

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 2, 2022 at 1:30 p.m.

1. [22-21301](#)-E-13 **QING SONG LIU** **MOTION FOR RELIEF FROM**
[NBL-1](#) **Peter Macaluso** **AUTOMATIC STAY**
 6-29-22 [23]
NT DUNHILL I LLC VS.

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. No Proof of Service has been filed. At the hearing, **XXXXXXXXXXXX**

<p>The Motion for Relief from the Automatic Stay is granted.</p>

NT Dunhill I LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1661 E. Monte Vista Avenue, Suites Q-103, Q-104, and Q-105, Vacaville, California 95688, ("Property"). The moving party has provided the Declaration of Julie Davis to introduce evidence as a basis for Movant's contention that Qing Song Liu ("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. Based on the evidence presented, what is advanced by Movant is that Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano and received a judgment entitling Movant to possession of the premises, with a Judgment for Unlawful Detainer having been entered by that court on May 9, 2022. Exhibit C, Dckt. 28.

DEBTOR'S OPPOSITION

Debtor filed an opposition on July 19, 2022 (Dckt. 43) stating:

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1. The amount due is \$19,404.14, and not \$239, 685.50.
2. Debtor is not 33 months behind payment.
3. The repairs sought under the contract are the subject of disputed insurance claims.
4. Debtor has \$26,000.00 in cash assets to fund the arrears.
5. The Chapter 13 Plan is intended to cure any financial claim owed to MOvant and keep the business in operation.

CHAPTER 13 TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee filed a nonopposition on July 19, 2022. Dckt. 48. Trustee raises several concerns regarding Debtor's feasibility on how Debtor will treat Creditor in the Plan. Trustee states Debtor has not filed a Plan, and the deadline to file the Plan was July 19, 2022. Additionally, Trustee cannot discern what Debtor's interest in the Property is. Trustee requests the court grant the Motion.

CREDITOR'S REPLY

Creditor filed a Reply on July 26, 2022. Dckt. 50. Creditor notes that Debtor's Opposition fails to consider the lease in question has been forfeited by a valid unlawful detainer judgment. Further, Creditor details the procedural background of the unlawful detainer suit and that judgment was entered prior to the bankruptcy case.

DISCUSSION

Movant has provided the Judgment to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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

Debtor's assertions do not contravene the fact that an unlawful detainer was entered by Solano County Superior Court. Furthermore, even if all the evidence was weighed in Debtor's favor, Debtor has not alleged claims that would nullify the execution of the unlawful detainer. Debtor would still have violated the lease by not paying due rent, and Debtor would still be behind payments. The unlawful detainer is still valid and Creditor has grounds for relief.

Here, the bankruptcy case has been filed, the automatic stay imposed, and Debtor asserting that Movant is wrong to prosecute the unlawful detainer, and therefore this bankruptcy filing should block the unlawful detainer action. Unfortunately, there are substantive non-bankruptcy law issues concerning these Parties that must be litigated.

The Opposition to this Motion merely states that the dollar amount claimed is the subject of dispute, with the amount being less than the cash Debtor has on hand and is ready to pay Movant. Debtor disputes the number of months of asserted default. Finally, that any of alleged repair amount are the subject of a disputed insurance claim.

These are all substantive matters to be litigated in proceedings other than a motion for relief from the stay. While Debtor may seek to pay any obligations owed Movant through a Plan (indicating that they are significantly more substantial than the \$19,404.14 (for which Debtor has \$26,000 of cash on hand to pay) than Debtor asserts in the Opposition.

Though no mentioned in the Opposition, in Debtor's Declaration she testifies that:

3. I did not received [sic] the notice of the court date to which the unlawful detainer was mailed.

Declaration ¶ 3; Dckt. 44. It appears this testimony is that Debtor did not get notice of a court date in the unlawful detainer proceeding. It is unclear as to what the reference is to "to which the unlawful detainer was mailed." One questions whether Debtor read the Declaration, reviewed her Testimony Under Penalty of Perjury, and made sure that what Debtor was testifying to under Penalty of Perjury was true and accurate statements by Debtor.

The Ninth Circuit Court of Appeal long ago noted with respect to California law, the termination of a lease occurs not when the final judgment is entered, but when the notice of default and cure period expires, which is prior to commencing an unlawful detainer. *See, In re Windmill Farms, Inc.*, 841 F.2d 1467, 1469-1471 (9th Cir. 1988), which discussion and holding includes:

B. Termination of the Lease

The Bankruptcy Code permits a trustee, with court approval, to "assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). However, "the trustee may not assume or assign any executory contract or unexpired lease of the debtor . . . if . . . such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief." 11 U.S.C. § 365(c)(3). The phrase "applicable nonbankruptcy law" means applicable state law. *See City of Valdez v. Waterkist Corp. (In re Waterkist Corp.)*, 775 F.2d 1089, 1091 (9th Cir. 1985).

