

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

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

1.	14-31016 -C-13	GARRY/CYNTHIA SIMPSON	MOTION FOR RELIEF FROM
	DWB-1	Scott Johnson	AUTOMATIC STAY
			5-21-15 [80]

CASHCALL, INC. 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 21, 2015. 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.
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CashCall, Inc. seeks relief from the automatic stay with respect to a 2012 Chevrolet Impala 4-door Sedan LT, Vehicle Identification Number 2G1WG5E34C1309669. The moving party has provided the Declaration of Lance D. Knox 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 Debtors have missed 1 pre-petition and six post-petition payments. 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 \$19,879.29 while the value of the property is determined to be \$10,226, as stated in Schedules A and D filed by Debtor.

Debtors' Opposition

Movant alleges that Debtors are currently \$3,873.02 behind on post-petition payments. These missed payments reflect the pre-filing rate of \$423.18, not the proposed post-filing amount of \$321.72. This total includes \$126.90 in late charges and \$1,207.08 in attorneys' fees and costs. Movant alleges that, as of May 18, 2015, it has not received a single payment from the Chapter 13 Trustee. This is incorrect. A glance at the Trustee's 13Network website will show that the Trustee has disbursed \$838.50 to the Movant on April 30, 2015 and \$436.74 on May 29, 2015. As of April 30, 2015, Movant began receiving adequate protection payments.

Debtors shall be objecting to the Proof of Claim filed by the Movant as the sales contract agreement is incomplete and is believed to have removed the protection of the contract referring to the right to redeem and the right to attorneys' fees and costs.

Movant alleges that as of May 9, 2015, Debtors' are not maintaining insurance on the subject vehicle. Insurance began May 9, 2015. See Ex. B.

Trustee's Response

The Debtors have paid a total of \$2,560 to date, and no plan is pending. The Trustee has disbursed \$838.50 to the Movant on April 30, 2015 and \$436.74 on May 29, 2015.

Discussion

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 notes that the Movant received disbursements of \$838.50 on April 30, 2015 and \$436.74 on May 29, 2015. However, at least three payments remain outstanding and the Movant is significantly undersecured. Further, the Trustee's response does not indicate that the Movant is receiving adequate protection payments.

The court shall issue a minute order terminating and vacating the automatic stay to allow CashCall Inc., 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 CashCall, Inc., 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 2012 Chevrolet Impala 4-door Sedan LT, Vehicle Identification Number 2G1WG5E34C1309669.

No other or additional relief is granted.

2. [15-24061](#)-C-13 RANDY RICHARDSON AND MOTION FOR RELIEF FROM
RSS-1 JACQUELYN **Ramirez-Richardson** AUTOMATIC STAY
W. Steven Shumway 6-5-15 [[14](#)]
OWB REO, LLC VS.

Tentative Ruling: The Motion for Relief from the Automatic 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 June 5, 2015. 14 days' notice is required. That requirement was met.

The Motion to Value 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
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The Motion for Relief from the Automatic stay is granted.

OWB REO LLC seeks relief from the automatic stay with respect to the real property commonly known as 7925 Rock Springs Road, Penryn, California. The moving party has provided the Declaration of Richard S. Sontag 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 March 18, 2015 and recording the deed within the time period imposed by state law. Movant seeks to proceed with the unlawful detainer action filed in state court on May 20, 2015. Debtor has filed multiple bankruptcy cases to prevent Movant from recovering possession of the property (Case Nos. 13-34358, 13-35194, 14-27936).

Opposition

The Chapter 13 Trustee opposes the Motion on the basis that:

1. The Debtors' first Chapter 13 payment of \$6,320 is due June 25, 2015.
2. The Movant's declaration is hearsay because potentially every statement was made "on information and belief."
3. The Movant has not filed a separate Memorandum of Points and Authorities.
4. Debtors' prior bankruptcy cases were filed prior to the Movant obtaining title of the property.

