

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 9, 2017, at 1:30 p.m.

1. **17-20943-E-13** **MARTHA RAMIREZ**
FWP-2 **Peter Macaluso**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-11-17 [34]**

**SUTTER COUNTY TAX COLLECTOR
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, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 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.

The Motion for Relief from the Automatic Stay is granted.

Martha Ramirez ("Debtor") commenced this bankruptcy case on February 15, 2017. Sutter County Tax Collector ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 906 Almond Street, Yuba City, California ("Property"). Movant has provided the Declarations of Steven Harrah and Holly Estioko to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

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Additionally, the Motion pleads that relief should be granted under 11 U.S.C. § 362(d)(4) because this case is Debtor's fourth bankruptcy case in the past eight years, with the time in between (or lack thereof) being so short that this bankruptcy case has essentially been continuous for eight years. Movant argues that Debtor's bankruptcy is a scheme to unreasonably delay and hinder Creditor from selling the Property to recover payment of past due real property taxes.

The Harrah Declaration states that there are 26 pre-petition payments in default, with a pre-petition arrearage of \$64,366.35. The Declaration states that since tax defaults began against the Property in 2003, Debtor has paid only once, in November 2009.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 42. The Trustee states that Debtor is current in plan payments and includes Creditor in that plan. The Trustee notes that his Objection to Confirmation is set for April 25, 2017.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 25, 2017. Dckt. 45. Debtor asserts that there is no cause to grant the requested relief and that Debtor has been making adequate protection payments to the Trustee. Debtor argues that she acquired insurance for the Property and that there is no cause under 11 U.S.C. § 362(d)(1).

Debtor argues that there is no "nefarious purpose" in this case because the dates do not support that conclusion. Debtor states that Case No. 09-33215 was dismissed on August 27, 2009; Case No. 09-48498 was filed in 2009 and dismissed on May 13, 2011; the third case was filed on July 5, 2011, converted to Chapter 7 on March 20, 2012, a final decree was issued on August 18, 2016, and it was reopened and discharged on March 16, 2017.

Debtor's attorney argues that Debtor relinquished control of her properties during the Chapter 7 case. Debtor filed this case on February 15, 2017, but claims that no case was pending since August 18, 2016, except to reopen the case to file post-credit-counseling documents.

Finally, Debtor's attorney argues that Debtor has made two adequate protection payments to the Trustee on Creditor's Class 2 claim.

It is telling that Debtor has failed (or refuses) to testify in opposition to this Motion for Relief. No declaration in opposition has been filed. Debtor merely relies on the arguments of her counsel that Debtor is acting in good faith in her multiple, continuous bankruptcy cases that she has filed and benefitted from over the past eight years. As noted in the Civil Minutes from the hearing on the objection to confirmation, the only case that debtor "successfully prosecuted" was the one the court converted to a case under Chapter 7 and in which Debtor obtained a discharge.

Debtor does not dispute that she, or whomever has owned this property, has not paid property taxes since 2003, with the exception of only one payment that was made in 2009. Though obtaining all the

benefit of County services, Debtor has chosen to do so through the “largess” of her neighbors who have paid their property taxes. Debtor’s counsel argues that “debtor relinquished control of the properties during the term of the Chapter 7,” (Opposition, p. 2:19–20; Dckt. 45), as if this were a voluntary grand act on her part. It was not, with the case being converted and Debtor ousted by operation of law from control of the property of the bankruptcy estate. Debtor “elected” to convert the case after she was denied confirmation of her plan.

MOVANT’S REPLY

Movant filed a Reply on May 2, 2017. Dckt. 54. Movant stresses that the facts in this case still provide cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) & (4).

DISCUSSION

At the April 25, 2017, the court sustained the Trustee’s and the Creditor’s Objection to Confirmation. Dckt. 48 & 50. A review of the docket shows that Debtor has not proposed an amended plan and has not filed another bankruptcy case. In denying confirmation of the plan, the court held:

“Creditor’s objections are well-taken. The objecting creditor holds a first-priority tax lien secured by Debtor’s residence. Creditor has filed a proof of claim in which it asserts \$64,366.35 in pre-petition arrearages. The Plan does not propose to cure those arrearages through ongoing monthly payments alone. Instead, the Plan proposes monthly payments of \$860.00 (as a Class 2 Claim) plus a lump sum on or before the sixtieth month. Dckt. 10. The court agrees with Creditor that the Plan is too speculative as to funding the Plan when Debtor does not provide specific mechanisms in case she is not able to sell property to generate a lump sum. Section 1.02 of the Plan calls for “LUMP-SUM FROM SALE OF COMMERCIAL PROPERTIES IN THE APX AMOUNT OF \$130,00 OR AN AMOUNT SUFFICIENT TO COMPLETE THE PLAN. Id.

