

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

February 13, 2018 at 1:30 p.m.

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1.	<a href="#">17-26209</a> -C-13	JOHN/DEBORAH MARTYNSKI	MOTION FOR RELIEF FROM
	<a href="#">SW-1</a>	Scott Shumaker	AUTOMATIC STAY
			1-30-18 [ <a href="#">30</a> ]

ALLY BANK VS.

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**Final Ruling:** No appearance at the February 13, 2018 hearing is required.

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The Movant, Ally Bank, having filed a "Withdrawal of Motion" for the pending Motion for Relief from Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation of Plan, and good cause appearing, **the court dismisses the Chapter 13 Trustee's Objection to Confirmation of Plan.**

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

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

An Objection to Confirmation of Plan having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of Plan is dismissed without prejudice.

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DEBTOR DISMISSED:  
01/29/2018  
TKR PROPERTIES, LLC VS.

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**Tentative Ruling:** The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 30, 2018. 14 days' notice is required.

The Motion for Relief from Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The for Relief from the Automatic stay will be continued to a date set at the hearing.**

TKR Properties, LLC seeks relief from the automatic stay with respect to the real property commonly known as 797 Blackwood Street, Sacramento, California. Debtor defaulted on payments and a Notice of Trustee's Sale was recorded on December 22, 2017 scheduling a sale for January 16, 2018. On January 16, 2018, the trustee under the deed of trust sold the property to TKR. On January 19, 2018, TKR received notification that a bankruptcy had been filed on January 16, 2018 and that the sale would need to be rescinded.

Movant requests the court annul the stay or determine that there was no stay in effect at the time of the sale of the property. The court notes that the case was dismissed on January 29, 2018 for failure to file documents.

The court can retroactively grant relief from the automatic stay. A court must balance the equities between the parties in order to determine whether retroactive annulment is justified. In re National Environmental Waste Corp., 129 F.3d 1052, 1055 (9th Cir. 1997). The Ninth Circuit has held that the court "has wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from stay." Swartz v. United States (In re Schwartz), 954 F.2d 569, 572 (9th Cir. 1992). However, the Ninth Circuit has additionally cautioned that such retroactive relief should be "applied only in extreme circumstances." Mataya v.

Kissinger (In re Kissinger), 72 F.3d 107, 109 (9th Cir. 1995) (quoting Phoenix Bond & Indemnity Company v. Shamblin (In re Shamblin), 890 F.2d 123, 126 (9th Cir. 1989)).

When determining whether or not to grant retroactive relief from stay, the court must determine whether or not the harm to the creditor incurred by imposing the stay and voiding the transfer outweighs the harm to the debtor by retroactively annulling a valid stay created by the filing of the debtor's bankruptcy petition.

The creditor does not argue that the automatic stay should be annulled due to cause. Although the information provided to the court is incomplete, it appears that the debtor had an equity in the property at the time of the foreclosure sale. Instead, the creditor argues that the stay should be annulled because the debtor filed the bankruptcy petition for the sole purpose of frustrating the foreclosure sale. The evidence supporting such contention provided by the movant is that the debtor's case has since been dismissed for failure to file documents.

However, the court is not persuaded that the filing of the bankruptcy petition was in bad faith. Filing a bankruptcy petition for the purpose of forestalling a foreclosure is not per se indicative of bad faith. The debtor may have filed with every intention of pursuing bankruptcy relief. Although the debtor did not file schedules, the debtor did pay the filing fee. After the foreclosure sale occurred the debtor may have thought that the bankruptcy was no longer in her best interests without the possibility of keeping the house. While the court makes no such findings, the court is unconvinced on the evidence submitted to it that annulment of the automatic stay to allow the foreclosure sale is warranted.

The court will continue the hearing to allow the movant an opportunity to file supplemental briefing to convince the court that the automatic stay should be annulled.

The court shall issue a minute 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 the creditor 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 hearing will be continued to a date to be determined at the hearing.

No other or additional relief is granted.

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