

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California**

February 11, 2020 at 1:30 p.m.

1.	<u>20-20344</u> -C-13 <u>HSM</u> -1	RAYMOND/MARLEN GALLO Stephan Brown	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 1-28-20 <u>[11]</u>
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ALTA SUNRISE DEVCO, LLC VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion for Relief from the Automatic Stay is granted.
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Alta Sunrise Devco, LLC, as successor in interest (“Movant”), seeks relief from the automatic stay with respect to the real property commonly known as 5450 Sunrise Boulevard, Suite E, Citrus Heights, California (“Property”). The moving party has provided the Declaration of Jacqueline Hoff-Sasser to introduce evidence as a basis for Movant’s contention that Raymond Henry Gallo and Marlen Angela Gallo (“Debtor”) do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property, and Debtor was merely a tenant.

Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on December 27, 2019. Exhibit E, Dckt. 17.

Existence of Automatic Stay

The movant argues that no stay exists and seeks confirmation of that fact, relying on In re Windmill Farms, Inc., 841 F.2d 1467, 1471 (9th Cir. 1988). That reliance is misplaced.

In re Windmill Farms, Inc. did not discuss the automatic stay provisions of 11 U.S.C. § 362. That case examined whether there was a lease which could be assumed, and determined there was none. In re Windmill Farms, Inc., 841 F.2d at 1471.

11 U.S.C. § 362(b)(22)(emphasis added) speaks directly to the issue at hand:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(22) subject to subsection (l), under subsection (a)(3), **of the continuation of any eviction, unlawful detainer action, or similar proceeding** by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement **and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession** of such property against the debtor.

Read by its plain meaning, the Bankruptcy Code says there is no stay where judgment for possession was obtained prior to filing. What is not stated is that there is no stay where an unlawful detainer action is merely filed. Movant’s argument that no stay exists would render 11 U.S.C. § 362(b)(22) surplusage.

Here, a judgment was not shown to be obtained prior to filing.

Relief From Stay

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the

Property is *per se* not necessary for an effective reorganization. See *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because Debtor has no interest in the Property, and the lease was terminated prepetition.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Alta Sunrise Devco, LLC, as successor in interest (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 5450 Sunrise Boulevard,

Suite E, Citrus Heights, California .

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.