...

1. The California Statutes

California Civil Code section 1951.2(a) HN6 provides that "if [the lessee's] right to possession is terminated by the lessor because of a breach of the lease, the lease terminates." Cal. Civ. Code § 1951.2(a) (West 1985). No one disputes that the lessee, WFI, breached the lease by not paying the rent and

property tax impounds. It is also uncontroverted that in its three-day notice to pay rent or quit, the lessor, Vanderpark, notified WFI that if the back rent and delinquent tax impounds were not paid within the three-days period, the lease would terminate. . . .

. . .

We look to California's unlawful detainer statutes to determine when a lessee's right to possession is terminated in these circumstances. See Cal. Civ. Proc. Code § 1161 (West 1982). A tenant who is guilty of unlawful detainer cannot possibly have the right to possession of the property. He still may be in possession of the property, but his possession is not rightful; it is unlawful. California Code of Civil Procedure section 1161 specifies when this possession becomes unlawful:

A tenant of real property . . . is guilty of unlawful detainer:

. . . .

When he continues in possession . . . without the permission of his landlord . . . after default in the payment of rent, pursuant to the lease . . . under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, or possession of [**10] the property, shall have been served upon him. . . .

Cal. Civ. Proc. Code § 1161(2). After the three-days' notice period has passed, if the tenant remains in possession, the landlord may file his unlawful detainer complaint and proceed according to Code of Civil Procedure section 1174(a), which provides:

If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the possession of the premises; and if the proceedings be for an unlawful detainer . . . after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

Id. § 1174(a) (West 1988) (emphasis added). As we interpret these statutes, upon the expiration of three days after the lessor has given the lessee the notice required by section 1161(2), if the lessee has failed to pay the rent in default the lessor has terminated the lessee's right to possession. The lessor may then rely upon section 1174(a) to regain actual possession of the premises. And if the lessor stated a forfeiture election in his notice to the lessee, the lessor also is entitled to a judicial declaration of forfeiture of the lease. *Id.*

. . .

After the three-days' notice period has expired, if the lessee has failed to pay the rent in default, the lessee from that point forward is unlawfully detaining the

premises if he remains in possession. See Cal. Civ. Proc. Code § 1161(2). Because his detention is "unlawful," he has lost his right to possession. His right to possession has been "terminated by the lessor because of a breach of the lease [and] the lease terminates." Cal. Civ. Code § 1951.2(a). In an ensuing unlawful detainer proceeding, the court does not decide whether the lessor terminated the lease. That has already occurred. Instead, the court decides whether the termination was proper and if it was, the court grants the lessor a judgment for possession of the property. See Cal. Civ. Proc. Code § 1174(a). If the lessor's three-days' notice contained a forfeiture election, the lessor also is entitled to a judicial declaration of forfeiture and may immediately enforce the judgment for possession. Id. § 1174(c). If the lessor's notice did not elect a forfeiture, the lessor must wait five days from the entry of the judgment before the judgment for possession is enforceable, during which time the lessee may satisfy the judgment "and the tenant [shall] be restored to the tenant's estate." *Id.*

...

We hold that under California law a lease terminates for nonpayment of rent at least by the time the lessor files an unlawful detainer action, provided that a proper three-days' notice to pay rent or quit has been given, and the lessee has failed to pay the rent in default within the three-day period, and further provided that the lessor's notice contained an election to declare the lease forfeited. *See In re Escondido West Travelodge*, 52 Bankr. 376, 379 (S.D. Cal. 1985).

Here, there is not only an ongoing state court proceeding in which Debtor's basic right to possession and the existence of a lease at issue, but there is a State Court Judgment (Exhibit 3, Dckt. 28) adjudicating that Defendant does not have right to possession of the Property.

For Debtor to cure the defaults in a lease, Debtor must be a party to a lease that may be assumed as provided in 11 U.S.C. § 365. Here, it appears that Debtor disputes the judgment entered in the State Court Action and seeks to have this Federal Court "overrule" and ignore the State Court Judgment. Debtor seeks to have this court adjudicate the effect of Movant giving the notice of default, and ignore such, to allow Debtor to proceed on a side bankruptcy track without regard to California law and the State Court Action.

