

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 26, 2016 at 1:30 P.M.

1. [16-21041](#)-C-13 RICHARD LAWSON MOTION TO CONFIRM TERMINATION
JKB-1 Marc Voisenat OR ABSENCE OF STAY
4-1-16 [[27](#)]
DEBTOR DISMISSED: 04/07/2016

Tentative Ruling: The Motion to Confirm Termination of the Automatic 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 April 1, 2016. 14 days' notice is required. That requirement was met.

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 -----
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The Motion to Confirm Termination of the Automatic stay is granted.

Robert William Heckman seeks an order confirming that the automatic stay terminated on March 26, 2016 with respect to the real property commonly

known as 7120 Front Street, Rio Linda, California. The moving party has provided the Declaration of to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor that this is Debtor's second bankruptcy pending within a one year time frame and that Debtor did not seek an extension of the automatic stay beyond 30 days.

Discussion

Pursuant to 11 U.S.C. 362(c)(3), if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed [. . .] the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

Movant holds the first trust deed secured by the subject property with a balance of \$106,467.59 owing. A foreclosure sale of the subject property was scheduled for April 7, 2015, but Debtor filed for bankruptcy two days prior, and thus the automatic stay precluded the foreclosure sale. The case was dismissed on February 21, 2016 for failure to make plan payments.

On February 24, 2016, Debtor commenced the instant bankruptcy proceeding, his second case pending within the last year. In this case, the Debtor has failed to seek an extension of th automatic stay beyond the first 30 days of this case. Thus the automatic stay expired on March 26, 2016.

The court shall issue a minute order confirming termination of the automatic stay to allow Robert William Heckman, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

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) terminate on March 26, 2016 to allow Robert William Heckman, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all

rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 7120 Front Street, Rio Linda, California.

No other or additional relief is granted.

2. [10-28544](#)-E-13 RAJ SINGH
Pro Se

CONTINUED MOTION SEEKING
APPROVAL FOR EMERGENCY FILING
3-30-16 [[219](#)]

DEBTOR DISMISSED:
12/21/2011
CASE CLOSED: 05/09/2013

Tentative Ruling: The Motion for Seeking Approval for Emergency Filing 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 Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 30, 2016. Fourteen days' notice is required. That requirement was met.

The Motion for Seeking Approval for Emergency Filing 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 -----.

The Motion for Seeking Approval for Emergency Filing is . . .

Raj Singh request permission to file a bankruptcy and alleges that the IRS is pursuing illegal collection against him.

ISSUANCE OF A MINUTE ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Seeking Approval for
Emergency Filing filed by the Debtor(s) 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 Seeking
Approval for Emergency Filing is . . .

3. [15-29647](#)-C-13 JASON/SHELLY BELOTTI
RCO-1 Richard Steffan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
2-22-16 [[48](#)]

LOANDEPOT.COM, LLC VS.

Final Ruling: No appearance at the April 26, 2016 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 February 22, 2016. Twenty-eight days' notice is required. This 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). 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 overruled as moot.

LoanDepot.com seeks relief from the automatic stay with respect to the real property commonly known as 3906 Southpark Place, Auburn, California. The moving party has provided a Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has not yet missed a post-petition payment but has missed eight pre-petition payments. Movant contends that Debtor's Chapter 13 Plan reflects Debtor's intent to surrender the property. 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 \$231,006.48 (including \$231,006.48 secured by movant's first trust deed), as stated in the Declaration, while the value of the property is determined to be \$299,000.00, as stated in Schedules A and D filed by Debtor.

DEBTORS' OPPOSITION

Debtors point out that there is equity in the property and that Debtors have filed a motion to approve a sale of the property set for hearing on March 22, 2016 at 2:00 p.m.

MARCH 22, 2016 HEARING

At hearing on March 22, 2016, the court continued the instant motion.

STIPULATION

On April 15, 2016, parties submitted a stipulation, Dckt. 84, wherein Creditor LoanDepot withdrew the instant motion and Debtors withdrew their response. The instant motion is thus denied as moot, having been resolved by stipulation of the parties.

The court shall issue a minute order denying the instant motion.

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 is denied as moot.

4. [15-29757](#)-C-13 ROBERT/PATRICIA EVANS
MDE-1 Jeffrey Ogilvie

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-21-16 [[32](#)]

VW CREDIT LEASING, LTD. VS.

Final Ruling: No appearance at the April 26, 2016 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 21, 2016. Twenty-eight days' notice is required. This 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). 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.

Robert Patrick Evans and Patricia Lorraine Evans ("Debtor") commenced this bankruptcy case on December 22, 2015. VW Credit Leasing, Ltd. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 VW Passat, VIN ending in 6508 (the "Vehicle"). The moving party has provided the Declaration of Martha Henriquez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Henriquez Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of \$1,694.43 in post-petition payments past due. The Declaration also provides evidence that there is 1 pre-petition payment in default, with a pre-petition arrearage of \$643.62.

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 \$26,482.69, as stated in the Henriquez Declaration, while the value of the Vehicle is determined to be \$21,450, as stated by Movant, as Debtors have not scheduled the asset.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

CHAPTER 13 RESPONSE

On April 12, 2016, Chapter 13 Trustee filed a statement of non-opposition.

RULING

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. *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 and the estate have 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).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow VW Credit Leasing, Ltd., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, 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.

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 VW Credit Leasing, Ltd. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 VW Passat, VIN ending in 6508 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.
