

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 22, 2025 at 1:30 p.m.

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|----|-------------------------------|------------------|------------------------------|
| 1. | 21-20814-E-13 | ARLEANER COLLINS | CONTINUED MOTION FOR RELIEF |
| | RAS-1 | Peter Macaluso | FROM AUTOMATIC STAY |
| | | | 9-18-24 [45] |
| | MORTGAGE ASSETS MANAGEMENT, | | |
| | LLC 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.

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, parties requesting special notice, and Office of the United States Trustee on September 18, 2024. By the court's calculation, 34 days' notice was provided. 28 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). 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.

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| The Motion for Relief from the Automatic Stay is XXXXXXX. |
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April 22, 2025 Hearing

The court continued the hearing on this Motion as Creditor Movant agreed to one short continuance to afford Debtor's counsel an additionally opportunity to reach out to the successor representative of the Debtor and Debtor's family to see if they are going to move forward with a sale of the Property. A review of the Docket on April 18, 2025 reveals nothing new has been filed with the court.

At the hearing, XXXXXXX

REVIEW OF MOTION

Mortgage Assets Management, LLC (“Movant”) seeks relief from the automatic stay with respect to Arleaner Collins’ (“Debtor”) real property commonly known as 1828 Jamestown Dr, Sacramento, California 95815 (“Property”). Movant has provided the Declaration of Carlene Reid to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 48.

Movant states that on June 16, 2024, Debtor passed away. Mot. 3:12-13, Docket 45. Movant is still owed \$330,501.41 on the reverse mortgage Note that is secured by the deed of trust in the Property. *Id.* at 4:1; Decl. ¶ 9, Docket 48. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) as Movant’s death has caused the loan to go into default, and the terms of the reverse mortgage permit the balance of the loan to be due and payable upon death of Debtor. Decl. ¶ 7.

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on October 8, 2024. Docket 52. Debtor’s counsel states he has been unable to determine for himself whether Debtor has passed away and asks the court for a continuance until he can find if Debtor has truly passed away.

TRUSTEE’S OPPOSITION

On October 11, 2024, David Cusick, the Chapter 13 Trustee (“Trustee”) filed an Opposition. Trustee opposes on the ground that Movant has not elaborated how Movant learned of Debtor’s death, and Trustee has not been presented with evidence of Debtor’s death.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$330,501.41, while the value of the Property is determined to be \$375,000 as stated in Schedules A/B filed by Debtor. Am. Schedule A/B 4, Docket 29.

Absence of Evidence

In the Motion, the grounds for the requested relief is that the Debtor has died. Motion, p. 5:1-7; Dckt. 45. The Declaration of Carlene Reid, a “Contract Management Coordinator of PHH Mortgage,” includes the following testimony:

8. Arleaner Collins (“Debtor”) is the only borrower on this Note. Debtor passes away on June 15, 2024; thus, calling the Note all due and payable upon such date. The total amount due remains due and owing.”

Dec., ¶ 8; Dckt. 48. This testimony is provided under penalty of perjury. It is also provided by Movant and Movant’s counsel subject to the Federal Rules of Evidence. As counsel knows, witness testimony must be based on that witnesses personal knowledge and not mere speculation or hearsay (with specific exceptions not applicable here).

Ms. Reid, in her testimony under penalty of perjury does not explain how she has personal knowledge of the death for which she provides her testimony. Possibly, she was present with the Debtor in her final minutes and personally witnessed the death.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, the terms of the reverse mortgage are such that the balance of the Note become due and payable once the Debtor passes away. The confirmation from Debtor’s daughter that the Debtor has passed away, the condition cited by Movant has occurred.

Federal Rule of Bankruptcy Procedure 4001(a)(3) 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, as it is unclear whether the Property is being properly maintained, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 5:9-15, Docket 45.

Movant has 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).

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant’s Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

OCTOBER 22, 2024 HEARING

At the hearing, counsel for Movant, stated that he has not been able to reach his client. Debtor's daughter appeared at the hearing, and confirmed that the Debtor, her mother, has passed away.

