

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 12, 2019 at 1:30 p.m.

1.	<u>18-27708</u> -C-13 <u>JCW</u> -1	VIRGIL EVANS Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-5-19 <u>[30]</u>
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U.S. BANK, N.A. VS.
DEBTOR DISMISSED: 02/21/2019

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2019. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted, with relief issued pursuant to 11 U.S.C. § 362(d)(4).

U.S. Bank National Association (“Movant”) seeks relief from the automatic stay with respect to Virgil Evans’ (“Debtor”) real property commonly known as 2004 Rapallo Way, Bay Point, California (“Property”). Movant has provided the Declaration of Kathleen Daugherty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on February 21, 2019, for not attending the Meeting of Creditors, being delinquent in plan payments, and not noticing a Plan for confirmation. Dckt. 45.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or

724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of February 21, 2019, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue a minute order confirming that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Debtor and the bankruptcy estate in this case pursuant to 11 U.S.C. § 362(c)(2)(B) and § 349(b)(3) as it applied to Property.

Relief Requested Pursuant to 11 U.S.C. § 362(d)(4)

The Motion seeks relief pursuant to 11 U.S.C. § 362(d)(4), which would prevent the automatic stay from going into effect in subsequently filed cases during a two year period following the entry of the order. The Motion states with particularity (Fed. R. Bankr. P. 9013) grounds, which includes the following:

“On or around April 15, 2013, Michael Genzoli [the original borrower for the obligation upon which the secured claim is based], a single man transferred all interest to The Rapallo Way Trust, Lanette Genzoli as Trustee (100%) without the knowledge or consent of the Movant in violation of the terms of the Deed of Trust Original Borrower signed. A true and correct copy of the unauthorized Grant Deed and Agreement and Declaration of Trust is attached hereto as Exhibit “4” and incorporated herein by reference.”

Motion, p. 3:12.5-16.5.

“On or around December 15, 2015, Amendment to Trust was executed transferring beneficial interest to Mike Genzoli (90%) and Virgil Leroy Evans (10%) without the knowledge or consent of the Movant in violation of the terms of the Deed of Trust Original Borrower signed. A true and correct copy of the unauthorized Amendment to Trust is attached hereto as Exhibit “5” and incorporated herein by reference.”

Id., p. 3:17.5-21.5.

The Motion further identifies multiple bankruptcy cases filed by Mike Genzoli, which cases have been dismissed by the court, as well as prior cases filed by Debtor:

“Multiple Bankruptcies

Michael Robert Genzoli filed a previous bankruptcy petition in the above-entitled Court on 07/09/2014 as Case Number 14-42895. The Court entered an Order Dismissing Case on 07/25/2014. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Michael Robert Genzoli filed a previous bankruptcy petition in the above-entitled Court on 08/11/2014 as Case Number 14-43312. The Court entered an Order Dismissing Case on 08/27/2014. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Michael Robert Genzoli filed a previous bankruptcy petition in the above-entitled Court on 04/08/2015 as Case Number 15-41114. The Court entered an Order Dismissing Case on 05/13/2015. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Virgil Leroy Evans filed a previous bankruptcy petition in the above-entitled Court on 04/18/2016 as Case Number 16-22447. The Court entered an Order Dismissing Case on 08/02/2016. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Virgil Leroy Evans filed a previous bankruptcy petition in the above-entitled Court on 05/16/2017 as Case Number 17-23313. The Court entered an Order Dismissing Case on 08/03/2017. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Virgil Leroy Evans filed a previous bankruptcy petition in the above-entitled Court on 04/07/2018 as Case Number 18-22102. The Court entered an Order Dismissing Case on 10/11/2018. A true and correct copy of the PACER Docket is attached hereto as Exhibit “6”.

Virgil Leroy Evans, (herein after referred to as “Debtor”) filed a petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court, Case No. 18-27708 on 12/12/2018.”

Id., p. 3:23.5-26.5, 4:1.5-18.5.

Debtor has filed an Opposition, asserting that the Motion is moot since his bankruptcy case has been dismissed. Dckt. 49 (Debtor refiled the Opposition as Dckt. 50).

In the Declaration in support of the Motion, Kathleen Daugherty, Vice President at CitiMortgage, Inc. (the loan servicer), testifies of the defaults on the secured obligation dating back to October 2011, which total \$140,437.43. Declaration ¶¶ 9, 10; Dckt. 34.

It is alleged and evidence is provided that Michael Genzoli transferred the real property commonly known as 2004 Rapallo Way, Bay Point, California from himself (as the 100% owner) to Lanette Genzoli as the Trustee of the Rapallo Way Trust. Motion, p. 3:12.5-16.5; Dckt. 30. Subsequently, the Trustee was amended to give Debtor a 10% interest and Michael Genzoli having a 90% interest in the Trust.