...

The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. See 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). What has been proposed to the court, though, is far too speculative for the court or any party in interest to determine the feasibility and viability of a plan based upon a potential sale of property within the next five years.

Without a sufficient lump sum from selling property, Debtor will not be able to make adequate plan payments under 11 U.S.C. § 1325(a)(6). Debtor proposes to pay Creditor’s claim \$860.00 per month, which equals \$51,600.00 over the course of the plan term. That amount is short of Creditor’s full priority claim by \$12,766.35.

...

Through four bankruptcy cases that have existed almost as one ongoing case, Debtor has experimented with various chapters of the Bankruptcy Code and has not yet proposed a plan that the court confirmed. Only by the court converting one of

Debtor's cases to Chapter 7 was Debtor able to complete a case to discharge. The filing of the present case and plan does not appear to be in good faith pursuant to 11 U.S.C. § 1325(a)(3) & (7) given Debtor's history of proposing unconfirmable plans."

Civil Minutes, Dckt. 50. The proposed plan in this case suffered from gross deficiencies.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be in default for years old property taxes, as stated in the Harrah Declaration.

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). The court determines that cause exists for terminating the automatic stay, including defaults in pre-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Debtor having received a discharge in Case No. 11-36557 on March 16, 2017, means that Debtor cannot receive a discharge in this case. Debtor has not presented any grounds that this case was filed in good faith for any bona fide bankruptcy purpose. Debtor cannot obtain a discharge.

Debtor's Opposition asserts that the only "for cause" grounds for relief asserted are that Debtor was not maintaining insurance on the Property. Opposition, p. 1; Dckt. 45. The Motion goes further, stating with particularity that:

"Cause also exists because the Debtor owes real property taxes for the Property dating back to 2003, and has not made a tax payment to Sutter County since November 2009 (over seven years ago), which payment was part of a short-lived, failed installment payment plan.

Cause also exists because this is the Debtor's fourth bankruptcy case filed within the last eight years. The Debtor's four bankruptcy cases have been pending nearly continuously for the last eight years. To say that there has been unreasonable delay prejudicial to creditors, including Sutter County, is an understatement.

...

The Debtor has had numerous opportunities to file and confirm a plan in her several cases; but once again, the Debtor's plan in this recently filed case is unconfirmable on its face, as it is not feasible, is highly speculative, and does not comply with 11 U.S.C. §§ 1325(a)(3), (a)(5), (a)(6) & (a)(7)."

Motion, p. 2:1-3, 7-10, 15-18; Dckt. 34.

Debtor's counsel then moves in the Opposition to argue about why the multiple filings and inability over the past eight years to confirm any bankruptcy plan does not provide grounds for relief under 11 U.S.C. § 362(d)(4). Though Debtor appears to ignore the issue, since "cause" exists under both 11 U.S.C. § 362(d)(1) and § 362(d)(4), the court considers those arguments made as to only § 362(d)(4) as applicable to the § 362(d)(1) relief requested.

While Debtor's counsel argues that insurance has been obtained and presented as an unauthenticated exhibit, there is no credible, admissible evidence of any such insurance. Debtor did not (or would not) provide any simple testimony in opposition to the Motion. While Debtor's counsel asserts that it is "easy" to show that there is insurance by an unauthenticated insurance statement, just filing exhibits with the court is not the proper, or credible (to the court) way to present evidence.

This becomes more significant in that Debtor fails to provide any testimony and facts about why or how she can prosecute any feasible plan in this bankruptcy case. Debtor offers no testimony for the court to conclude that she filed and is prosecuting this case in good faith.

Debtor's prior, unsuccessfully prosecuted (with the assistance of attorneys) cases are significant. On July 5, 2011, Debtor commenced her Chapter 13 case, No. 11-36557, in this court. This followed two prior Chapter 7 cases she filed in pro se, Nos. 09-33215 and 09-48498. As noted in the court's order converting case, 11-36557, Debtor elected to convert by stating it on the record at a hearing in her husband's (Santiago Ramirez, No. 12-20928) bankruptcy case. 11-36557; Order, Dckt. 78. The chart below provides a summary of Debtor's and her former husband's (Debtor in her Statement of Financial Affairs stating that she has not been married in the prior eight years) cases.