Debtor has the ability to assert her rights in the State Court Action. If service was defective, then she may seek to have the judgment set aside and be vindicated in her contentions that there is no valid notice of default and demand to cure. But those rights and interests will be adjudicated in the State Court Action.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise.

Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is 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 NT Dunhill I 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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1661 E. Monte Vista Avenue, Suites Q-103, Q-104, and Q-105, Vacaville, California 95688, including, without limitation, the State Court Action *NT Dunhill I, LLC v. Quin Song Liu*; California Superior court for the County of Solano, Case No. FCS057848.

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

No other or additional relief is granted.

**ELSA SHEKELLE, AS TRUSTEE OF
THE THE MARTHA J. VOESTER
LIVING TRUST VS.**

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 1, 2022. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

With respect to service, there are a couple shortcomings. First, for contested matters such as this Motion for Relief, the Motion and supporting pleadings must be served in the manner prescribed for service of a summons and complaint in Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 9014(c). Such service must be made on both the debtor and debtor's counsel. Fed. R. Bankr. P. 7004(b)(9), (g). Additionally, service was made by "email" on Debtor's counsel. Such electronic service may be made when the party or counsel consents in writing. Fed. R. Bank. P. 9036(b)(2). There is no indication that such written consent was given.

However, both of these service issues have been remedied. Debtor has filed an opposition. Second, Counsel for Debtor, a registered user in this District, has been electronically served by the Clerk of the Court as provided in Federal Rule of Bankruptcy Procedure 9036(b)(1). Though the certificate of service does not document such service, the court notes for purposes of this Motion, this one time, that such service was made.

Additionally, the Local Bankruptcy Rules for the Eastern District of California have been updated to provide not only for such electronic service via the Clerk of the Court, but also a mandatory Certificate of Service Form to be used by all registered users which provides a clear process to document the various types of service which the serving party is certifying. *See* L.B.R. 9036-1, 7005-1.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Relief from the Automatic Stay is continued to
XXXXXXXXXX.**

Elsa Shekelle, as Trustee of the The Martha J. Voester Living Trust (“Movant”) seeks relief from the automatic stay to allow *In re the Martha J. Voester Living Trust, Established June 20, 2002*, Superior Court of El Dorado County, and Case No. 20160033 (the “State Court Litigation”) to be concluded. Movant has failed to provide the Declaration of any individual to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Edward Peterson and Kathryn Martha Peterson (“Debtor”). Additionally, Movant provides no or grounds stated with particularity in her motion.

The grounds stated with particularity in the Motion (as required by Fed. R. Bankr. P. 9013) consist of the following:

Movant/Judgment Creditor Elsa Shekelle, as Trustee of the The Martha J. Voester Living Trust, established June 20, 2002 brings this Motion for Relief from Automatic Stay for “cause” which is based on 11U.S.C. § 362(d)(1), and related Ninth Circuit Court case law. This Motion will further be made on the basis that "cause" exists for a Motion for Relief from Automatic Stay under 11 U.S.C. § 362(d)(1). Movant/Judgment Creditor is seeking Relief from Automatic Stay to pursue Judgment Creditor’s rights under California law, including the recordation of an Abstract of Judgment.

Movant's/Judgment Creditor's Motion for Relief from Automatic Stay for Cause will be further based upon this Notice of Motion, Motion, Memorandum of Points and Authorities in Support of Motion, Declarations of Stephen Cammack, Esq. and Donald Burris, Esq., and all Exhibits and Requests for Judicial Notice thereto.

Motion, p. 2:3-13; Dckt. 110.

While making reference to the legal basis, 11 U.S.C. § 362(d)(1), no grounds are stated.

The court notes that the Motion also appears to direct the court to read the Notice of Motion, then read the Points and Authorities, then read the Declaration of Stephen Cammack, Esq., then read the declaration of Donald Burris, Esq., then read all Exhibits, and then read all documents for which Judicial Notice is Requested; and after reading, analyzing, and then assembling all of the grounds which the Court can construct for Movant, for the court to them prosecute the Motion with such grounds.

A review of the Docket shows that there are no Declarations of either attorney filed in support of the Motion. The court notes that attached as “merely” an Exhibit is a Declaration of Stephen T. Cammack, Esq. Exhibit E; Dckt. 56. These exhibits total 173, and appear to show that there are complex factual issues to be litigated in this summary motion for relief contested matter. ^{FN.1.}

FN. 1.

