

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

June 6, 2017 at 1:30 p.m.

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1. [13-22207](#)-C-13 SHIRLEY NELSON MOTION FOR RELIEF FROM  
JHW-1 Mark Wolff AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
5-2-17 [[76](#)]

CARMAX FUNDING SERVICES, LLC  
VS.

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**Final Ruling:** No appearance at the June 6, 2017 hearing is required.  
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Creditor, Carmax Funding Services LLC, having filed a "Withdrawal of Motion" for the pending Motion for Relief from Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Relief from Automatic Stay, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion for Relief from Automatic Stay.**

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.

A Motion for Relief from Automatic Stay having been filed by Carmax Funding Services, LLC, the Creditor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion for Relief from Automatic Stay is dismissed without prejudice.

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2. [17-22613](#)-C-13 GREGORY MONACO  
JBC-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
5-11-17 [[18](#)]

DAVID SHULKIN VS.

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**Tentative Ruling:** The Motion to Value 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).**  
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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 May 11, 2017. 14 days' notice is required.

The Motion for Relief from Automatic Stay 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.

**The Motion for Relief From the Automatic Stay is granted.**

Movant, David Shulkin, seeks relief from the automatic stay to resume a pending unlawful detainer in the Sacramento Superior Court, Case No. 17UD01676 with respect to property commonly known as 6930 Gloria Drive, Sacramento, California. Debtor had not been paying rent, and on March 16, 2017, the movant served a 3 day notice on the debtor. On March 22, 2017, movant filed a complaint for unlawful detainer against the debtor. Debtor filed for bankruptcy on April 20, 2017, four days before the trial was to begin in the state court.

Debtor filed a previous bankruptcy on July 14, 2016, case no. 16-24588 which was dismissed by the court on September 29, 2016 for several reasons, including failure to appear at the First Meeting of Creditors, failure to provide the Trustee with payment advices and tax returns, failure to file a certificate of completion from an approved nonprofit budget and credit counseling agency, failure to make plan payments, and failure to properly schedule claims filed.

## DEBTOR'S OPPOSITION

The debtor filed a letter to the court on May 17, 2017, Dckt. 25, that, among other requests, requested that the Motion for Relief from Automatic Stay be dismissed because the Motion refers to the debtor as George Monaco rather than Gregory Monaco. Additionally, debtor represents that he will move out of the property on or before June 15, 2017.

## TRUSTEE'S RESPONSE

The Trustee filed a response indicating that he has no basis to oppose the Motion for Relief and to bring the court's attention to the debtor's letter filed on May 17, 2017, as well as the fact that the debtor had a previous case pending in the past year.

## DISCUSSION

Debtor filed a previous case in this court that was dismissed on September 29, 2016. Debtor filed the petition in this case on April 20, 2017. Pursuant to 11 U.S.C. § 362(c)(3)(A), absent a motion to extend the automatic stay, the automatic stay expires 30 days after the filing of the second petition. The debtor has not requested an extension of the automatic stay. As a result, the automatic stay expired 30 days after the filing of the petition.

Although the automatic stay has expired with respect to the debtor, the court will grant the motion for automatic stay as § 362(c)(3)(A) only operates to extinguish the stay with respect to property of the debtor.

The court maintains the right to grant relief from stay for cause when the 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 has not payments since February 2017 and filed this instant case in order to frustrate Movant's attempts to proceed with the unlawful detainer action. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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) are vacated to allow the Movant, David Shulkin, to resume a pending unlawful detainer in the Sacramento Superior Court, Case No. 17UD01676 with respect to property commonly known as 6930 Gloria Drive, Sacramento, California.

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3. [17-22615](#)-C-13 RICKIE WALKER  
BAW-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
4-25-17 [[10](#)]

SPECIALIZED LOAN SERVICING,  
LLC VS.

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**Final Ruling:** No appearance at the June 6, 2017 hearing is required.  
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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 (pro se), Chapter 13 Trustee, and Office of the United States Trustee on April 25, 2017. Twenty-eight days' notice is required. That requirement is 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.**

Specialized Loan Servicing LLC seeks relief from the automatic stay with respect to the real property commonly known as 3830 Whitney Oaks Drive, Rocklin, California. The moving party has provided the Declaration of Shane Ellis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ellis Declaration states that the Debtor went into default on February 1, 2008, and now owes more than \$900,000.00 in arrears, representing at least 110 unpaid monthly payments. 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 \$1,838,667.04 (including \$1,150,000.00 secured by movant's first trust deed), as stated in the Ellis Declaration, while the value of the property is determined to be \$1,150,000.00, as provided by the Movant. Debtor has not filed any schedules to date.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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 property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). There is no evidence that the property is necessary to an effective reorganization.