Chapter 13 Bankruptcy Case No. 09-33215 <i>In Pro Se</i>	Filed: June 28, 2009		
Proposed Chapter 13 Plan provided for no payments by Debtor			
Case Dismissed due to failure to make plan payments	Dismissed: August 27, 2009		

	125 Days Lapse		
Chapter 13 Bankruptcy Case No. 09-33215 In Pro Se	Filed: December 30, 2009		
Chapter 13 Plan Filed - \$0.00 Payments to Trustee			
Order Converting Case to Chapter 7. Civil Minutes, Dckt. 56, stating grounds including: (1) Debtor not meet 11 U.S.C. § 109(e) debt limits, (2) plan not feasible, and (3) Debtor not stating an understandable interest in the substantial rental properties owned with her non- debtor spouse.	Filed: May 3, 2010		
Case converted to Chapter 11. Order, Dckt. 74.	Filed: June 7, 2010		
Case dismissed, motion by U.S. Trustee. Order, Dckt. 131 Civil Minutes stating grounds include: (1) Debtor failing to file monthly operating reports, and (2) schedules showing significant real property assets owned separately or jointly with husband which could be sold to pay creditor claims. Dckt. 130. Docket reflects that Debtor did not file a Chapter 11 plan.	Filed: May 3, 2011		
Chapter 13 Case 11-36557 Represented by Counsel	Filed: July 5, 2011		

Confirmation of Chapter 13 Plan denied	Filed: September 20, 2011		
		Filed: October 6, 2011	Santiago Ramirez (Debtor's husband) Chapter 13 Case (represented by same attorney as Debtor)
		Filed: December 22, 2011	Case dismissed for failure to timely prosecute a Chapter 13 plan.
Confirmation of Amended Chapter 13 Plan denied	Filed: December 29, 2011		
		Filed: January 18, 2010	Santiago Ramirez (Debtor's husband) Chapter 13 Case (represented by same attorney as Debtor)
		Filed: March 19, 2012	Denial of motion to confirm Chapter 13 Plan. Order, Dckt. 63. In denying confirmation, one of the grounds was Mr. Ramirez failing to make the plan payments. The court also expressed concern over Mr. Ramirez and his wife (the Debtor) filing non-productive bankruptcy cases spanning multiple years between them. Civil Minutes, Dckt. 62.
Case Converted to Chapter 7. Order, Dckt. 78. Order states that Debtor stated her election to convert on the record at a hearing to extend the automatic stay in her husband's bankruptcy case 12-20928.	Filed: March 20, 2012	Filed: March 20, 2012	Case Converted to Chapter 7. Order, Dckt. 64. Order states that Mr. Ramirez stated his election to convert on the record at the hearing for relief from stay in his bankruptcy case. FN.1.
		Filed: September 16, 2012	Case dismissed due to Mr. Ramirez's failure to attend First Meeting of Creditors. Order, Dckt. 107.

Final Decree and Closing of Case Without Discharge	Filed: August 18, 2016		
Motion to Reopen Case No. 11-36557	Filed: February 10, 2017		
	Filed: February 12, 2017		Debtor's Chapter 13 Case (current case) No. 17-20943 Represented by Counsel
Discharge of Debtor	Filed: March 16, 2017		
	Filed: April 26, 2017		Denial of confirmation of Chapter 13 Plan. Order, Dckt. 53.

 FN.1. The court's decision to extend the automatic stay was not driven by Mr. Ramirez's or Debtor's effective, good faith prosecution of their respective bankruptcy cases, but the best interests of the estate and creditor. The court's findings and conclusions include:

“Though the court would be well justified to deny this motion and leave the Debtor and Martha Ramirez to their fate solely under state law, doing so could well be view as imposing a penalty against them **for what appears to be their abusive conduct in the filing of the non-productive bankruptcy cases.** The penalty would be the loss of a significant equity in the property securing the Boomgaarden claim, as **it appears likely that the Debtor and Mrs. Ramirez are not capable of addressing either the payment of that obligation or the sale of the property to satisfy the obligation** and retain the equity therein.