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home*

Mortgage Serv., Inc. (In re Veal), 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim" *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Harms v. Bank of N.Y. Mellon (In re Harms), 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019).

Exhibit E is a Declaration of Stephen T. Cammack, Esq. made in Adversary Proceeding 18-2121; not a declaration providing testimony in this Contested Matter.

Movant does not explain how testimony in some other judicial proceeding is testimony in this Contested Matter. This does not appear to be introduced to impeach or show inconsistent testimony of the person giving testimony in the judicial proceeding, the Contested Matter, before this court. F.R.E. 613. Movant does not explain as to what the judge in the Adversary Proceeding heard Mr. Cammack say is proper, credible evidence presented in this Contested Matter. F.R.E. 802. No explanation is provided how the testimony in the Adversary Proceeding constitutes evidence of an adjudicative fact that:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201

The court declines the assignment to do legal work for Movant and Movant's counsel, and the request to violate the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure (see Fed. R. Civ. P. 7(b), and the Local Bankruptcy Rules (see L.B.R. 9004-2(c), 9014-1(d)(3)) .

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure

9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

As noted above, Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

- A. Creditor “brings this Motion for Relief from Automatic Stay for “cause” which is based on 11U.S.C. § 362(d)(1), and related Ninth Circuit Court case law.” Motion, Dckt. 110 at 2:4-5.
- B. Creditor brings the Motion on the grounds “‘cause’ exists for a Motion for Relief from Automatic Stay under 11 U.S.C. § 362(d)(1).”

Those “grounds” are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

- A. The Notice of Motion;
- B. Motion;
- C. Memorandum of Points and Authorities;
- D. Declaration of Stephen Cammack, Esq.;
- E. Declaration of Donald Burris, Esq.;

- F. All Exhibits filed by Movant; and
- G. All Documents for which Movant Requests Judicial Notice be taken.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is “really” the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

Grounds in Memorandum of Points and Authorities

The court notes that in the Memorandum of Points and authorities, in addition to legal Points, Authorities, and argument, there appear to be grounds (which must be stated in the motion) which include:

1. Debtor has acted in a concerted pattern of conduct “to harass, cause unnecessary delay, or needlessly increase the cost of litigation” in the state court action, the Chapter 13 bankruptcy case, and the Shekelle Adversary Proceeding.
2. Creditor has sought to recover monies and property improperly taken by Debtor since 2015.
3. Debtor and Creditor spent three years in a state court action with debtor denying service and jurisdiction.
4. Debtor and Creditor spent another three years in litigation, and eventually reached a settlement agreement.
5. Debtor’s actions should constitute “cause” within the broad meaning under 11 U.S.C. § 362(d)(1).

Memorandum, Dckt. 114.

DEBTOR’S OPPOSITION, DCKT. 119

Debtor’s counsel argues that relief is not warranted because Debtor is current in plan payments. Opposition, Dckt. 119. Debtor states that the “confirmed plan” provides for 100% of the Creditor’s claim. *Id.*

CREDITOR’S SUPPLEMENTAL RESPONSE, DCKT. 122

Creditor states a First Modified Plan was proposed based on the entry of a Judgment for Nondischargeable Debt and Dismissal of Objection to Claim. Supp. Response, Dckt. 122 at ¶ 4. This plan was subsequently denied. Order, Dckt. 104.

Creditor states that the confirmed plan does not provide for Creditor and that the lack of a new plan filing after the denial of the First Modified Plan is grounds for relief from the automatic stay.

DISCUSSION

Failure To Provide Evidence

Creditor and Debtor's counsels filed the present Motion for Relief From Automatic Stay and Opposition making several factual assertions. However, no declaration of the Creditor or Debtor or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

History of Misconduct Is Not Necessarily Grounds for Relief

As Creditor addresses themselves, the alleged misconduct was provided for in the November 13, 2021 meeting. Memorandum, Dckt. 114 at 9:1. The court sees no reason why, if Creditor voluntarily agreed to settle the issues brought before this court, these issues need to be relitigated. Additionally, although “cause” may be determined on a case by case basis, Creditor provides no law suggesting relief should be granted after entering into a settlement agreement. Creditor provides no evidence the settlement agreement was breached, and any conduct since entering the settlement agreement appearing nefarious.

