

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

July 21, 2015 at 1:30 P.M.

1. [11-49405](#)-C-13 LAWRENCE/ROXANNE BENDER MOTION FOR RELIEF FROM
BEP-1 Mikalah Liviakis AUTOMATIC STAY
6-11-15 [[50](#)]
CITY OF SACRAMENTO VS.

Final Ruling: No appearance at the July 21, 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 June 11, 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). 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.

City of Sacramento seeks relief from the automatic stay with respect to the real property commonly known as 5540 Ashland Way, Sacramento, California. The moving party has provided the Declaration of John Leno 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 Subject Property has been found to be in violation of numerous Dangerous Building (SCC Chapter 8.96) and Substandard Building (SCC Chapter 8.100) code sections. Namely, the Subject Property is in violation of the following: section 8.100.1240(A) · (F) [failure to actively maintain and monitor vacant building]; 8.04.100(A)

[maintaining an accumulation of junk, trash and debris]; chapter 6 17.68 [unlawful landscaping and paving]; section 8.100.590 ["unsafe electrical equipment; insufficient outlets; or inadequate grounding"]; section 8.96.110(R) ["public nuisance"]; section 8.96.110(0) ["fire hazard"]; section 8.96.110(L) ["structure violation"]; section 8.100.620(D) ["broken, rotted walls/roof"]; and 8.100.600 ["hazardous plumbing"].

The Subject Property remains a public nuisance that is a threat to the health, welfare, and safety of the public.

Trustee's Response

The trustee filed a statement of nonopposition.

Discussion

An exception under 11 U.S.C. § 362(b)(4) provides that, a bankruptcy filing does not stay the actions of a governmental entity enforcing its police or regulatory power. One of the purposes of this exception is to protect public health and safety. *Mid/atlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection* 474 U.S. 494, 502 (1986). The exception allows for the enforcement of laws affecting health, welfare, morals and safety despite the pendency of bankruptcy proceedings. *Lockyer v. Mirant Corp.* 398 F.3d 1098, 1107 (9th Cir. 2005). A suit comes within the "police or regulatory powers" exception if it passes either the "pecuniary purpose" test or the "public purpose" test. *Universal Life Church, Inc. v. United States (In re Universal Life Church)*, 128 F.3d 1294, 1297 (9th Cir. 1997).

Here, the "public purpose" test is satisfied because the Property is a nuisance. Thus, lifting the stay is necessary to protect the health, safety, and welfare of the public.

The court shall issue an order terminating and vacating the automatic stay to allow City of Sacramento, 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.

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 City of Sacramento ("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 City of Sacramento and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 5540 Ashland

Way, Sacramento, California.

No other or additional relief is granted.

2. [15-23505](#)-C-13 MIKHAIL SAVON AND YULIYA MOTION FOR RELIEF FROM
APN-1 OTKIDYCHEVA AUTOMATIC STAY
Mark Shmorgon 6-10-15 [[15](#)]
WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the July 21, 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 June 10, 2015. 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.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to a 2009 Toyota Venza, Vehicle Identification Number 4T3ZK11A79U009334. The moving party has provided the Declaration of Elena Schultz 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 3 pre-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 \$12,042.34, while the value of the property is determined to be \$13,000, as stated in the Statement of Financial Affairs 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 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 Wells Fargo Bank, N.A., 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 Wells Fargo Bank, N.A., 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 2009 Toyota Venza, Vehicle Identification Number 4T3ZK11A79U009334.

No other or additional relief is granted.

3. [15-22925](#)-C-13 CHRISTOPHER/CAREENA
APN-1 RIDENER
Robert Gimblin
KIA MOTORS FINANCE VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-8-15 [[19](#)]

Final Ruling: No appearance at the July 21, 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, Chapter 13 Trustee, and Office of the United States Trustee on June 8, 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.

Christopher Lee Ridener and Careena Michelle Ridener ("Debtor") commenced this bankruptcy case on April 10, 2015. Kia Motor Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Kia Sorento, VIN ending in 7763 (the "Vehicle"). The moving party has provided the Declaration of Efrain Novarro to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Novarro Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$1,228.42 in post-petition payments past due. The Declaration also provides evidence that there is 1 pre-petition payments in default, with a pre-petition arrearage of \$614.21.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$23,020.69, as stated in the Novarro Declaration, while the value of the Vehicle is determined to be \$16,699, as stated in Schedules B and D filed by Debtor.

Chapter 13 Trustee has filed a statement of no opposition to the instant motion.

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. *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 and the estate have 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 an order terminating and vacating the automatic stay to allow Kia Motor Finance, 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.

