

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**May 17, 2018, at 10:00 a.m.**

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1. **17-91019-E-7**      **ANN PINEDA**      **MOTION FOR RELIEF FROM**  
**EAT-1**      **Pro Se**      **AUTOMATIC STAY**  
**U.S. BANK, N.A. VS.**      **4-3-18 [30]**

**Final Ruling:** No appearance at the May 17, 2018 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on April 3, 2018. By the court's calculation, 44 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). 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 and other parties in interest 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 denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.**

U.S. Bank National Association, as Trustee Successor in Interest to Wachovia Bank National for GSR Mortgage Loan Trust 2003-9, Mortgage Pass-Through Certificates Series 2003-9-H ("Movant") seeks relief from the automatic stay with respect to Ann Pineda ("Debtor") real property commonly known as 22550 Bennet Road, Sonora, California ("Property"). Movant has provided the Declaration of Mary Gracia

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to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on April 27, 2018, for failure to appear at the Meeting of Creditors. Dckt. 40.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

*(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of April 27, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on April 27, 2018.

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 U.S. Bank National Association, as Trustee Successor in Interest to Wachovia Bank National for GSR Mortgage Loan Trust 2003-9, Mortgage Pass-Through Certificates Series 2003-9-H (“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 as moot, this bankruptcy case having been dismissed on April 27, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Ann Pineda (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 22550 Bennet Road, Sonora, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the April 27, 2018 dismissal of this bankruptcy case.