Id., p. 3:17.5-21.5.

On Schedule A/B Debtor does not list any interest in the real property commonly known as 2004 Rapallo Way, Bay Point, California, nor any interest in the Rapallo Way Trust. Dckt. 21.

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay and order that the stay in a subsequently filed case will not be effective as to specific property where the court finds that the petition in the case before the court was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property.

Additionally, there is evidence of a purported unauthorized transfers of a fractionalized interest in the property, indirectly through the purported fractional interest in the Trust, to beneficiaries who then filed several bankruptcies deliberately used for a stay to any foreclosure.

Debtor, under penalty of perjury states in the Schedule no interests in the Property or the Trust. Interestingly, the Amendment to the Trust purporting to create a 10% interest in the Rapallo Way Trust in the Debtor to have a printed signature for Debtor that is similar to the printed signature on the Opposition. Exhibit 5, Dckt. 36; Opposition, Dckt. 49. However, even more interesting is that the Debtor, identified as Virgil Leroy Evans has not signed the bankruptcy petition. Dckt. 1 at 6.

It may well be that Virgil Leroy Evans, to the extent that he has filed the current Petition may be the victim of identity theft/identity highjacking to try and improperly use the Bankruptcy Code to temporarily, repeatedly derail a foreclosure sale of the 2004 Rapallo Way, Bay Point, California.

There have been repeated bankruptcy cases filed, and dismissed, by Debtor and Michael Genzoli to assert the automatic stay to delay/derail the foreclosure sale of the Property. A purported transfer/creation of a fractional interest in a trust has been used to assert that the stay in Debtor's case delays/derails the foreclosure sale.

The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court also grants relief pursuant to 11 U.S.C. § (d)(4), with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 terminating and vacating the automatic stay to allow U.S. Bank, N.A., as Trustee as trustee for Bear Stearns asset backed securities trust 2003-AC7, asset-backed certificates, series 2003-AC7, ("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 this bankruptcy case having been dismissed on February 21, 2019, the court confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Virgil Evans ("Debtor") and the bankruptcy estate in this case pursuant to 11 U.S.C. § 362(c)(2)(B) and § 349(b)(3) as it applied to the real property commonly known as 2004 Rapallo Way, Bay Point, California

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, which provides that if this order is recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any subsequent bankruptcy case under this Title purporting to affect such real property commonly known as 2004 Rapallo Way, Bay Point, California, filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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.

THE BANK OF NEW YORK MELLON
VS.

No 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.

Local Rule 9014-1(f)(1) 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 February 6, 2019. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is ~~XXXXX~~.

The Bank of New York Mellon ("Movant") seeks relief from the automatic stay with respect to Paul Eagle's ("Debtor") real property commonly known as 4377 Country Run Way, Antelope, California ("Property"). Movant has provided the Declaration of Megan Koontz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Megan Koontz Declaration states that there are 18 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$18,509.94 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default.

CHAPTER 13 TRUSTEE'S RESPONSE:

David Cusick ("the Chapter 13 Trustee") filed a Response on February 22, 2019. Dckt. 85. The Chapter 13 Trustee asserts that the Debtor is current under the confirmed plan where the last posted payment was on January 23, 2019 for \$930.00. Debtor's Plan classified the Movant as a Class 1 creditor regarding the ongoing mortgage payments and arrears as outlined in the "Ensminger provision" included in Section 6 of the Plan and pursuant to the Order Confirming the Plan. Dckts. 5 (Plan); 54 (Order Confirming).

The Movant's claim reflects a secured claim of \$147,300.00 and arrears of \$5,053.07. Claim No. 4-1. The Trustee's records reflect that a total of \$19,308.35 adequate protection payments have been disbursed with a current principal due of \$0.00.

The Trustee also notes that the confirmed Plan provided that the Debtor has "in process a HAMP application" and no evidence has been filed as to any pending application. Movant's motion includes exhibits showing that there was a loan modification prior to filing which the Trustee construes as an implicit denial of any pending application. As such the Trustee contends that the Debtor has 14 days from the motion to file a motion to modify the Plan.

DEBTOR'S OPPOSITION:

Debtor Opposes Movant's request for relief from stay. Debtor's counsel asserts that Debtor applied for a loan modification and received correspondence on January 26, 2019 stating that the application was received. Dckt. 88. Debtor's counsel states that loan modification is still in process with the Movant.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$223,719.89 (including \$147,194.89 secured by Movant's first deed of trust), as stated in the Megan Koontz Declaration and Schedule D. The value of the Property is determined to be \$270,000.00, as stated in Schedules A and D.

