

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 13, 2017 at 1:30 p.m.

1.	17-22708 -C-13	EVANGELINE	MOTION TO CONFIRM TERMINATION
	MWM-1	GARCIA-BLACKFORD	OR ABSENCE OF STAY
		Pro Se	5-24-17 [22]
	DEBTOR DISMISSED: 05/23/2017		

Tentative Ruling: The Motion to Confirm Termination or Absence of Stay 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).

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 24, 2017. 14 days' notice is required.

The Motion to Confirm Termination or Absence of 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. At the hearing -----

The Motion to Confirm Termination or Absence of Stay is granted.

Movant, Blue Ocean Funding, LLC moves for an order from the court confirming that the automatic stay has expired with respect to the debtor pursuant to § 362(c)(3)(C). The debtor filed Case No. 16-25732 on August 30, 2016 which was dismissed on January 23, 2017 for failure to make plan payments.

On February 8, 2017 Movant acquired the property located at 293 Sage Sparrow Circle, Vacaville, Solano County, California, pursuant to a trustee's sale following foreclosure upon a deed of trust. On March 29, 2017, the Movant caused to be served on the debtor a Three Day Notice to Quit. On April 6, 2017, Movant filed an Unlawful Detainer action in the Superior Court of California, County of Solano, Case No. FCM154172. On

April 14, 2017 Movant obtained a judgment for Unlawful Detainer by Default in the superior court case.

Movant requests relief from the automatic stay to proceed as provided by the laws of the State of California to recover possession of the property.

The court notes that on May 23, 2017, the case was dismissed for failure to timely file documents. As a result, the automatic stay does not operate to stop the Movant from exercising its rights under non-bankruptcy law with respect to the property.

As the Movant requests that the court confirm that the automatic stay is no longer in effect, the motion will be 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 Motion to Confirm Termination or Absence of 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 is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are no longer in effect due to the dismissal of Case Number 17-22708 on May 23, 2017 for failure to make plan payments.

No other or additional relief is granted.

2. [14-28949](#)-C-13 JERRY/NELIA GAPAL
MDE-1 Bert Vega

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-20-17 [[56](#)]

TOYOTA LEASE TRUST VS.

Final Ruling: No appearance at the June 13, 2017 hearing is required.

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.

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.

Toyota Lease Trust seeks relief from the automatic stay with respect to a 2013 Toyota Scion FR-S.

The Brian Abrahamsen Declaration states that the debtors have not made 5 post-petition payments with \$1,809.67 remaining unpaid in arrears. The value of the property appears to be approximately \$22,074.00 while the debt owned by the creditor appears to be approximately \$22,062.13.

The Trustee does not 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).

The court shall issue a minute order terminating and vacating the automatic stay to allow Schools Financial Credit Union, and its agents, representatives and successors, to exercise their applicable non-bankruptcy rights.

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 Toyota Lease Trust, its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents and successors to exercise all of their non-bankruptcy rights with respect to the 2013 Toyota Scion FR-S.

No other or additional relief is granted.
