

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

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

1. [19-20779-E-13](#) ASHA KING
[KH-1](#) Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-26-19 [\[13\]](#)**

IH5 PROPERTY WEST, LP 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on February 26, 2019. 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.

IH5 Property West, LP., ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as **1701 Pebblewood Drive, Sacramento**, California ("Property"). The moving party has provided the Declaration of Tonya Tretter to introduce evidence as a basis for Movant's contention

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that Asha King (“Debtor”) does 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. Declaration**, Dckt. 19; Exhibit 1, Dckt. 16. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an **unlawful detainer** action in California Superior Court, County of Sacramento on February 5, 2019. Exhibit 3, Dckt. 18.

Opposition Filed by Debtor

Though not required because the Motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), Debtor has filed a pleading stating that she “submits this Opposition to the Motion for Relief from the Automatic Stay.” No opposition grounds are stated.

On Schedule G Debtor lists a least of residential real property, with a lease period of December 2017 through December 2019. Dckt. 12 at 15.

DISCUSSION

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). Debtor has not presented evidence or argument suggesting the Property is necessary for an effective rehabilitation.

Debtor’s lack of an interest is also good cause for termination of the stay. 11 U.S.C. § 362(d)(2)

The court shall issue an order terminating and vacating the automatic stay to allow IH5 Property West, LP., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1701 Pebblewood Drive, Sacramento, California, 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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not 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 IH5 Property West, LP., (“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 IH5 Property West, LP., and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1701 Pebblewood Drive, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.