The Chapter 13 Plan incorrectly includes Creditor's claim as a Class 1 Claim. Dckt. 5. The Plan does not provide for making the current monthly payment and a payment sufficient to cure the arrearage during the life of the Plan. Rather, the only treatment for Creditor's claim is to make monthly adequate protection payments pending diligent prosecution of a loan modification request, and preserving Creditor's right to seek relief from the automatic stay. See Plan, Section 6, Additional Provisions. Dckt. 5. Creditor has exercised its rights to seek relief from the automatic stay.

This case was filed on June 15, 2016. Debtor's plan filed on June 15, 2016, provides that Debtor will make an adequate protection payment of \$772.85 pending Debtor's diligent prosecution of a HAMP application for a loan modification. The Plan provision makes the affirmative representation that the loan modification is already in process as of June 15, 2016:

6.01.2 Adequate Protection Payment

The Debtor has in process a HAMP Application for modification of this loan. The application requests that the prepetition arrearage, to the extent not waived, be included in a new principal amount to be amortized over the life of the loan as modified. During loan modification application process Bank of America shall be paid an aggregate \$772.85 a month as an adequate protection payment pending determination on the loan modification. The monthly adequate protection payment shall be applied to the post- petition -interest on this claim or as specified in a loan modification.

Plan, Additional Provision ¶ 6.01.2. June 15, 2016, is 1,000 days prior to the hearing on this Motion.

In the Opposition, Debtor's counsel argues that Debtor has "applied" for a loan modification on

January 22, 2019, which is approximately 935 days after filing the Plan that said Debtor was already in the process of a loan modification. Opposition, Dckt. 88. Debtor provides her testimony in a Declaration that the modification application was completed as of January 22, 2019. Dckt. 89. Debtor provides no testimony of the diligent prosecution of a loan modification application during the 1000 days since filing this case.

In Motion, it is alleged that the loan that is the basis of this claim was modified, directing the court to review Exhibit E to determine what and when that was done (Creditor electing to not state such information with particularity in the Motion). Motion ¶ 6, Dckt. 79. The Loan Modification document filed as Exhibit E is dated May 13, 2014 - three years before the filing of the current case.

Here, Debtor has had 1,000 days to diligently prosecute a loan modification. It appears that Debtor has not so prosecuted a loan modification, but has waited two and one-half years to submit a loan application. The submission of the loan modification application coincides with Creditor, after almost 1,000 days, filing the present Motion.

Debtor explains the lack of there being a loan modification being prosecuted before January 2019 as **XXXXXXXXXXXXXXXXXXXX**

Whether relief is warranted rests on whether there is still a pending request for loan modification and, if denied, the Movant provided proper notice to the Debtor and Debtor's counsel regarding its determination.

At the hearing -----.

The court shall **xxxx**.

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 the Bank of New York Mellon ("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 **xxxx**.

3. [19-21395-C-11](#) **PINK OCEAN**
[RPG-1](#) **HOSPITALITY,LLC**
Pro Se

MOTION TO DISMISS
CASE O.S.T.
3-7-19 [6]

MATTER TO BE HELD IN DEPT.
E, COURTROOM NO. 33

No 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)(3) Motion—Hearing Required.

The court issued an Order setting the hearing for March 12, 2019 at 1:30 p.m. Dckt. 9. The court required Movant to provide notice to Debtor and the law firm Ganzer & Williams. The Proof Of Service indicates the Motion was served on the Debtor and Office of the U.S. Trustee, and notice of the hearing provided March 11, 2019 on the Office of the U.S. Trustee and Yan Shi, the Sole Member and Manager of Debtor. Dckts. 6, 10. **No evidence has been provided showing notice was provided to Ganzer & Williams as required by the court's Order.**

The Motion To Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 To Dismiss is XXXXXXXXXX.
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Creditor SAS Stockton, LLC ("Movant") filed this Motion seeking dismissal of the case of Pink Ocean Hospitality, LLC ("ΔIP"). Movant argues cause exists for dismissal pursuant to 11 U.S.C. § 1112(b) because ΔIP is a limited liability company not represented by counsel, and applicable law does not permit Debtors who are not individuals to appear in *pro per*.

On March 7, 2019, the court issued a Notice To Debtor Concerning Legal Representation. Dckt. 5. The Notice instructed ΔIP that unless it obtains legal representation, the Court or a party-in-interest may initiate an action to dismiss the case.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 to Dismiss the case filed by Creditor SAS Stockton, LLC (“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 Motion to Dismiss is **xxxxxx**.