Fortunately, the court has the luxury given the Debtor's and Mrs. Ramirez's election to convert their cases to one under **Chapter 7 to allow new fiduciaries properly administer the two bankruptcy estates, pay creditor claims, and preserve value in the assets** which the **Debtor and Mrs. Ramirez have been incapable of over the several years and multiple bankruptcy cases.** Given the **significant delay and apparent expenses** which Ms. Boomgaarden has incurred **due to the strategies employed by the [Mr. Ramirez] and [Debtor],** a substantial part of the equity will be lost to those increases in that claim, as well as the interest which has been accruing on delinquent property taxes. But a lower amount of the equity saved is better than a loss of all the equity. **The court would not have granted the motion and continued the automatic stay in effect if the Debtor and Mrs. Ramirez had not converted their cases, ceding the fiduciary responsibilities therefor to an independent trustee.”**

12-20928; Civil Minutes, Dckt. 60 (emphasis added). As noted above, there was no “voluntary relinquishment” of control over the property of the estate by Debtor and Mr. Ramirez, but that such was required to allow a Chapter 7 trustee to fulfill the fiduciary obligations due the estate that Mr. Ramirez and Debtor had demonstrated they were incapable of doing.

As has been shown, Debtor has been “challenged” to propose and prosecute any plan in her bankruptcy cases. While professing there being a substantial equity in properties, she has been incapable of marketing and selling any properties. She was incapable, or chose not to, get her Chapter 7 discharge for years—preserving the automatic stay while the Chapter 7 Trustee administered properties of the estate. Then, she sought the discharge only after she filed the current case.

In reviewing Schedule J filed by Debtor, she states that she has no mortgage or rent expense, no home repairs or maintenance, no property taxes to be paid for a residence. Dckt. 11 at 43. She further states under penalty of perjury that she will pay \$3,847.00 in monthly property taxes, outside of any plan. *Id.*

On Schedule I, Debtor states that she has \$1,177.67 in monthly income from her employment. Dckt 11 at 41–42. She then states that she has \$10,535.00 in net income from her business or rental property. *Id.* at 42. No statement showing the gross receipts and expenses for the rental properties is attached to Schedule I.

Though claiming to have \$10,535.00 in monthly net income, Debtor states on Schedules I and J that she pays no more than \$115.00 per month for state and federal income and self-employment taxes.

Debtor has not sought to employ any real estate brokers or make any effort to sell any properties to fund a Chapter 13 plan. What Debtor’s conduct shows is that she intends to stay in Chapter 13 and gamble, with creditor’s money, that property values will rise, allowing her to reap the reward without any risk. If the market does not rise, or if it drops, the creditors will suffer the loss.

Debtor has not filed and is not prosecuting this Chapter 13 case in good faith. Debtor is not prosecuting this Chapter 13 case and has demonstrated an inability (even when now represented by two different attorneys) to prosecute any bankruptcy plan, whether in Chapter 11 or the much simpler (if someone is attempting to prosecute a case in good faith) Chapter 13 protections.

Cause exists to terminate the automatic stay.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.

**Prospective Relief from Future Stays
Pursuant to 11 U.S.C. § 362(d)(4)**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* Movant has argued that this fourth bankruptcy case is really an eight-year extension of one case. The court notes that Debtor's prior cases were either filed shortly after a prior one or while one was pending still.

The relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by the filing of multiple overlapping bankruptcy cases in the past eight years.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking or *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. However, the filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of Debtor having just obtained her Chapter 7 discharge in the prior case. The case has not been filed in good faith in light of the repeated and failed, with assistance of counsel, prior Chapter 11 and Chapter 13 cases filed by Debtor and her husband.

In her Opposition, Debtor's counsel quotes something, stating:

"The creditor makes this motion based on 11 U.S.C. 362(d)(4), whereas a creditor may be granted relief by showing of 'an intentional act or plan adopted for the nefarious purpose specified in the statute to delay, hinder, or defraud creditors.'"

Opposition, p. 2:5–9; Dckt. 45. It could appear that Debtor is quoting 11 U.S.C. § 362(d)(4). However, that would be an inaccurate citation of that section which states:

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4).

