

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 15, 2017 at 1:30 p.m.

1.	17-20715 -C-13	JAMES BRADLEY	MOTION FOR RELIEF FROM
	KKY-1	Dale Orthner	AUTOMATIC STAY
			7-14-17 [28]
	SMW 104 FEDERAL CREDIT UNION		
	VS.		

Thru #2

Final Ruling: No appearance at the August 15, 2017 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 July 14, 2017. 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 for Relief from the Automatic stay is granted.

SMW 104 Federal Credit Union seeks relief from the automatic stay with respect to a Supplemental Pension Fund owned by the debtor. The Credit Union perfected its security by taking possession of the necessary funds in the debtor's Pension Fund. The moving party has provided the Declaration of Tiara MacDonald to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The MacDonald Declaration states that the Debtor has not made 5 post-petition payments, with a total of \$958.55 in post-petition payments

past due. 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 \$8,923.15, as stated in the MacDonald Declaration, while the value of the property is determined to be \$6,650.18.

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 debtor did not provide for the creditor in his chapter 13 plan. The creditor was not listed on the schedules. Debtor has no equity in debtor's Supplemental Pension Fund. Debtor has not been making payments.

The court shall issue a minute order terminating and vacating the automatic stay to allow SMW 104 Federal Credit Union, 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.

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 SMW 104 Federal Credit Union, its agents, representatives, and successors, 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 debtor's Local 104 Supplemental Pension Fund.

No other or additional relief is granted.

2. [17-20715](#)-C-13 JAMES BRADLEY
KKY-2 Dale Orthner

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-14-17 [[35](#)]

SMW 104 FEDERAL CREDIT UNION
VS.

Final Ruling: No appearance at the August 15, 2017 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 July 14, 2017. 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 for Relief from the Automatic stay is granted.

SMW 104 Federal Credit Union seeks relief from the automatic stay with respect to a Supplemental Pension Fund owned by the debtor. The Credit Union perfected its security by taking possession of the necessary funds in the debtor's Pension Fund. The moving party has provided the Declaration of Tiara MacDonald to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The MacDonald Declaration states that the Debtor has not made 5 post-petition payments, with a total of \$290.65 in post-petition payments past due. 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 \$1,840.98, as stated in the MacDonald Declaration, while the value of the property is determined to be \$6,650.18.

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 debtor did not provide for the creditor in his chapter 13 plan. The creditor was not listed on the schedules. Debtor has no equity in debtor's Supplemental Pension Fund. Debtor has not been making payments.

The court shall issue a minute order terminating and vacating the automatic stay to allow SMW 104 Federal Credit Union, 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.

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 SMW 104 Federal Credit Union, its agents, representatives, and successors, 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 debtor's Local 104 Supplemental Pension Fund.

No other or additional relief is granted.
