

Eastern District of California

Modesto, California

1. 18-90428 -E-11	RANDHAWA TRUCKING, LLC	CONTINUED STATUS CONFERENCE VOLUNTARY PETITION 6-7-18 [1]
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Continued from 6/6/19 to be heard in conjunction with the continued motion for sanctions for violation of the stay.

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No 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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditor, and Office of the United States Trustee on April 29, 2019. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions For Violation of 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Sanctions For Violation of Stay is XXXXXX.

REVIEW OF MOTION

The Chapter 11 debtor in possession, Randhawa Trucking, LLC ("AIP") filed this Motion for Sanctions ^{FN.1.} seeking (1) a determination that the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh ("Respondent") wilfully violated the automatic stay, and (2) an order awarding sanctions.

FN.1. The Motion was actually entitled "MOTION FOR ORDER TO SHOW CAUSE WHY THE SHARMA FAMILY TRUST, PARAMJIT RAI, SHAKUNTALA RAI, AND DALBIR SINGH SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF AUTOMATIC STAY." Dckt. 77.

However, the Motion does not actually request the court issue an order to show cause—what is requested is for the court to find there was a stay violation and to issue sanctions. The court has recast the Motion to reflect the relief requested.

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor filed this case on June 6, 2018.
2. Respondent received notices from this bankruptcy case via the BNC beginning June 13, 2018.
3. Respondent appeared at November 29, 2018 status conference.
4. On December 10, 2018 Respondent filed and served a Notice of Default.
5. On April 17, 2019 Respondent filed and served a Notice of Trustee's Sale.
6. No motions for relief have been filed in this case.
7. It is indisputable Respondent had actual notice of the bankruptcy. Therefore the violation was wilful.
8. The violation of stay was not inconsequential.

Motion, Dckt. 77.

The Declaration of Avinash Singh filed in support of the Motion presents testimony that Mr. Singh spoke "with Mr. Sharma several times regarding the bankruptcy and the debt both in telephone and a face-to-face meeting on November 29, 2018 at the US Bankruptcy Court's meeting room outside the court room." Declaration, Dckt. 79.

OPPOSITION

Respondent filed several documents relating to the Motion on May 23, 2019. Dckts. 84-86.

The Declaration of Rajinder Sharma presents the following testimony:

1. On or about August 24, 2015, Rajinder Sharma, Paramjit Rai, Shakuntala Rai, and Dalbir Singh collectively made a \$600,000.00 loan to Avinash Singh ("Singh").
2. The loan was made to Singh as an individual, secured by tow properties owned by Singh as of the date the loan was made and Deed of Trust was recorded: 1200 6th Street, Modesto, Stanislaus County, California ("Modesto Property") and 253 Tissot Drive, Patterson, Stanislaus County, California.
3. Rajinder Sharma recently discovered that the day after the loan was made, Singh transferred the Modesto Property to ΔIP. The lenders did not know about this transfer.
4. Respondent did receive a notice of ΔIP's filing, but did not know the Modesto Property had been deeded by Singh to ΔIP. Further, Respondent

June 27, 2019 at 10:00 a.m.

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are not attorneys and did not understand the import or significance of ΔIP filing a bankruptcy.

5. Respondent hired Equity Foreclosure Company (“EFC”) in 2018 to pursue foreclosure on the Modesto Property. A record search by EFC indicated the Modesto Property was owned by “Randhawan Trucking, LLC” and not “Randhawa Trucking, LLC.”
6. After learning ΔIP held title to the Modesto Property through notice of this Motion, Respondent instructed ECF to postpone further proceedings.
7. Respondent was not advised by ΔIP or counsel for ΔIP regarding possible stay violations.

Declaration, Dckt. 84.

The Declaration of Stephanie Roberts, and EFC employee, presents testimony that the title owner of the Modesto Property is “Randhawan Trucking, LLC” and not “Randhawa Trucking, LLC,” and therefore that there was nothing to give Respondent notice that the Modesto Property was included in the bankruptcy of ΔIP.

REVIEW OF GRANT DEED

ΔIP filed as Exhibit “A” the Corporation Grant Deed alleged to transfer title of the Modesto Property to ΔIP. Dckt. 80.

The Grant Deed states Avinash Singh grants to “Randhawan Trucking, LLC” the Modesto Property. *Id* (emphasis added). The Grant Deed was recorded on September 15, 2015 in Stanislaus County.

JUNE 6, 2019 HEARING

At the June 6, 2019 hearing the court continued the hearing in part to allow further pleadings to be filed (and in part to allow the presiding judge to hear the Contested Matter). Civil Minutes, Dckt. 96. In continuing the Matter for further pleadings, the court provided the following discussion:

On April 29, 2019 the Debtor in Possession filed and serve this Motion. On May 23, 2019, the attorneys for Rajinder Sharma, one of the persons named in the Motion for Sanctions, filed the Declaration of Rajinder Sharma, the Declaration of Stephanie Roberts, and thirty pages of Exhibits as evidence in connection with the Motion. Dckts. 84, 85, 86. The Declaration of Rajinder Sharma has the title,

DECLARATION OF RAJINDER SHARMA IN OPPOSITION TO DEBTOR'S MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT FOR VIOLATION OF AUTOMATIC STAY

Dckt. 84. Then, the Declaration of Stephanie Roberts is titled:

DECLARATION OF STEPHANIE ROBERTS IN OPPOSITION TO DEBTOR'S
MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT
FOR VIOLATION OF AUTOMATIC STAY

Dckt. 85.

The Exhibits document has the title:

EXHIBITS IN OPPOSITION TO DEBTOR'S MOTION FOR ORDER TO
SHOW CAUSE REGARDING CONTEMPT FOR
VIOLATION OF AUTOMATIC STAY

Dckt. 86.

