

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 2, 2016 at 1:30 P.M.

1. [16-24125](#)-C-13 MELISSA FAUS
SMR-1 Richard Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-5-16 [[19](#)]

OAKMONT PROPERTIES -MADISON
HILLS/FOLSOM POINTE, LP 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 July 5, 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.

Creditor, Oakmont Properties - Madison Hills/Folsom, L.P., seeks relief

from the automatic stay with respect to the real property commonly known as 9201 Madison Avenue, Apt. 188, Orangevale, California. The moving party has provided the Declaration of Amber Morgan to introduce evidence as a basis for Movant's contention that Melissa Anne Faus ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. On February 20, 2016, Debtor and the non-filing co-debtor Brittney Faus, entered into a written lease agreement with Movant. During May 2016, Debtor failed and continues to fail to tender full monthly rent of \$1,245 pursuant to the lease agreement.

On May 5, 2016, Movant served a three day notice to pay rent or quit upon Debtor and Brittney Faus. On June 2, 2016, Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit A, Dckt. 23.

On June 24, 2016, Debtor filed this bankruptcy petition, and proceedings against Debtor and Brittney Faus were stayed. Creditor seeks relief against Debtor and non-filing co-debtor Brittney Faus.

DEBTOR'S OPPOSITION

Debtor opposes the instant motion, asserting that the rental property is Debtor's only place of residence, and since they need a place to live, the residence is necessary to their reorganization.

Debtor asserts that the chapter 13 plan adopts the lease with Movant, and estimates the lease delinquency at \$2,490. Her proposed plan cures the delinquency quickly through the plan providing \$280 each month beginning month 2. Trustee disburses this upon confirmation. Debtor tendered July 1, 2016, rent. This payment was refused.

MOVANT'S REPLY

Creditor urges the court to lift the stay to proceed with the state court unlawful detainer.

First, Creditor asserts Debtor lacks good faith in the filing of the bankruptcy petition. Debtor and Brittney Faus state that their need for a place to live makes the property necessary to their reorganization. The opposition proposes plan payments to resolve the delinquency in their leasehold payments. Debtor and Brittney Faus have all but admitted that the bankruptcy was filed not for the true purpose of collection of relief but simply as a means of forestalling Movant's ability and right to recover possession of the property. Creditor points to the fact that Debtor scheduled and interest in the property lease as "ownership interest," that the schedule G provides that there is "9 months left on a 1 year lease" despite the three day notice to quit on or before May 9, 2016.

Second, Creditor and Brittney Faus asserts that Debtor lacks any ownership interest or equity in the property. They failed to pay rent pursuant to the lease, Debtor and Brittney Faus did not pay within the notice period, thus the lease was terminated on May 9, 2016 after the expiration of the notice period. Therefore any claims that Debtor and Brittney Faus have interest in the property by virtue of some "unexpired" contract is wholly without merit. They have no actual equity in the property, and as such the property is clearly unnecessary for an effective reorganization.

Finally, Debtor's response was late-filed and as such the late written opposition should constitute a waiver of any opposition.

DISCUSSION

Movant's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). 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).

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). Movant has presented a colorable claim for 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 Creditor, Oakmont Properties - Madison Hills/Folsom, L.P., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 9201 Madison Avenue, Apt. 188, Orangevale, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 Oakmont Properties - Madison Hills/Folsom, L.P. ("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 Oakmont Properties - Madison Hills/Folsom, L.P. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 9201 Madison Avenue, Apt. 188, Orangevale, 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 not waived for cause shown by Movant.

No other or additional relief is granted.