Movant requests the court grant relief from stay under § 362(d)(4), finding that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors. Debtor is not a stranger to this bankruptcy court. On September 18, 2008, the debtor filed case number 08-33310, dismissed on August 7, 2009 for failure to attend at least 9 Meetings of Creditors. On January 25, 2010, debtor filed case number 10-21656 and received a discharge on October 19, 2011. On February 24, 2015, the debtor filed case number 15-21393, dismissed on November 2, 2015 pursuant to an unanswered Order to Show Cause. On October 3, 2016, debtor filed case number 16-26606, dismissed on October 21, 2016 for failure to timely file documents.

Additionally, as the Movant points out, there are two other bankruptcies that affect the property in question. On December 2, 2016, debtor apparently executed and recorded a Quitclaim Deed whereby debtor gave 25% interest in the property to Lawrence Garrett. Immediately on December 5, 2016, Garrett filed bankruptcy case 16-28012 which was dismissed on December 23, 2016 for failure to file documents. Again, on March 3, 2017 debtor gave 25% interest in the property to Andrew Chaney. Again, immediately afterwards, on March 6, 2017, Chaney filed bankruptcy case 17-21438 which was dismissed on April 4, 2017 for failure to file documents.

The court is convinced that granting this Motion for Relief from Stay under § 362(d)(4) is appropriate. The debtor appears to have been engaging in a scheme to delay, hinder, or defraud creditors.

The court shall issue a minute order terminating and vacating the automatic stay to allow Specialized Loan Servicing LLC, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 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 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) are vacated to allow Specialized Loan Servicing, LLC, 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 3830 Whitney Oaks Drive, Rocklin, 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 file during that period.

No other or additional relief is granted.

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4. [16-22719](#)-C-13 MATTHEW JUHL-DARLINGTON MOTION FOR RELIEF FROM  
AP-1 Michael O'Dowd Hays AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
4-14-17 [[122](#)]  
U.S. BANK, N.A. VS.

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**Final Ruling:** No appearance at the June 6, 2017 hearing is required.  
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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 April 14, 2017. Twenty-eight days' notice is required. That requirement is 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.**

U.S. Bank, N.A., seeks relief from the automatic stay with respect to the real property commonly known as 1230 Broadway Street, Chico, California. The moving party has provided the Declaration of Shanay Desiree Mayberry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Mayberry Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$3,641.76 in post-petition payments past due. 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 \$306,820.76 (including \$276,000.00 secured by movant's first trust deed), as stated in the Mayberry Declaration, while the value of the property is determined to be \$276,000.00, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a response indicating that there was no basis to oppose the motion.

The court maintains the right to grant relief from stay for cause when the 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 has 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 has no equity, it is the burden of the debtor 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 property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). There is no evidence that this property will be necessary for an effective reorganization. In fact, in every proposed plan filed by the debtor, the debtor proposes to surrender the collateral to U.S. Bank, N.A.

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank, N.A., 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) are vacated to allow U.S. Bank, N.A., 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 1230 Broadway Street, Chico, California.

No other or additional relief is granted.

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5. [14-20299](#)-C-13 KENNETH/RAMONA BRADFORD MOTION FOR RELIEF FROM  
AP-1 Peter Macaluso AUTOMATIC STAY  
4-20-17 [[153](#)]  
U.S. BANK, N.A. VS.

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**Final Ruling:** No appearance at the June 6, 2017 hearing is required.  
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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 April 20, 2017. Twenty-eight days' notice is required. That requirement is 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 denied as moot.**

U.S. Bank, N.A., seeks relief from the automatic stay with respect to the real property commonly known as 3712 Comanche Way, Antelope, California. The moving party has provided the Declaration of Sherry Elaine Gonzalez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Gonzalez Declaration states that the Debtor has not made 4 post-petition payments, with a total of \$7,582.02 in post-petition payments past due. 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 \$330,682.50 (including \$200,000.00 secured by movant's first trust deed), as stated in the Gonzalez Declaration, while the value of the property is determined to be \$200,000.00, as stated in Schedules A and D filed by Debtor.

#### **TRUSTEE'S RESPONSE**

Trustee responds that the debtors' confirmed plan, Dckt. 100, reclassified the creditor to Class 4 to be paid outside of the plan.

#### **DISCUSSION**

The creditor is listed as a Class 4 claim. Section 2.11 of the plan states that upon confirmation of the plan, "all bankruptcy stays are

modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." The plan was confirmed pursuant to court order on June 14, 2016, Dckt. 128. Therefore, the automatic stay is no longer in effect with respect to this creditor, or any other creditor that is provided for in the plan in Class 4.

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 for Relief from stay is moot as the automatic stay provisions of 11 U.S.C. § 362(a) have expired pursuant to the terms of the confirmed plan, Dckt. 100.

No other or additional relief is granted.

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