

Eastern District of California

Sacramento, California

1. **19-22165-E-13 ROBERT SKIFF MOTION FOR RELIEF FROM**
KWY-1 W. Steven Shumway AUTOMATIC STAY
4-9-19 [8]
FRIEDA YANG VS.

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).

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, _____.

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real property commonly known as 4891 Knightswood Way, Granite Bay, California (“Property”). The moving party has provided the Declaration of Frieda Yang to introduce evidence as a basis for Movant’s contention that Robert Skiff (“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. 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 Placer and received a judgment for possession, with a Writ of Possession having been issued by that court on March 29, 2019. Exhibit C, Dckt. 11.

The Motion seeks the order to confirm that the stay does not exist by virtue of 11 U.S.C. § 362(b)(22), or if it does, to have the stay modified pursuant to 11 U.S.C. § 362(d)(2)

**Requested Relief Pursuant to 11 U.S.C. § 362(j)
Expiration of the Stay, 11 U.S.C. § 362(b)(22)**

First, the Bankruptcy Code creates an exception to the automatic stay for eviction or unlawful detainer proceedings by a lessor of residential property in 11 U.S.C. § 362(b)(22) as follows:

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

In 11 U.S.C. § 362(l) the Bankruptcy Code provides a detailed provision specifying the application of 11 U.S.C. § 362(b)(22), the applicable elements being (as paraphrased by the court and using the statutory paragraph numbering) as follows:

(l)

(1) Except as otherwise provided, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, unless the debtor files a certificate stating that:

(A) under nonbankruptcy law debtor would be permitted to cure the entire monetary default even after that judgment for possession was entered; and

(B) debtor has deposited with the Clerk any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If the above certificate is filed and rent deposited, and then certifies that the entire monetary default that gave rise to the order for possession, (b)(22) shall not apply, unless ordered to apply by the court.

This bankruptcy case having been filed on April 8, 2019 and the hearing being conducted on April 30, 2019, the thirty-day period before which 11 U.S.C. § 362(b)(22) becomes effective has not expired.

The Motion states that Debtor entered into a “Rent to Own” Agreement or the single family

residential property at issue, which was a month to month tenancy after October 30, 2018. The option to purchase the property under the Agreement expired on October 30, 2018, with the state court having determined that the lease was cancelled and forfeited. Motion, p.2:17-28, 3:1-2.

Subsequent to the filing of the Motion for Relief, Debtor filed the Schedules in this bankruptcy case. On Schedule G Debtor states that there are no executory contracts or unexpired leases. Dckt. 19 at 17. On Schedule I Debtor states having income of only \$905 a month. *Id.* at 19-20. On Schedule J Debtor makes no provision for paying current rent or mortgage payments. *Id.* at 21-22.

On its face, as of the hearing on the Motion, the automatic stay has not yet terminated pursuant to 11 U.S.C. § 362(b)(22). The court cannot say that prospectively that it will terminate on a date certain as Debtor's ability to delay its effect has not yet expired.

Relief From the Stay Pursuant to 11 U.S.C. § 362(d)(2)

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8-9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow creditor, Frieda Yang, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4891 Knightswood Way, Granite Bay, 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. ^{FN. 1}

FN. 1. The court could well imagine a creditor seeking relief from the automatic stay saying (in a polite way of course) that: "Judge, really, it's obvious that you can go through the motion and assemble for my client whatever grounds you think are sufficient to give the relief and then ignore those that you think do not support such relief." Two comments: (1) If it is very obvious then Movant, who is in a better

position than the court, could easily have a paragraph stating that the fourteen days stay of enforcement imposed by the United States Supreme Court should be stricken by the Article I bankruptcy judge because,” and (2) it is not the court’s role to assemble pleadings for one party against the other and then advocate for that party against the other.

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 creditor, Frieda Yang (“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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4891 Knightswood Way, Granite Bay, 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.