In light of there not having been a successor representative for the late Debtor, and Debtor's counsel apparently not having been contacted by the family, the Parties agreed to a continuance to allow Debtor's heirs to determine if they wan to pursue a sale of the Property.

The hearing is continued to 1:30 p.m. on December 10, 2024.

DECEMBER 10, 2024 HEARING

The court continued the hearing on this Motion after confirming at the prior hearing that Debtor had indeed passed away. The court continued the hearing to provide the parties with an opportunity to

decide if they wanted to pursue a sale of the Property. Nothing new has been filed with the court as of December 4, 2024, under this Docket Control Number. However, Debtor has filed a Motion to Substitute at Docket 61, which will be heard on the 2:00 p.m. calendar on December 10, 2024.

The court having granted the Motion to Substitute a Successor Representative for the late Debtor, the Parties agree to continue the hearing on the Motion.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on January 28, 2025.

JANUARY 28, 2025 HEARING

The court continued the hearing on this Motion at the Parties' request, there being a successor in interest appointed in the case. Order, Docket 71. A review of the Docket on January 24, 2025 reveals nothing new has been filed with the court.

Curiously, in the past forty-three (43) days since the December 15, 2024 hearing, no motion to employ a real estate broker has been filed by the Debtor. On Schedule A/B Debtor valued the Property at \$375,000. As of September 2024, Creditor computed its secure claim to be(\$330,501.41). It may be that the Successor Representative for the Debtor has concluded that the debt secured by the Property exceeds any recoverable value from the sale of the Property.

At the hearing, the Parties requested a further continuance to allow the successor representative to proceed with the marketing and sale of the Property, while also coordinating with the probate proceeding that has been commenced.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m on April 8, 2025.

APRIL 8, 2025 HEARING

The court continued the hearing on this Motion as the Parties requested a further continuance to allow the successor representative to proceed with the marketing and sale of the Property, while also coordinating with the probate proceeding that has been commenced. A review of the Docket on April 3, 2025 reveals nothing new has been filed related to this Motion.

At the hearing, Creditor Movant agreed to one short continuance to afford Debtor's counsel an additionally opportunity to reach out to the successor representative of the Debtor and Debtor's family to see if they are going to move forward with a sale of the Property.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on April 22, 2025.

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 Mortgage Assets Management, 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 for Relief from the Automatic Stay is
XXXXXXX.

2. [25-20830](#)-E-13

EILEEN HECHT
Pro Se

**NOTICE OF INCOMPLETE FILING AND
NOTICE OF INTENT TO DISMISS
CASE IF DOCUMENTS ARE NOT
TIMELY FILED
2-27-25 [8]**

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 court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

**The hearing on the Notice of Incomplete Filing and Notice of Intent to Dismiss is
XXXXXXX.**

On February 26, 2025, Debtor Eileen Hecht commenced this voluntary Chapter 13 Case. Petition; Dckt. 1. On February 26, 2025, and then again on February 27, 2025, the Clerk of the Court entered a Notice of Incomplete Filing and Notice of Intent to Dismiss Case If Documents Not Timely Filed. Dckts. 3, 8. The following Documents were identified by the Clerk as not having been filed and the deadlines for filing such Documents:

Filed on or before March 5, 2025

Verification and Master Address List

Filed on or before March 12, 2025

Chapter 13 Plan
Form 122C-1 Statement of Monthly Income
Schedule A/B - Real and Personal Property
Schedule C - Exempt Property
Schedule D - Secured Creditors
Schedule E/F - Unsecured Claims
Schedule G - Executory Contracts
Schedule H - Codebtors
Schedule I - Current Income
Schedule J - Current Expend.
Statement of Financial Affairs

Summary of Assets and Liabilities

Id.

None of the required Documents were filed, and the Clerk of the Court entered an Order dismissing this Bankruptcy Case on March 10, 2025 (the Verification and Master Address List being required to be filed on or before March 5, 2025). Dckt. 10.

