

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

March 10, 2015 at 1:30 P.M.

---

1. [13-28817](#)-C-13 ADRIAN ROBERTS MOTION FOR CLARIFICATION OF  
DBR-2 ORDER FOR RELIEF FROM AUTOMATIC  
STAY  
2-24-15 [[109](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the March 10, 2015 hearing is required.  
-----

The court having signed the order granting Creditors' Motion for Relief from Automatic Stay as to real property commonly known as 7726, Quimby Way, Sacramento, California, the Motion for Clarification of Order is dismissed 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 Clarification of Order  
for Relief from Automatic Stay 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  
Clarification of Order for Relief from Automatic  
Stay is dismissed as moot, the court having  
signed the order granting Creditors' Motion for  
Relief from Automatic Stay as to real property  
commonly known as 7726, Quimby Way, Sacramento,  
California.

\*\*\*\*\*

2. [14-29083](#)-C-13 RICHARD/LINDA BROCK  
JHW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-5-15 [[36](#)]

FORD MOTOR CREDIT COMPANY,  
LLC VS.

\*\*\*\*\*

**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.**

-----  
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 February 5, 2015. 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 granted.**

Creditor, Ford Motor Company, LLC, seeks relief from the automatic stay with respect to a 2014 Ford Fusion, VIN: 3FA6P0HD9ER393152. The moving party has provided the Declaration of Tiffany Didur to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Didur Declaration states that the Debtor has not made two (2) post-petition payments, with a total of \$1,182.82 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 \$35,484.07 as stated in Debtors' Schedule D (although the Movant's Relief from Stay Information Sheet lists the debt at \$33,117), while the value of the property is determined to be \$29,600, as stated in Schedules B and D

filed by Debtors.

Further, in addition to seeking relief from the automatic stay in place, Movant requests that the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived.

#### **TRUSTEE'S RESPONSE**

Chapter 13 Trustee responds to Creditor's motion to provide that Debtor is delinquent \$4,450 under the confirmed plan. Debtors have paid a total of \$7,550 to date. Under the confirmed plan, Ford Motor Credit Company, LLC, was listed as Class 2 purchase money security interest creditor. Trustee has disbursed to Creditor a total of \$1,766.70 in principal and interest in November 2014 and December 2014.

Finally, Trustee states that Debtors have filed a modified plan proposing to reclassify Creditor to Class 3 surrender. This hearing was set for February 24, 2015.

#### **DISCUSSION**

As the Chapter 13 Trustee has indicated, Debtors filed a modified plan proposing to reclassify Creditor to Class 3 surrender. On February 24, 2015, the court granted Debtors' motion to modify chapter 13 plan. The modified chapter 13 plan has reclassified Creditor to Class 3, indicating an intent to satisfy Creditor's secured claim by surrendering the collateral at issue here. (Dkt. 32).

Thus, the court shall issue a minute order terminating and vacating the automatic stay to allow Ford Motor Company, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The court is persuaded that waiver of the 14-day stay of enforcement required under Rule 4001(a)(3) is appropriate here, and this part of the requested relief is 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 Ford Motor Company, LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2014 Ford

Fusion, VIN: 3FA6P0HD9ER393152, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

\*\*\*\*

KENNEDY MEADOWS MHC, LLC VS.

\*\*\*\*\*

**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).**  
-----

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 24, 2015. 14 days' notice is required.

The Motion to Value 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 -----  
-----.

|   |
|---|
| <b>The for Relief from the Automatic stay is granted.</b> |
|---|

Kennedy Meadows MHC, LLC dba Fairway Estates ("Movant") operates and owns a mobilehome park, and seeks relief from the automatic stay with respect to a residential real property commonly known as 4123 Annapolis Lane a.k.a 5011 Hillsdale Boulevard, Space 165, North Highlands, California (the "Property") under 11 U.S.C. §§ 362(d)(1) and (2). The moving party has provided the Declaration of Amber Monte to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

A review of the motion for relief, supporting documents, and civil minutes, filed in a prior state action show the following. Movant leased to Debtors the above-described Property October 29, 2010, and Debtors have placed upon the premises a 2003 Oakwood Mobile Home bearing the decal number LBF7116 (manufactured by HBOS Manufacturing, LP), which Debtors own. The lease agreement calls for monthly payments in the amount of \$666.39 due on

the first of each month through September 30, 2015. The lease agreement calls for Debtors to pay for utilities actually used by Debtors at the Property. Debtors untimely made their utility payments for October 2014, and made no payments for rent or utilities since September 2014, despite remaining in possession of the Property. Movant asserts Debtor has no equity in the Property as a renter.

Movant served upon Debtor a three-day notice to pay rent or quit and sixty day notice of termination of possession on October 7, 2014. On February 2, 2015, Movant commenced an unlawful detainer action. (Sacramento County Superior Court Case No. UD15-00867). On February 4, 2015, Debtors were served with the Eviction Complaint. On February 12, 2015, Debtors filed the instant bankruptcy case.

The court maintains the right to grant relief from stay for cause under 11 U.S.C. § 362(d)(1) 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, and appears to have used bankruptcy as a means to delay payment or foreclosure. 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 court infers from Debtors' lack of response that the Property is not necessary to an effective reorganization. If the Debtor does not appear at the hearing, the court will infer that the property is not necessary to an effective reorganization.

Finally, the moving party asserts that they have perfected a statutory "warehouse lien" against Debtors' mobile home pursuant to CCP § 798.56a(e), and seek the court's permission to enforce this warehouse lien. The court makes no judgment as to the legitimacy of Movant's rights or entitlements under state law. However, Movant may exercise its rights to obtain possession of the Property pursuant to applicable nonbankruptcy law, including applicable state law, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The court shall issue a minute order terminating and vacating the automatic stay to allow Kennedy Meadows MHC, LLC dba Fairway Estates, and its agents, representatives and successors, to exercise its rights to obtain possession of the Property pursuant to applicable nonbankruptcy law, including applicable state law, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Kennedy Meadows MHC, LLC dba Fairway Estates ("Movant"), its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors, under applicable nonbankruptcy law, including applicable state law, to obtain possession of the property commonly known as 4123 Annapolis Lane a.k.a 5011 Hillsdale Boulevard, Space 165, North Highlands, California.

No other or additional relief is granted.

\*\*\*\*\*