

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

June 9, 2015 at 1:30 P.M.

1. [14-21056](#)-C-13 MICHAEL BROWN MOTION FOR RELIEF FROM
JKF-1 David Brady AUTOMATIC STAY
5-11-15 [[75](#)]

SUE TERWILLIGER VS.

Tentative Ruling: 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).

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

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 May 11, 2015. Twenty-eight days' notice is required. That requirement was not 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). 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.
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Motion for Relief

Sue Terwilliger seeks relief from the automatic stay with respect to the real property commonly known as 726-525 Mail Route Road, Ravedale, California. The moving party has provided the Declaration of Sue Terwilliger to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Terwilliger Declaration states that:

1. The moving party has not received confirmation of receipt, from the Debtor or Debtor's Attorney, that the payments required under the First Amended Plan of \$225.00 beginning January 1, 2015 for property taxes have been made or confirmation of payment to the taxing authority, Lassen County Tax Collector.
2. The amount of property tax currently due as of May 8th, 2015 is \$1,465.16 and an additional amount of \$3,355.85 in delinquent taxes is also due, for a total of amount of property taxes owed of \$4,821.02.
3. The moving party was forced to pay the property insurance premiums in March, April and May of 2015 for the Property, along with a payment to get current on delinquent payments and renewal costs.

Trustee's Response

The Chapter 13 Trustee responds that the Debtor is delinquent \$3,220 under the confirmed plan and has paid a total of \$18,990 to date. The Debtor's last payment was received on March 10, 2015. The Trustee provides an accounting of payments to the moving party, which show that monthly disbursements of \$1,000-\$2,000 were consistently made from April 30, 2014 to March 31, 2015.

Discussion

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 \$170,120, while the value of the property is determined to be \$135,000, as stated in Schedules A and D filed by 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 made plan payments. 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 terminating and vacating the automatic stay to allow Sue Terwilliger, 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.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is

not awarded attorneys' fees for all matters relating to this Motion.

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 Sue Terwilliger, 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 726-525 Mail Route Road, Ravedale, California.

No other or additional relief is granted.
