

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 5, 2014 at 1:30 p.m.

1. [10-46031](#)-E-13 TERRY/LISA TAYLOR MOTION FOR RELIEF FROM
 BJG-2 Douglas B. Jacobs AUTOMATIC STAY
 7-7-14 [[86](#)]

FEATHER RIVER CONSTRUCTION &
DEVELOPMENT COMPANY VS.

Final Ruling: No appearance at the August 5, 2014 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, parties requesting special notice, and Office of the United States Trustee on July 7, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief from 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 and other parties in interest 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 Automatic Stay is granted.

Feather River Construction & Development Company, seeks relief from the automatic stay to may proceed only against the available insurance assets of Debtor Terry Lee Taylor, dba Four Seasons Roofing ("Debtor") in the residential construction defect cases *Amrik Sandhu, et al. v. Feather River Construction & Development Co.*, (Sutter County Superior Court Case No.: CV 11-2137); *Madhu Sharma, et al. v. Feather River Construction & Development Co.* (Sutter County Superior Court No.: CV 12-0309); and *Steven and Bobbie McMahan v. Feather River Construction & Development Co., et al.* (Colusa County Superior Court Case No.: CV 23954) ("the Actions"). Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Frank J. Lee to introduce evidence to

August 5, 2014 at 1:30 p.m.

authenticate the documents upon which it bases its claim.

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Given that the movant would not seek to enforce any judgments against the debtor and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay.

The Chapter 13 Trustee also filed a non opposition on July 14, 2014.

The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the movant to prosecute the claims against the debtor, but not enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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 Feather River Construction & Development Company, its agents, representatives, and successors to allow the movant to prosecute the claims against the debtor, but not enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No other or additional relief is granted.

2. [10-25935](#)-E-13 BRUCE/JERMAYNE POWELL
DHB-1 Bret K. Adams

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-3-14 [[52](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the August 5, 2014 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, parties requesting special notice, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 33 days' notice was provided. 28 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.

Deutsche Bank National Trust Company, as Trustee for the Harbor View Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-3 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 109 Merlot Way, Rio Vista, California (the "Property"). Movant has provided the Declaration of Brittany Mays to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mays Declaration states that there are 48 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$166,229.69 in post-petition payments past due.

The Chapter 13 Trustee filed a non-opposition on July 14, 2014.

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, including

defaults in post-petition payments which have come due. 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 Movant, 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 Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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 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 Deutsche Bank National Trust Company, as Trustee for the Harbor View Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-3 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 immediately vacated to allow Deutsche Bank National Trust Company, as Trustee for the Harbor View Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-3, 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 109 Merlot Way, Rio Vista, California.

No other or additional relief is granted.

3. [10-52489](#)-E-13 KURTIS/TINA MARTINELLI
LET-1 Chad M. Johnson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-25-14 [[41](#)]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the August 5, 2014 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, parties requesting special notice, and Office of the United States Trustee on June 25, 2014. By the court's calculation, 41 days' notice was provided. 28 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.

U.S. Bank, N.A., as Trustee for the Holders of the Bear Stearns ALT-A Trust 2006-3, Mortgage Pass-Through Certificates, Series 2006-3("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 226 Brookdale Drive, Vacaville, California (the "Property"). Movant has provided the Declaration of Brittany Mays to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mays Declaration states that there are 25 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$53,280.33 in post-petition payments past due.

The Chapter 13 Trustee filed a non-opposition on July 17, 2014.

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, including defaults in post-petition payments which have come due. 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 Movant, 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 Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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 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 U.S. Bank, N.A., as Trustee for the Holders of the Bear Stearns ALT-A Trust 2006-3, Mortgage Pass-Through Certificates, Series 2006-3 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 immediately vacated to allow U.S. Bank, N.A., as Trustee for the Holders of the Bear Stearns ALT-A Trust 2006-3, Mortgage Pass-Through Certificates, Series 2006-3, 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 226 Brookdale Drive, Vacaville, California.

No other or additional relief is granted.