Movant has not 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 Kia Motor Finance ("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 2013 Kia Sorento ("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.

4. [13-35963](#)-C-13 DEREK CASEBEER AND ERICA
DVW-1 WHEELER-CASEBEER
Richard Jare

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY AND/OR
MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-2-15 [[38](#)]

VANDERBILT MORTGAGE AND
FINANCE, INC. VS.

Tentative Ruling: The Motion to Confirm Termination or Absence of Stay and/or Motion for Relief from 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 July 2, 2015. 14 days' notice is required. This requirement was met.

The Motion to Confirm Termination or Absence of Stay and/or Motion for Relief from Automatic 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 .
--

Creditor, Vanderbilt Mortgage and Finance, Inc., holds a lien encumbering real property commonly known as 9015 Neponset Drive, Elk Grove, California ("Subject Property"). The Assignment of Deed of Trust was recorded on November 28, 2012 in the Office of the Sacramento County Recorder. Exhibit 3, Dckt. 42. Creditor now holds a lien on the Subject Property owned by Derek Dean Casebeer and Erica Monique Wheeler-Casebeer ("Debtors").

MOTION

Creditor's Motion alleges the following:

1. Debtors executed a note in the sum of \$467,400.00 naming Bayrock Mortgage Corporation as Payee. The Note is secured by a Deed of Trust in the sum of \$467,400.00 naming Mortgage Electronic Registration Systems, Inc. as nominee for Bayrock Mortgage Corporation, as Beneficiary recorded in the Office of the County Recorder of Sacramento County on May 31, 2007 encumbering the Property. Dckt. 42, Exhibit 1 and 2.
2. All beneficial interest in the Note and Deed of Trust were assigned to Creditor. Creditor is in possession, custody, and control of the original endorsed Note assigning all right, title, and interest therein to Creditor.
3. An Assignment of the Deed of Trust was recorded on November 28, 2012 in the Office of the Sacramento County Recorder. Dckt. 42, Exhibit 3.
4. Debtors filed the instant bankruptcy case on December 21, 2013.
5. On December 21, 2013, Debtors filed a Chapter 13 Plan listing Creditor as a Class 4 claimant, which class allows the holder of a Class 4 secured claim, upon confirmation of the Plan, to exercise its rights against its collateral in the event of a default under terms of its loan or security documentation provided the case is then pending under Chapter 13. An order confirming the Plan was entered on March 4, 2014.
6. Debtors are now delinquent in post-petition payments for April 1, 2015 through June 1, 2015, for a total of three months totaling \$8,787.99, less \$815.99 from Debtors' suspense, totaling \$7,972.
7. The post-petition mortgage payment is currently \$2,929.33. There is no loan modification pending.
8. Creditor is informed and believes that no Order of the court confirming no stay is in effect may be required by the title company in order to provide insurable and marketable title.

The Creditor is seeking an Order confirming that there is no stay in effect in this case as to the Subject Property pursuant to Debtors' post-petition default and the terms of the confirmed plan, wherein the automatic stay was modified to permit Class 4 claimants to exercise its rights against its collateral and any nondebtor in the event of a default.

CHAPTER 13 TRUSTEE NONOPPOSITION

On July 7, 2015, David Cusick, the Chapter 13 Trustee, filed a notice of nonopposition to the instant Motion.

APPLICABLE LAW

11 U.S.C. § 1327(a) states:

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor

is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected to plan.

Under the confirmed Plan, Section 2.11, Class 4 claims:

mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default of applicable law or contract.

DISCUSSION

Debtor's Chapter 13 Plan was confirmed on February 28, 2014, Dckt. 30. The Debtor's confirmed Plan lists Movant's claim as a Class 4 Creditor, which provides that Debtor will make direct payments to the Movant. Section 2.11 of the Plan, providing for Class 4 claims states:

Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default of applicable law or contract.

Creditor provides that Debtor has defaulted on three mortgage payments, after the chapter 13 plan was confirmed. Accordingly, Creditor may move to exercise its rights against its collateral and nondebtors under the modified automatic stay.

ORDER EFFECTIVE UPON ISSUANCE

The automatic stay having been previously terminated by operation of law, the court waives the 14-day stay imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3), to the extent it applies to this order.

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 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 and confirmed no automatic stay went into effect upon the confirmation of the Plan on February 28, 2014 (Dckt. 30) of Case No. 13-35963 under the provisions of Plan and Creditor, Vanderbilt Mortgage and Finance, Inc., their 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 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 9015 Neponset Drive, Elk Grove, California.

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 was granted.
