

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 29, 2017 at 1:30 p.m.

1.	17-23156 -C-13	BRIAN DEMONTIGNY	MOTION FOR RELIEF FROM
		Bruce Dwiggins	AUTOMATIC STAY
			6-28-17 [24]

LEONA E. HANLON, ET AL. 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 June 28, 2017. 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 denied.

Thomas J Hanlon, Trustee and Leona E Hanlon, Trustee of Hanlon Family Living Trust (HFLT) seeks relief from the automatic stay with respect to the real property commonly known as 2218 Ferry Street, Anderson CA and 2230 Ferry Street, Anderson, CA. The moving party has provided no declaration to introduce evidence upon which it bases the claim and the obligation owed by the Debtor.

Creditor has offered no evidence indicating that the debtor has not been making payments. Although the debtor has not confirmed a plan, the Trustee reports that the debtor is current under the terms of the unconfirmed plan and has been making regular payments to the creditor. The parties disagree about the value of

the properties. Under either parties' valuation, the debtor has equity in the properties.

The parties filed responses to each other that did not contain any legal arguments.

The Creditor has not filed a Relief from Stay Summary Sheet pursuant to Local Rule 4001-1(a). Creditor has not introduced any evidence of debtor's default. Creditor's motion is a letter pleading that has been treated as a relief from stay motion. The letter asserts that there are mistakes or inaccuracies on debtor's schedules. Creditor's argument appears to be that based upon an accounting of debtor's schedules, debtor does not have the money to make payments to the Creditor. However, there is no evidence that debtor has failed to make payments. There is no evidence that the debtor does not have equity in the properties.

The court finds no basis for granting relief from stay.

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 Motion for Relief from the Automatic Stay is denied without prejudice.
