

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 18, 2017 at 1:30 p.m.

1.	16-20919 -C-13	PAUL/DOREEN BAILEY	MOTION FOR RELIEF FROM
	SSW-1	Dale Ortner	AUTOMATIC STAY
			3-15-17 [102]
	STERLING, INC. VS.		

Final Ruling: No appearance at the April 18, 2017 hearing is required.

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 March 15, 2017. Twenty-eight days' notice is required. That requirement is 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). 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.

Sterling Inc. d/b/a Kay Jewelers seeks relief from the automatic stay with respect to personal property of the debtors, specifically jewelry. The moving party has provided the Declaration of Pamela Fairley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the debtors.

The Fairley Declaration states that the debtors has not made 9 post-petition payments, with a total of \$1,665.00 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 \$4,718.11 (including \$3,500.00 secured by the debtor's jewelry), as stated in the Fairley Declaration, while the value of the property is determined to be \$3,500.00, as stated in Schedule A filed by the debtors.

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 court shall issue a minute order terminating and vacating the automatic stay to allow Sterling Inc. d/b/a Kay Jewelers, and its agents, representatives and successors, and all other creditors having lien rights against the property, to repossess and/or dispose of the property under any applicable nonbankruptcy law.

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 Sterling Inc. d/b/a Kay Jewelers, its agents, representatives, and successors, to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to repossess and/or dispose of the jewelry owned by the debtors as itemized in the debtors' Schedule A.

No other or additional relief is granted.

2. [16-25445](#)-C-13 CAMMY WOOD
ME-3 Jeffrey Guyton

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
3-7-17 [[159](#)]

FRANK R. LEDESMA, LOUISE D.
LEDESMA VS.

Tentative Ruling: The Motion to for Relief from Stay 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 March 7, 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.

The Motion for Relief from the Automatic stay is denied.

Frank Ledesma seeks relief from the automatic stay with respect to the real property commonly known as 8121 Hammonton-Smartsville Rd., Smartsville, California. The moving party has provided the Declaration of Michael Ecker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Creditor asserts a total of \$6,963.82 in post-petition payments past due. The loan matured and is payable January 12, 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 \$235,726.16 (including \$235,726.16 secured by movant's first trust deed), as stated by the creditor, while the value of the property is determined to be \$220,000, as

stated in Schedules A and D filed by Debtor. Creditor states that the value of the property is \$300,000.00.

Debtor filed a response requesting that the motion be continued to allow for enough time to file a response. The court granted a continuance to April 18, 2017 and required that the debtor file supplemental briefing opposing the motion.

DEBTOR'S OPPOSITION

Debtor opposes relief from stay on the basis that there is substantial equity in the property, and the creditors are over-secured as the valuation is closer to \$410,000.00. Therefore, debtor requests that the motion be denied or continued in order to allow time for the debtor to close the escrow for her anticipated refinancing of all of the debtor's obligations owed to creditors.

Debtor asserts that not providing fire insurance is not a default because the property is uninsurable, and the creditors knew that at the time of the sale.

Debtor argues that the debtor has improved the property and the creditors raised no objections to those improvements.

Debtor denies that there has been unreasonable delay, pointing to the litigiousness of the creditors and a plan to pay off all creditors in full through a refinancing.

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

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 Automatic Stay is denied.
