

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

June 8, 2017, at 10:00 a.m.

1. [17-90147-E-7](#) **SHANNON EDMONDS** **MOTION FOR RELIEF FROM**
ASW-1 **Mark A. Wolff** **AUTOMATIC STAY**
4-24-17 [24]
MVB BANK, INC. VS.

Final Ruling: No appearance at the June 8, 2017 hearing is required.

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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 24, 2017. By the court's calculation, 45 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.

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| <p>The Motion for Relief from the Automatic Stay is granted.</p> |
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Shannon Edmonds aka Shannon Gruenke ("Debtor") commenced this bankruptcy case on February 28, 2017. MVB Bank, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 140 Highland Meadows Drive, Grafton, West Virginia ("Property"). Movant has provided the Declaration of Scott Burris to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

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The Scott Burris Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,282.12 in post-petition payments past due. The Declaration also provides evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of \$6,846.36.

DEBTOR'S NON-OPPOSITION

Debtor filed a Notice of Non-Opposition on May 22, 2017. Dckt. 33. Debtor asserts that she does not oppose the Motion.

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 \$211,142.04 (including \$211,142.04 secured by Movant's first deed of trust), as stated in the Scott Burris Declaration. The value of the Property is determined to be \$205,000.00, as stated in Schedules A and D.

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 post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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.

Request for Attorney's Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and

California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

Fourteen-Day Stay of Enforcement of Order

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.

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 MVB Bank, Inc. ("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 MVB Bank, Inc., 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 140 Highland Meadows Drive, Grafton, West Virginia.

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.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

BUSH ZHANG 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—No Opposition Filed.

Adequate Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 7 Trustee on May 18, 2017. By the court's calculation, 21 days' notice was provided. 28 days' notice is required. FN.1.

FN.1. Movant is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. Movant is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The Motion for Relief from the Automatic Stay has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court deems the Notice to satisfy the requirements of Local Bankruptcy Rule 9014-1(f)(2), for which no written opposition is required.

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.

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| <p>The Motion for Relief from the Automatic Stay is granted.</p> |
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Bush Zhang ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1394 Mendocino Creek Drive, Patterson, California ("Property"). Movant alleges that Alex Jones ("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. This is the second time that Movant has presented this Motion to the court. *See* Dckt. 51.

NOTICE PROVIDED PURSUANT TO L.B.R. 9014-1(f)(2)

Local Bankruptcy Rule 9014-1(f)(1) requires twenty-eight days' notice for a Motion for Relief from the Automatic Stay. Movant provided only twenty-one day's notice. Insufficient notice has been provided once again (last time, only twenty-four days' notice was provided) for this Motion to be treated as

one for which written notice is required. However, at least fourteen days' notice has been given, which complies with Local Bankruptcy Rule 9014-1(f)(2). In light of this being the second motion, the second notice to Debtor, and the second time the Chapter 7 Trustee has been required to handle this paper, the court considers this as an "(f)(2)" motion, for which oral opposition may be presented at the hearing.

Though not automatically denying this motion at the May 4, 2017 hearing, Movant advised the court that he had counsel represent him in state court to obtain the unlawful detainer judgment, but that "cost money," and he did not want to spend more money on this Motion. Movant made reference to having "gone to Sacramento" and having been told that all he had to do was to file the Motion and show up in court with all of the documents to show the judge.

That is not the procedure for prosecuting a motion correctly in federal court. Several times, Movant requested that the court provide legal advice and tell Movant what to do, what evidence Movant needs to present, and how Movant can prosecute this Motion correctly. Providing legal assistance is not one of a federal judge's duties to one party over another in a proceeding.

Once again, Movant has been penny-wise and pound-foolish regarding spending money for attorney's fees to prosecute this Motion and has not provided the minimum amount of notice provided for what should have been a simple motion for relief.

CONSIDERATION OF MERITS OF MOTION

Though penny-wise and pound-foolish, Movant or someone assisting Movant has spent time to prepare the present Motion and supporting pleadings. The pleadings are handwritten, with time taken to make sure that the writing is legible. Movant has now paid two filing fees for this and the prior motion. Movant has expended his time and emotional energy trying to bring this Motion.

In doing so, Movant is also consuming the time and resources of the Chapter 7 Trustee, the court, and the U.S. Trustee. Consideration of the Motion on its merits is warranted.

The Motion requests relief from the automatic stay to allow Movant to regain possession of the real property commonly known as 300 Starr Avenue, Turlock California. Motion, p. 1; Dckt. 64. However, in the Notice of Hearing it states that the property that is the subjection of the Motion is 1394 Mendocino Creek, Patterson, California. Notice, p. 2; Dckt. 65. Attached to the Notice is what are represented to be the state court unlawful detainer proceeding documents, which identify the property as being 1394 Mendocino Creek, Paterson, California. These pleadings identify the Starr Avenue property as being that of the Superior Court itself. This is confirmed on the Superior Court's website. FN.2.

FN.2. <https://www.stanct.org/turlock-court-small-claims-ud>.

REVIEW OF MOTION

Movant appears to have provided a certified copy of the Writ of Possession this time, but the court notes that the certified copy filed has several matters that are scratched out and changed. Dckt. 65, at

4–7. FN.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). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

FN.2. Movant filed the Notice of Hearing and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents § (III)(A). Movant is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

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 Bush Zhang, and his agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1394 Mendocino Creek Drive, Patterson, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Bush Zhang (“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 Bush Zhang and his agents, representatives and successors, to

exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1394 Mendocino Creek Drive, Patterson, California.