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. Movant commenced an unlawful detainer action in California Superior Court, County of Placer. Exhibit C, Dckt. 17.

Movant has provided a properly authenticated/ certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. 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 *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (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 Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow OWB REO LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 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 OWB REO 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow OWB REO LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 7925 Rock Springs Road, Penryn, California .

No other or additional relief is granted.

3. [12-21667](#)-C-13 LUPE BILEY
PPR-1 Michael Hays

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-21-15 [[35](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the June 30, 2015 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 21, 2015. Twenty-eight days' notice is required. This 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). 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.

Creditor, Deutsche Bank National Trust Company for the benefit of the Certificate Holders of New Century Home Equity Loan Trust, Series 2004-A Asset Back Pass-Through Certificates Series 2004-A, seeks relief from the automatic stay with respect to the real property commonly known as 4790 Windward Way, El Dorado, California. The moving party has provided the Declaration of Lorrie Matheson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Matheson Declaration states that the Debtor has not made 40 post-petition payments, with a total of \$102,3556.67 in post-petition payments past due, on an outstanding obligation of \$426,761.57. Movant has provided a Grant Deed, recorded in El Dorado County in May of 2011, Exhibit E, Dckt. 38, showing a conveyance from John and Rosemarie Thornson to Debtor Lupe Molina Biley. However, Debtor has not listed the real property at issue here in her schedules, filed an opposition to this instant motion, or otherwise expressed that she has any sort of interest in the real property.

David Cusick, Chapter 13 Trustee, has filed a statement of non-opposition to the instant 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 Creditor, 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 plead no additional facts or presented any sort of argument 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 Deutsche Bank National Trust Company for the benefit of the Certificate Holders of New Century Home Equity Loan Trust, Series 2004-A Asset Back Pass-Through Certificates Series 2004-A, 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 4790 Windward Way, El Dorado, California.

No other or additional relief is granted.

4. [15-24475](#)-C-13 TRINNA ALBRO
JBC-1 Mohammad Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-10-15 [[11](#)]

RANDAL NG VS.

Tentative Ruling: The Motion to Value 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 June 10, 2015. 14 days' notice is required. This requirement was met.

The Motion to Value 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 --
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The for Relief from the Automatic stay is granted .
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Creditor, Randal Ng, seeks relief from the automatic stay with respect to the occupancy and possession of real property commonly known as 979 Astro Court, Sacramento, California. The moving party has provided the Declaration of Randal Ng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ng Declaration states that Movant is owner of the residential real property at issue, and on May 14, 2014, Debtor as lessee and Movant as lessor entered into a one-year residential lease agreement for the Subject Property. See Lease Agreement, Exhibit A, Dckt. 14. The one year lease expired on May 31, 2015. During her occupancy of residence, Debtor defaulted on her rent obligations in the total amount of \$4,350 as of May 2015. On May 4, 2015, Movant caused to be served on Debtor a written three-day notice to pay rent or quit ("Notice"). Exhibit B, Dckt 14. May 14, 2015, Movant filed

a summons and complaint for unlawful detainer against Debtor for Debtor's failure to pay rent or vacate the premises. Exhibit C, Dckt. 14. Trial was set for June 8, 2015. On June 1, 2015, Debtor filed the instant voluntary petition.

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).

Chapter 13 Trustee has filed a statement of non-opposition to the instant motion.

The court shall issue a minute order terminating and vacating the automatic stay to allow Randal Ng, 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 Randal Ng, his agents, and representatives, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 979 Astro Court, Sacramento, California.

No other or additional relief is granted.

5. [15-24494](#)-C-13 RICHARD DICKSON
SC-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-12-15 [[11](#)]

PARKVIEW EDGE PROPERTIES,
LLC VS.

Final Ruling: No appearance at the June 30, 2015 hearing is required.

The case having previously been dismissed on June 22, 2015, Dckt. 22, the Motion is moot.

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 Automatic Stay by Creditor Parkview Edge Properties, having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is moot, the case having been dismissed.