On April 1, 2025, Debtor filed a Motion to Vacate the Order Dismissing this Chapter 13 Bankruptcy Case. Dckt. 12. The court granted that Motion on April 3, 2025. Order, Docket 13.

As part of that Order, Debtor was to file the missing documents by April 15, 2025. *Id.* Debtor has not filed the documents as of the court's review on April 18, 2025.

At the hearing, **XXXXXXX**

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 of Incomplete Filing and Notice of Intent to Dismiss having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that hearing on the Notice of Incomplete Filing and Notice of Intent to Dismiss is **XXXXXXX**.

3. [24-24390-E-13](#)
[PLC-4](#)

TARRA WASILCHEN
Peter Cianchetta

**MOTION FOR RELIEF FROM
AUTOMATIC STAY , STIPULATION
FOR RELIEF FROM AUTOMATIC STAY
WITH DAVID BRUCE CHAPMAN
3-28-25 [56]**

DAVID BRUCE CHAPMAN 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on April 1, 2025. By the court's calculation, 22 days' notice was provided. The court set the hearing for April 22, 2025. Dckt. 60.

The hearing on the Stipulation, which the court has deemed a Motion for Relief was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 hearing on the Stipulation, which the court has deemed a Motion for Relief
is XXXXXXX.**

On March 28, 2025, Tarra Wasilchen, Debtor, filed a Stipulation for Relief From Automatic Stay. Dckt. 56. The Stipulation states that Debtor Tarra Wasilchen and David Chapman, who is identified as Debtor's spouse, are seeking to have the automatic stay modified to proceed with a dissolution of marriage. Stipulation; Dckt. 56. The grounds and relief stated in the Motion are:

The Parties, by and through counsel of record, stipulate that the automatic stay set forth in 11 U.S.C. section 362 be lifted so that the Parties can proceed in the North Carolina Action. However, additional relief from stay is necessary for the enforcement of any equitable distribution order against property of the estate. The Parties further agree that upon motion by an interested party, this Court shall have the ability to review the determinations by the court in the North Carolina Action as it may relate to the Debtor's bankruptcy case.

Stipulation, p. 1:18-23; Dckt. 56.

On March 28, 2025, counsel for the Debtor lodged with the court a proposed order granting relief from the automatic stay.

Federal Rule of Bankruptcy Procedure 4001(d) addresses agreements, such as stipulations, for relief from the automatic stay, providing:

(d) Various Agreements: Relief from the Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Providing Adequate Protection; Using Cash Collateral; or Obtaining Credit.

(1) Motion; Content; Service.

(A) Motion. A motion to approve any of the following must be accompanied by a copy of the agreement and a proposed form of order:

...

(iii) an agreement to modify or terminate the stay provided for in § 362;

...

(C) Service. The motion must be served on all those who must be served under (a)(1)(A) and any other entity the court designates.

No Motion has been filed for the court to approve the Stipulation and to issue an order modifying the automatic stay. Additionally, the relief requested does not clearly state the scope of the proceedings, how the assets and rights of the Bankruptcy Estate will be addressed, and the procedure for the Debtor to obtain authorization with respect to compromising rights of the Bankruptcy Estate.

The court set a deadline of April 17, 2025, to file supplemental pleadings detailing the requested relief. Order, Docket 60. A review of the Docket on April 21, 2025 reveals no supplemental pleadings have been filed with the court.

At the hearing, **XXXXXXX**

~~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 hearing on the Stipulation, which the court has deemed a Motion for Relief, 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 modified as applicable to Tarra Diane Wasilchen (“Debtor”) to allow Movant, its agents, representatives and successors, and trustee under the trust deed, and any other~~

~~beneficiary or trustee, and their respective agents and successors to proceed with litigation before the General Court of Justice, District Court Division, in the State of North Carolina, County of Mecklenberg, Case No. 23-CV034628-590..~~

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.