Confirmed Plan Does Not Provide for 100% of Creditor's Claim

Contrary to Debtor's assertion, the confirmed plan does not provide for 100% of Creditor's claims. The First Modified Plan was proposed by Debtor based upon the Judgment for Nondischargeable Debt and Dismissal of Objection to Claim that was entered against them. Motion to Confirm First Modified Chapter 13 Plan, Dckt. 80 at ¶ 4. This is inherently an acknowledgment that the Judgment Claim Creditor has brought this motion for is *not* provided for in the confirmed plan. How Debtor can claim the confirmed plan provides for the Creditor's claim remains to be seen.

No other amended plan has been filed which provides for Creditor. Supp. Response, Dckt. 122.

**Overly Complex Motion Appears to Reference a
Very Simple Situation For Which Supplemental
Pleadings May be Filed To Properly Set Forth
Matters to Which Debtor May Respond**

Movant has files reams and reams of exhibits, seeking to review and rehash history of perceived misdealing by Debtor. This appears to relate to a litigation death spiral between the Parties.

It appears that the litigation spiral and troubles with perceived Debtor misconduct boils down into what is actually at relevant dispute to be the following:

- A. Pursuant to a Stipulation of Movant and Debtor, a Nondischargeable Judgment for \$123,486.51 in favor of Movant was entered on March 31, 2021. 18-2121; Judgment, Dckt. 96.
- B. Debtor commenced this Chapter 13 Case on April 9, 2018, and disputed Movant's Claim. This dispute was resolved by the Settlement for the Entry of the Nondischargeable Judgment in 2021.
- C. Debtor confirmed a Chapter 13 Plan by order entered on July 30, 2018. Dckt. 43.
- D. The Confirmed Plan requires monthly plan payments of only \$700.00 and requires a 100% Dividend for general unsecured claims. Plan, ¶¶ 2.01, 3.14. The Plan term, from June 2018 is for the maximum 60 month term of a Plan.
- E. In May of 2021, now more than a year ago, Debtor filed a First Modified Plan. Dckt. 82. The proposed Modified Plan provided for Debtor to make the \$700 a month Plan payments for months 1-59 of the Plan, and then make a lump sum payment of \$89,268 in the 60th month of the Plan. *Id.*, Additional Provisions.
- F. The court denied confirmation of the Modified Plan for several grounds, including that Debtor's delay in selling the real property to fund the Modified Plan until month 60 was not reasonable. Civil Minutes, Dckt. 102. The order denying the Motion to Confirm Modified Plan was entered on July 28, 2021. Order, Dckt. 104.
- G. In the fourth year of this Chapter 13 case since the July 28, 2021 Order denying the Motion to Confirm the Modified Plan, until the July 2022 filing of the Motion for Relief Debtor has failed to take any action to modify the plan to provide for Movant's claim based on the Nondischargeable Judgment or take any action to sell the property which Debtor stated was necessary to fund a plan to be prosecuted in this bankruptcy case.
- H. Debtor not appearing to prosecute a Chapter 13 Plan in this case to pay claims, cause exists pursuant to 11 U.S.C. § 362(d)(1).

Now, while the court may distill that information from the voluminous pleadings heaved on the court, the court will not presume that such is what Movant will state with particularity in a motion that complies with Federal Rule of Bankruptcy Procedure 9013 and the Local Bankruptcy Rules.

Filing of Amended Motion and Supplemental Pleadings

The court faces several alternatives at this point. The court could deny the Motion without prejudice, allowing Movant to file a new motion that complies with Federal Rule of Bankruptcy Procedure 9013 and file properly authenticated, admissible, and credible evidence in support of such motion as provided in Federal Rules of Evidence.

Alternatively, the court could allow Movant to file an amended motion, file supplemental pleadings in support of the amended motion, including declarations and exhibits which are properly authenticated, admissible, and credible evidence in support of such motion as provided in Federal Rules of Evidence.

At the hearing, **XXXXXXX**

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 Elsa Shekelle, as Trustee of the The Martha J. Voester Living Trust (“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 hearing on the Motion for Relief from the Automatic Stay is continued to **XXXXXXXXXXXXXX**

FINAL RULINGS

3. [22-21553-E-13](#) ALISHA NEWHEY
[RER-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-1-22 [\[11\]](#)

BIKRAM DHALIWAL VS
DEBTOR DISMISSED: 07/11/22

Final Ruling: No appearance at the August 2, 2022 hearing is required.

<p>The Bankruptcy Case having previously been dismissed, the Motion is dismissed without prejudice as moot.</p>
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The Motion for Relief From the Automatic Stay seeks the relief to proceed with a State Court eviction action. The Stay having terminated with the dismissal of this case (11 U.S.C. § 362(c)(2)(B), this Motion is rendered 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 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 dismissed as moot, the case having been dismissed.