

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 26, 2014 at 1:30 p.m.

1. [14-27196](#)-C-13 JENNIFER SALAZAR MOTION FOR RELIEF FROM
 SMR-1 Jared A. Day AUTOMATIC STAY
 7-28-14 [[15](#)]

OAKMONT PROPERTIES - MADISON
HILLS/FOLSOM POINTE, L.P.
VS.

Final Ruling: No appearance at the August 26, 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, and Office of the United States Trustee on July 28, 2014. 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). 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.

Oakmont Properties - Madison Hills/Folsom Pointe, L.P. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 9181 Madison Avenue, Unit No. 128, Orangevale, California (the "Property"). The moving party has provided the Declaration of Amber Morgan to introduce evidence as a basis for Movant's contention that Jennifer Salazar ("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 December 19, 2013, Debtor entered into a written, residential lease agreement with Madison Hills Apartment Homes. Based on the evidence

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presented, Debtor would be at best tenant at sufferance. On July 11, 2014, Declarant cause a Three-Day Notice to Pay Rent or Quit to be served on Debtor (Exh. B, Dkt. 18).

Chapter 13 Trustee

The Chapter 13 Trustee filed a statement of non-opposition to the court granting the Motion on July 30, 2014.

Discussion & Ruling

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 since the Debtor and the estate have no interest in the subject property. 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, to exercise its rights to obtain possession and control of the real property commonly known as 9181 Madison Avenue, Unit No. 128, 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 Pointe, L.P. 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 Pointe, 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 9181 Madison Avenue, Unit No. 128, Orangevale, California .

IT IS FURTHER ORDERED that the fourteen (14)

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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.

2. [14-24797](#)-C-13 ALEKSANDR ZHIRKOV
MDE-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-29-14 [[46](#)]

ONEWEST BANK, N.A. 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 29, 2014. 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

OneWest N.A., f/k/a OneWest Bank, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1788 Park Oak Drive, Roseville, California. The moving party has provided the Declaration of Victoria Frausto to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Frausto Declaration states that the Debtor has not made two (2) post-petition payments, with a total of \$10,136.22 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 \$1,118,151.38 (including \$1,118,151.38 secured by movant's first trust deed), as stated in the Frausto Declaration, while the value of the property is determined to be \$710,000, as stated in Schedules A and D filed by Debtor.

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Chapter 13 Trustee

On July 30, 2014, the Chapter 13 Trustee filed a statement indicating he has no opposition to the court granting the relief requested in the Motion.

Debtor's Opposition

Debtor opposes the Motion for Relief from Stay. Debtor asserts that he has filed an Objection to the Proof of Claim filed by Movant and disputes that Movant has any interest to "protect." Further, Debtor is preparing an adversary complaint alleging that Movant's predecessor fraudulently represented that it possessed an interest in the subject property when said interest was transferred.

Debtor argues there is an insufficient showing of bad faith. Debtor asserts that he has been working diligently with Movant to workout a payment plan and/or modification. He is seeking bankruptcy relief to protect his home and filed his petition in good faith.

Discussion and Ruling

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).

While Debtor filed an opposition to the Motion, the court is not persuaded that the argument contained in the opposition presents colorable grounds upon which the Motion should be denied.

First, Local Bankruptcy Rule 9014-1(f)(1)(ii) requires respondent's to file written opposition at least fourteen (14) days prior to the hearing of a Motion set on twenty-eight (28) days notice. Here, Debtor did not file his opposition until August 22, 2014, only four (4) days prior to the hearing.

Second, the court has reviewed the Opposition and the Objection to Claim filed by Debtor and concludes that neither contains sufficient evidence to warrant the court's denial of Movant's request for relief from the automatic stay. From the evidence presented in the Proof of Claim, the court determines that the mortgage was originated with Indymac Bank, F.S.B., which was later acquired by Onewest Bank, N.A., the Movant. Debtor retains the right to litigate his mortgage dispute in California Superior Court; however, he will not do so with the injunctive benefit of the automatic stay.

Movant further argues that it is entitled to an *in-rem* order on the basis that the Debtor's successive bankruptcy filings are in bad faith. Movant is requesting relief pursuant to 11 U.S.C. § 362(d)(4)(B). In support of its motion, Movant provides the following history of Debtor's filings:

Case Number	Date Filed	Debtor Name	Disposition	Notes
09-44142	11/04/09	Alexander Zeakovi	Dismissed 01/07/10. Reopened 01/28/10. Terminated 02/18/10.	No relief granted.
10-20028	01/04/10	Alexander Zeakovi	Dismissed 04/09/10	No relief granted.
11-29821	04/21/11	Aleksandr Zhirkov	Dismissed 08/03/11	No relief granted.
12-33723	07/26/12	Aleksandr Zhirkov	Dismissed 11/09/12	No relief granted.
13-31337	08/29/13	Alexander Zeakovi	Dismissed 11/14/13	No relief granted
14-24797	05/07/14	Aleksandr Zhirkov	Pending.	

A review of the docket in this case confirms the filing history detailed by Movant. 11 U.S.C. § 362(d) (4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d) (4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute 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.

The moving party plead adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 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 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 OneWest N.A., f/k/a OneWest Bank, FSB , 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 1788 Park Oak Drive, Roseville, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed no later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.