There need be no “nefarious purpose,” but only a scheme to delay, hinder, or defraud creditors that involves multiple filings of bankruptcy cases effecting that creditor’s property. Possibly Debtor acknowledges, and admits, that such multiple filings are also a nefarious purpose (in her cases), but the court does not have to go that far.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases. Debtor has not attempted to prosecute her bankruptcy cases in good faith. As shown in this case, Debtor has not fully disclosed her financial information. Debtor’s idea of a Chapter 13 bankruptcy plan is that Debtor delay creditors for five years while she speculates on the real estate market.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting the relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(d)(4). This would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from 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 Sutter County Tax Collector (“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 Sutter County Tax Collector, 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 that 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 to obtain possession of the real property commonly known as 906 Almond Street, Yuba City, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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.

2. [16-25884](#)-E-13 **GLORIA RANNALS**
AP-1 **Scott Hughes**

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
2-27-17 [19]**

CIT BANK, N.A. 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, and Office of the United States Trustee on February 27, 2017. By the court's calculation, 36 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.

The Motion for Relief from the Automatic Stay is denied without prejudice.

Gloria Rannals ("Debtor") commenced this bankruptcy case on September 1, 2016. CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3500 Liberty Road, Galt, California ("Property"). Movant has provided the Declaration of Daniel Cortina to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Cortina Declaration states that there is a post-petition defaults on the obligation secured by the Property because Debtor failed to maintain hazard insurance. The Declaration provides evidence that Movant secured insurance on the Property on December 21, 2016, in the amount of \$3,010.34.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 16, 2017, 2017. Dckt. 26. The Trustee reports that Debtor is current under the confirmed plan, having paid \$1,200.00 so far. Movant is listed in Class 1 as Freedom Financial having provided a reverse mortgage (with property taxes advanced)

for \$10,000.00 in arrears with a monthly dividend of \$166.67. The scheduled monthly contract installment is \$0.00, and Movant has filed Claim 1 with arrears listed as \$10,477.27.

DEBTOR'S OPPOSITION

Debtor's Counsel filed an Opposition on March 21, 2017. Dckt. 29. He asserts that Movant filed this Motion without conferring with Debtor and her counsel as required by Local Bankruptcy Rule 4001(b)(1). Debtor's Counsel claims that there is insurance on the Property, despite Movant's contention otherwise. Counsel states that the insurance policy is effective March 20, 2017, and that Debtor did not realize that the insurance had lapsed until this Motion was filed.

Counsel states that Movant can now remove the force placed hazard insurance and receive three-fourths of its unearned premiums back because the Property does not need to be insured twice. Counsel proposes filing a modified plan to cover any post-petition default remaining after Movant receives its unearned premiums back.

APRIL 4, 2017 HEARING

At the hearing, the parties agreed to continue the matter to allow Debtor and Creditor to resolve the insurance policy issue. Dckt. 32. The court continued the hearing to 1:30 p.m. on May 9, 2017.

DEBTOR'S SUPPLEMENTAL OPPOSITION

Debtor filed a supplemental Declaration in Opposition on April 18, 2017. Dckt. 40. Debtor states that she applied for and received a homeowner's insurance policy on March 20, 2017. Debtor also states that she has proposed a Modified Plan to account for reimbursement to Creditor for its expenses to put force placed insurance on the Property—\$703.79.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$261,302.01 (including \$261,302.01 secured by Movant's first deed of trust), as stated in the Cortina Declaration. This is a "Reverse Mortgage," for which Debtor is not obligated to repay the debt except under specific circumstances not alleged here.

The dispute arises from a lapse in insurance, that occurred after Debtor failed to pay the property taxes. While the failure to pay the property taxes was an event that caused Movant to proceed with a non-judicial foreclosure sale, the Debtor's Chapter 13 Plan provides for repaying that default (repay the monies Movant had to advance to protect its collateral).

Debtor's default in insurance was a post-petition default which caused Movant to advance monies for force-placed insurance. Based on that default, Movant now seeks relief from the stay. The Motion is clear and straightforward on these grounds, alleging:

“While the Debtor is not required to tender monthly contractual mortgage payments on the reverse mortgage, a default exists under the Loan for failure to maintain hazard insurance. As of January 11, 2017, the total post-petition default is \$2,484.98 for post-petition insurance advances. (See Declaration).”

Motion, p. 2:19–22; Dckt. 19. The Motion continues to state that payments of \$525.36 has been received, with the total cost of the force place insurance being \$3,010.34.

A review of the docket shows that Debtor has proposed a Modified Plan that will cure Creditor’s expenses for have to put force placed insurance on the Property. Debtor having obtained insurance and having cured Creditor’s grounds, the Motion is denied.

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 CIT Bank, N.A. (“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 is denied without prejudice.