

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

March 7, 2017 at 1:30 P.M.

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1. [15-24006](#)-C-13 MICHELE BLAIR CONTINUED AMENDED MOTION FOR  
AID-1 Mary Ellen Terranella RELIEF FROM AUTOMATIC STAY OR  
AMENDED MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
12-28-16 [[28](#)]  
  
HOUSING GROUP FUND, INC. 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 December 28, 2016. 14 days' notice is required. That requirement is met.

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.

**The hearing on Motion for Relief from the Automatic stay is granted.**

Housing Group Fund, Inc. seeks either relief from the automatic stay with respect to a post-petition state court action for partition or against

the state court entering an interlocutory judgment ordering the real property located at 100 Seneca Way, Vacaville, CA to be sold and its proceeds equitably distributed between Movant and debtor or a declaratory judgment that the stay does not apply.

The Movant and debtor each half own the property and debtor has been refusing to allow Movant physical access to the property . Movant requests relief from the stay "for cause." The Movant asserts that all claims asserted in the underlying state court action are for post-petition activities by the debtor, and as a result the automatic stay should not apply to stay any proceedings in the state court on this issue.

The Chapter 13 Trustee does not oppose the motion.

At the hearing Debtor's counsel represented to the court that opposition to the motion is based on the purported sale to Movant being invalid as a matter of law. This opposition is simply that as a matter of California law, a transfer of title cannot occur while an action for the partition of real property is pending.

Though the court does not determine the underlying rights of the parties in the context of a motion for relief from the stay, this opposition asserted is a basic issue of law which can be readily presented to the court of the court to determine whether there is a colorable interest in the Property for Movant to assert.

#### **DISCUSSION**

The parties filed supplemental briefs in order to address the issue of whether or not a transfer of title cannot occur while an action for the partition of real property is pending. Debtor's argument that relates to this issue is that because HGF represented that it intended to pursue the Partition Action at the time of the assignment, the transfer of the 50% interest not owned by the debtor is a violation of the automatic stay.

The court is not persuaded by this bare assertion. The debtor does not introduce any authority to support this claim. Furthermore, the court finds that a purchase of a non-debtor's interest in real property, which as the Creditor points out was not never owned by the debtor or estate, is valid and does not violate the automatic stay. As a result, cause exists to grant the motion for relief from the automatic stay.

The court finds unpersuasive Debtor's arguments that the filing of this bankruptcy case somehow voids Debtor's sister selling the sister's interest 50% interest in the Property. While Debtor may prefer to have her sister as the co-owner (which sister had commenced the partition action which Movant is seeking to now pursue), Debtor cannot defease Movant of their rights and interests in the Property.

Debtor's contentions of a violation of the stay by buying the property and the sister "assigning" the partition action to Movant is disingenuous and improperly tries to conflate two different actions by the sister. Debtor is outraged that Movant is asserting the ownership of the 50% interest and having received an "assignment" of the partition action because sister commenced the partition action after Debtor commenced this bankruptcy case. While outraged, Debtor has taken no action against the sister for such a violation of the automatic stay.

Though the partition action may be void, having been filed after the

automatic stay went into effect, such void litigation does not limit the sister's right to sell her property - the 50% interest. There is no contention that Movant has acted to prosecute the partition action, other than filing this Motion for relief from the stay so Movant can prosecute the partition action. It may be, as addressed at the hearing, Movant may need to commence a new partition action because the sister's action, which was "assigned" by sister, appears to be void.

### **Continuance of Hearing**

While the Opposition lacks merit on the law, the court addressed with the Parties the practical aspect of this situation. Debtor has not shown the court any basis under which in bankruptcy Debtor can deprive Movant of its right to the enjoyment and use of its 50% interest in the property, or the economic value thereof. However, sending the parties to state court for a partition action, when the Debtor can quickly and easily market the property and sell it for fair market value (not for an apparent distress court forced sale) appears to be to everyone's advantage. Debtor can, if providing adequate protection, reasonably accommodate Movant's rights and interests, while maximizing the value for all parties - at a much lower legal fee cost.

The court continued the hearing to allow Debtor's counsel to address the realities of this case, her 50% interest, and the rights of Movant. Additionally, to allow Movant's counsel to address with Movant the realities of bankruptcy and the ability to now have the Debtor use this process to maximize the recovery for all. Absent additional evidence or authority or stipulation, the motion will be granted.

