

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

July 31, 2018 at 1:30 p.m.

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1.	<a href="#">18-20628</a> -C-13	LEON DOTSON	CONTINUED MOTION FOR RELIEF
	<a href="#">BEP</a> -1	Peter Macaluso	FROM AUTOMATIC STAY
			2-16-18 [ <a href="#">19</a> ]

CITY OF SACRAMENTO VS.

Thru #2

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**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.**

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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 February 16, 2018. 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.

<b>The Motion for Relief From the Automatic Stay is xxxxx.</b>
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City of Sacramento seeks relief from the automatic stay with respect to the receivership case No 34-0218-00224983 as it relates to the real property commonly known as 2016 Florin Road, Sacramento, California.

The movant asserts that the subject property is a public nuisance that is a threat to the public. The City of Sacramento commended a state court action and obtained an order granting the appointment of a receiver, but the order is stayed pending this motion.

The debtor filed a response indicating that there are a number of material disputed facts. Therefore, the debtor requested the court to allow for further briefings.

The hearing was continued and both parties filed supplemental briefing.

### **Debtor's Supplemental Reply**

Debtor asserts that due to numerous bad acts by the City, that are themselves a violation of public policy, relief from stay cannot be granted on a public policy concern theory. The problem on the property was litter and clutter in need of removal. **Debtor has had "open" cases for debris and clutter, but all of those cases were closed as the debtor fixed each of these issues. Additionally, the city has not disclosed its own pecuniary interest in the property as a result** of the 2008 default judgment in the amount of \$232,625. There is no clutter and debris and there is no safety hazard on the property. In short, there is no justification for relief from the stay.

The debtor previously had filed a chapter 13 case, during the pendency of which the movant, without applying for relief from stay, **obtained a default judgment against the debtor and went onto the premises to take him off the property at gun point and drop him off at a McDonalds.** Then the city served him with a series of court pleadings, sent to the subject property where they had just kicked him out of.

### **Movant's Supplemental Reply**

Movant states that an evidentiary hearing is improper here where the question is whether the exercise of police power of a local government is exempt from the automatic stay. The city asserts that it is only looking to collect attorneys fees from the Default Judgment by this action, not the entire judgment amount. The court should grant relief to allow the state court to deal with the issue of the public nuisance, rather than adjudicate it in federal court.

### **Discussion**

Debtor is unlikely to be able to complete a chapter 13 plan.

There are numerous repairs that need to take place on the property and the debtor's only plan to complete them is to get help from people donating time and money. None of this is stated in the plan.

The court ordered the parties to jointly inspect the property. After this inspection, the city filed a supplemental list of all of the (30) repairs that need to be fixed. By April 12, 2018 the debtor was to have filed and served any responses to the punch list and the proposed amendments to the ch 13 plan indicating how the remediations will be undertaken by the debtor.

The court further continued this hearing from April 17, 2018 with the request that debtor shows how this is a confirmable chapter 13 plan.

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 xxxxxxxx

No other or additional relief is granted.

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**Tentative Ruling:** The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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.**

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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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2018. Twenty-eight days' notice is required. That requirement was met.

The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The Motion for Contempt is xxxxxxxxxxxx .</b>
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Debtor brings this motion for contempt for violation of the automatic stay against the City of Sacramento and Beau Parkhurst. After having knowledge of the bankruptcy filing, the city's attorney Parkhurst filed a supplemental reply demanding oral argument in the superior court. At the state court hearing on Feb 9, 2018, the city stated that Relief from the Automatic Stay was not necessary.

**TRUSTEE'S RESPONSE**

The motion for relief may decide the key issues in the matter. If no stay exists because of 362(b)(4), no violation of the stay exists.

**DEBTOR'S SUPPLEMENTAL MOTION**

Debtor requests relief under 362(k) and argues that 362(b)(4) does not apply because the city has a pecuniary interest in the property.

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 Contempt 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 xxxxxxxx

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3. [17-20765](#)-C-13 DAVID SIMS  
[MRG](#)-6 Peter Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-21-18 [[217](#)]

BOSCO CREDIT, LLC VS.  
DEBTOR DISMISSED: 7/17/2018

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**Final Ruling:** No appearance at the July 31, 2018 hearing is required.  
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The Chapter 13 case having been dismissed July 17, 2018, **the Motion for Relief from Stay is dismissed as moot, and the matter is removed from the calendar.**

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