However, no "Opposition" to the Motion has been filed, only evidence that someone wants to present - if there was an opposition filed.

It may well be that an opposition could be distilled from the testimony given by Stephanie Roberts and Rajinder Sharma, but none has been stated by any of the named persons against whom relief is requested. If it were to be distilled by the court, then it would effectively be the court that would be creating the opposition - which would be highly improper for the court to advocate for one party against another.

Further, relief is sought against the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh. Paramjit Rai, Shakuntala Rai, and Dalbir Singh are nowhere to be seen in this contested matter - not only failing to file any opposition but for the documents filed the counsel filing those documents is only the attorney for Rajinder Sharma personally. The attorney filing the pleading clearly identifies that he is representing only Rajinder Sharma personally, and does not indicate any representation of Mr. Sharma in any representative or fiduciary capacities, such as a trustee of a trust.

It appears that the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh have elected to default in response to the Motion, acknowledging or admitting their violations of the automatic stay.

Counsel of record for Rajinder Sharma, who is not named in the Motion, is a very experienced, well respected attorney in the bankruptcy community. That there would just be some declarations thrown at the court, no opposition filed, and the named parties defaulting is very surprising. It appears that such may reflect a larger problem for the court and parties in this case.

Reading the Rajinder Sharma (who is not named in the present Motion) declaration, it appears that there is an under current of ill will or bad blood with the Debtor and Debtor in Possession. Mr. Sharma goes beyond merely providing personal knowledge, factual testimony of a lay person witness (Fed. R. Evid. 601,

602), but proceeds to provide his legal analysis and conclusion concerning due on sale or transfer clauses.

Beyond his legal opinion, Mr. Sharma then provides the court with his “personal knowledge testimony” (with personal knowledge required, Fed. R. Evid. 602) that based only on “information and belief” does he so testify as to certain “facts.”

With respect to the testimony provided by Stephanie Roberts, she does so as an employee of the foreclosure company. Presumably, she presents herself as having specialized knowledge of the foreclosure process in California. Her declaration provides detailed testimony of checking public records for bankruptcies filed and there being a trustee’s sale guarantee issued which identified the Debtor as the owner of the property. Ms. Roberts testifies as there being actual notice that the Debtor owned the property as of November 2018.

7. As noted in the [trustee sale guarantee], the record owner of the subject property as of November 2018 was “Randhawan Trucking, LLC.” As part of EFC’s due diligence, we check the public records to see if there is any pending bankruptcy cases and in this instance, there was not a record of any pending or prior bankruptcy filed by Randhawan Trucking, LLC.

Dec. ¶ 7, Dckt. 85.

Ms. Robert’s testimony is accurate with respect to the trustee sale guaranty stating the property is owned by “Randhawan Trucking, LLC.” Rajinder Sharma Exhibit D, Dckt. 86 at 13. But the Debtor in this case, and the owner of the property is named -

Randhawa Trucking, LLC

there being no “n” on the end of “Randhawa.” Petition, p. 1; Dckt. 1.

A copy of the Corporation Grant Deed provided by the Debtor in Possession to document the 2015 transfer from Avinash Singh to the Debtor which has been filed as Exhibit A (Dckt. 80 at 2) lists the name of the transferee entity receiving the property as

Randhawan Trucking, LLC

Exhibit A, Dckt. 80 at 2 (triple emphasis added). This is noted in the Declaration of a non-party to the Motion that was filed with the court.

It may be that the asserted violation of the automatic stay is the result of something as simple as a finger brushing the wrong additional key when the deed transferring title to the Debtor was prepared.

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The court notes that missing from the Debtor in Possession's exhibits is the nice, polite, professional letter from Debtor in Possessions counsel to the believed wrongdoer of the asserted violation, of all the bad things that could happen, and asking them, politely, to correct the violation (void act). After sending such a letter, there would be no doubt that there was actual knowledge of the bankruptcy, the stay, and no honest, good faith belief that there could be an automatic stay.

Id.

RESPONDENT'S SUPPLEMENTAL OPPOSITION

Respondent and Rajinder Sharma filed an Opposition on June 20, 2019. Dckt. 100. In the Opposition Respondent and Rajinder Sharma argue they were aware of this bankruptcy case, but not that the Modesto Property had been deeded to ΔIP. *Id.* at p. 19-25.

The Opposition further states that while EFC was hired to process the foreclosure, their research did not turn up an applicable bankruptcy case because the Modesto Property was owned by Randhawan Trucking, LLC, and not ΔIP.

The Opposition asserts that all foreclosure efforts were halted once they received notice of this Motion, and that this Motion could have been avoided through an informal demand.

DISCUSSION

Respondent argues that once they learned the Modesto Property was within the bankruptcy case that they ceased all foreclosure proceedings. However, it is not clear what steps Respondent has taken to undo the recorded notice of default.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Sanctions For Violation of Stay filed by the Chapter 11 debtor in possession, Randhawa Trucking, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the that **XXXXXXXXXXXX**.

NISSAN-INFINITI LT VS.

Final Ruling: No appearance at the June 27, 2019 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 May 14, 2019. 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Nissan-Infiniti LT (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Nissan Rogue, VIN ending in 6460 (“Vehicle”). The moving party has provided the Declaration of Nataly Miranda to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Irma Rodriguez Alvarado (“Debtor”).

The Miranda Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$398.67 in post-petition payments past due. The Declaration also provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$1,191.01; that the Vehicle was being leased by Debtor; and that Movant is in possession of the Vehicle.

DISCUSSION

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 and Debtor having only a possessory interest in the Vehicle. 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 Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 Nissan-Infiniti LT ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Nissan Rogue, VIN ending in 6460 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.