

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 28, 2016 at 1:30 P.M.

1. [16-22309](#)-C-13 ANN MCLAUGHLIN MOTION FOR RELIEF FROM
APN-1 Seth Hanson AUTOMATIC STAY
5-19-16 [[17](#)]
BMW FINANCIAL SERVICES,
N.A., LLC VS.

Final Ruling: No appearance at the June 28, 2016 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 May 19, 2016. 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.

BMW Financial Services NA, LLC seeks relief from the automatic stay with respect to a 2014 BMW X1, Vehicle Identification Number with the last four digits of 5824. The moving party has provided the Declaration of Christine Hickman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has missed one pre-petition and one post-petition payment. 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 \$30,162.96 while the value of the property is determined to be \$30,162.96, as stated by Movant, and \$0.00 as stated in Schedules A and

D filed by Debtor. Pursuant to Debtor's Plan and petition, Debtor intends to surrender the vehicle.

The Chapter 13 Trustee filed a statement of nonopposition.

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 BMW Financial Services NA, 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 BMW Financial Services NA, LLC, its agents, representatives, and successors, to exercise any and all rights arising under the security interest and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the 2014 BMW X1, Vehicle Identification Number Vehicle Identification Number with the last four digits of 5824.

No other or additional relief is granted.

2. [16-23320](#)-C-13 MARISELA BRITTON
SMR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-31-16 [[20](#)]

TM INVESTMENTS, INC. VS.
DEBTOR DISMISSED: 06/10/2016

Final Ruling: No appearance at the June 28, 2016 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 19, 2016. 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 denied.

TM Investments, Inc. seeks relief from the automatic stay with respect to the real property commonly known as at 4226 Oberon Avenue, North Highlands, California. The moving party has provided the Declaration of Inessa Chernioglo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Movant is the legal owner of the property acquiring title by foreclosure sale pre-petition on February 29, 2016 and recording the deed within the time period imposed by state law. Movant filed an unlawful detainer action in state court on March 17, 2016. The matter proceeded to trial and a Judgment for Possession of the subject premises was entered in favor of Movant, as well as attorney fees and costs were awarded.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. The debtor was dismissed on June 10, 2016. On that day the protections of the automatic stay were terminated as to the debtor. Therefore, this motion for relief from the automatic stay is moot.

The court shall issue an order stating that the automatic stay terminated as to the debtor on June 10, 2016.

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 TM Investments, 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 Motion for Relief From the Automatic Stay is denied as moot. The automatic stay provisions of 11 U.S.C. § 362(a) terminated as to debtor Marisela Britton when the case was dismissed on June 10, 2016.

No other or additional relief is granted.

3. [13-31599](#)-C-13 TONY MILO
JHW-1 Eamonn Foster

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-25-16 [[104](#)]

FORD MOTOR CREDIT COMPANY,
LLC 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 25, 2016. Twenty-eight days' notice is required. That requirement was 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.

Tony Anthony Milo ("Debtor") commenced this bankruptcy case on September 3, 2013. Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Ford F150, VIN ending in 1376 (the "Vehicle"). The moving party has provided the Declaration of Lytria Sanders to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Sanders Declaration provides testimony that the vehicle was involved in a collision on January 13, 2016, and was declared a total loss by Debtor's insurance carrier, State Farm Insurance Co. Movant seeks relief from the automatic stay in order to recover only the insurance proceeds \$7,162.30 with respect to the vehicle.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee responds to provide more comprehensive information to the court as to this Creditor and vehicle.

Trustee provides that under hte plan, Debtor provides for Ford Motor Credit Company as a class 2 creditor with a monthly dividend of \$219.52 and a 4.5% interest. The Plan is a 60 month plan with 28 months remaining, with at least 8% to unsecured claims.

Debtor filed a motion to value the collateral of Creditor on September 4, 2013, Dckt. 8, seeking to value the 2006 Ford F-150 at \$9,085. Creditor opposed the motion, Dckt. 20, asserting a competing valuation of \$12,069.91. Ultimately the court issued a civil minute order granting Debtor's motion to value, determining the secured amount to be \$11,775. Creditor filed an amended claim on January 15, 2014 for \$12,069.81 of which \$11,775 was secured and \$294.81 was unsecured.

Creditor now moves the court for relief from the stay in order to collect insurance proceeds of \$7,162.30 to apply to the remiainin balance on the secured claim with any overage to be sent to Trustee's office. Trustee does not oppose this, however the question remains as to the disposition of the remaining proceeds which creditor may have a lien against until Debtor complete the plan. Debtor is curren under the confirmed plan. Creditor is owed only \$5,331.71 on their secured claim, which means the insurance proceeds exceed the secured claim by \$1,830.59.

Trustee records show that \$7,561.17 has been disbursed to Creditor with a remaining principal owed of \$5,331.71. A total of \$23.58 has been disbursed on the unsecured portion to date leaving \$271.23 remaining as unsecured debt.

Trustee does not oppose an order granting relief and either ordering the remaining proceeds to be paid to Debtor or ordering the remaining proceedings to be paid to Debtor except for \$271.23 to be held by Trustee in an interest-bearing account until either the plan is complete, at which time the proceeds will be turned over to Debtor, or the case is dismissed or converted at which time the \$271.23 will be turned over to Creditor.

DISCUSSION

The court determines that cause exists for terminating the automatic stay based on the total loss of Creditor's secured collateral. 11 U.S.C. § 362(d)(1). Creditor may seek the recovery of insurance proceeds to apply to the remaining secured claim.

The general unsecured amount remaining on Creditor's claim of \$271.23 shall be held in an interest-bearing account until the plan is complete, at which time the proceeds will be turned over to Debtor, or the case is dismissed or converted at which time the \$271.23 will be turned over to Creditor.

The court shall issue an order terminating and vacating the automatic stay to allow Ford Motor Credit Company, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to recover from the insurance proceeds the amount remaining on its secured claim.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving 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 Ford Motor Credit Company, LLC ("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 2006 Ford F150 ("Vehicle"), and applicable nonbankruptcy law to seek recovery of the insurance proceeds resulting from the total loss of the Vehicle, pursuant to State Farm Insurance Co. claim number 55797M169, to recover the amount remaining on Creditor's secured claim.

IT IS FURTHER ORDERED that general unsecured amount remaining on Creditor's claim of \$271.23 shall be held in an interest-bearing account until the plan is complete, at which time the proceeds will be turned over to Debtor, or the case is dismissed or converted at which time the \$271.23 will be turned over to Creditor.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.