The court shall issue a minute order to the effect that the automatic stay does not act to stay the state court proceeding and/or partitioning of the property.

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 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 the Movant, Housing Group Fund, Inc., to move for a post-petition state court action for partition or for a state court interlocutory judgment ordering the real property located at 100 Seneca Way, Vacaville, CA to be sold and its proceeds distributed between Housing Group Fund, Inc., Movant, and Michele R Blair, Debtor.

No other or additional relief is granted.

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2. [14-27525](#)-C-13 DEVENDRA SHARMA AND  
APN-1 MIRDULA SINGH  
Stan Riddle  
HYUNDAI LEASE TITLING TRUST  
VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-7-17 [[60](#)]

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**Final Ruling:** No appearance at the March 7, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 7, 2017. Twenty-eight days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

Hyundai Lease Titling Trust seeks relief from the automatic stay with respect to a leased 2013 Hyundai Accent.

The Greer Declaration states that the Lease Agreement reached maturity on December 28, 2016. Debtors are required to provide the Lessor with the monies that are due and owing or to immediately surrender possession of the property to Lessor. Debtors have no equity in the vehicle.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The Debtors have not carried out their duties with respect to the Lease Agreement. The Trustee does not oppose the motion.

The court shall issue a minute order terminating and vacating the automatic stay to allow Hyundai Lease Titling Trust, and its agents, representatives and successors, to repossess and/or dispose of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Hyundai Lease Titling Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the 2013 Hyundai Accent.

No other or additional relief is granted.

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3. [14-30861](#)-C-13 TERENCE/SUZANNE KELLUM  
NLG-1 Richard Chan

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
1-31-17 [[33](#)]

SETERUS, INC. VS.

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**Tentative Ruling:** The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 31, 2017. Twenty-eight days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is denied as moot.**

Seterus, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 9233 Caldera Way, Sacramento, California. The moving party has provided the Declaration of Chiaverotti to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Chiaverotti Declaration states that the Debtor has not made several post-petition payments. Debtor first defaulted under the terms of the Note, Deed of Trust, and confirmed Chapter 13 Plan by failing to make mortgage payment due in December 2015. Since that time, Debtors have remitted payments which were applied to the most delinquent post-petition month due. Debtors currently still owe Movant post-petition payments for the months of October 1, 2016 through January 1, 2017 with a total of \$4,414.88 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$123,645.57 (including \$123,645.57

secured by movant's first trust deed), as stated in the Chiaverotti Declaration, while the value of the property is determined to be \$220,000.00, as stated in Schedules A and D filed by Debtor.

The court notes that the creditor is provided for in Class 4 of the confirmed plan. Pursuant to the terms of the plan section 2.11, "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any non-debtor in the event of a default under applicable law or contract." As a result, the stay has been automatically modified, and the creditor may exercise its rights against the collateral pursuant to non-bankruptcy law. Thus, the Motion for Relief from Automatic Stay will be denied as moot.

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 Motion for Relief from the Automatic Stay is denied as moot as the stay has been automatically modified with respect to the Creditor's claim pursuant to the terms of the confirmed plan.

No other or additional relief is granted.

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4. [17-20191](#)-C-13 DAVID MOORE  
PJR-1 Nikki Farris

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-21-17 [[12](#)]

DANIELLE TRACY 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 February 21, 2017. 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.

<b>The for Relief from the Automatic stay is granted.</b>
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Danielle Tracy, Creditor, seeks relief from the automatic stay with respect to the real property commonly known as 5467 Skyway, Paradise, California. The moving party has provided the Declaration of Danielle Tracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Tracy Declaration states that the Debtor has not made 1 post-petition payment, with a total of \$1,078.00 in post-petition payments past due. The debtor has not made any payments on the house since January 2016. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$204,618.91 (including \$200,000.00 secured by movant's first trust deed), as stated in the Tracy Declaration, while the value of the property is determined to be \$200,000.00, as stated in Schedules A and D filed by Debtor.

The Trustee filed a response indicating that the Debtor's plan

provides for a monthly payment of \$1,567.00 beginning February 25, 2017. Debtor's plan classifies the creditor as a Class 1 secured claim regarding ongoing mortgage payments and arrears.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). The debtor has no value in the asset and the property is not necessary to an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow Danielle Tracy, and her agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Danielle Tracy, her agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real

property commonly known as 5467 Skyway, Paradise,  
California.

No other or additional relief is granted.

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