

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 30, 2016, at 1:30 p.m.

1. **16-25210-E-13** **MARCO SIERRA**
CPG-1 **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-16-16 [14]**

SARATOGA HOME LOANS VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 16, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

The Motion for Relief From the Automatic Stay is granted.

Saratoga Home Loans ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1485 Crystal Air Drive, South Lake Tahoe, California (the "Property"). Movant has provided the Declaration of Daniel Morrison to introduce evidence as a basis for Movant's

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contention that Marco Sierra (“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. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on February 16, 2016. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of El Dorado and received a judgment for possession, with a Writ of Possession having been issued by that court on August 1, 2016. Exhibit 4, Dckt. 18.

TRUSTEE’S RESPONSE

The Trustee filed a response on August 18, 2016. Dckt. 21. The Trustee states that Debtor’s case is incomplete and that a plan has not been filed. Debtor filed Form 101(A), (DN 9), stating that he has an eviction judgment against him and has deposited rent with the court, but the Trustee states that no rent was in fact deposited.

Additionally, Debtor indicated that he has not filed for bankruptcy in the past eight (8) years, but the Trustee has a previous case filed by Debtor. That case is 16-24506, filed on July 11, 2016. The Trustee also received a report from the United States Trustee that case 16-24506 was the fifth case filed by Debtor since April 8, 2011. Those prior cases were 16-30032, 15-31289, 11-34288, and 11-31345. FN.1 Lastly, the Trustee notes that Movant filed a Motion for Relief From the Automatic Stay in case 16-24506 and that it was granted on July 26, 2016. Case No. 16-24506, Dckt. 18.

FN.1. In the Eastern District of California, the court notes that cases 16-30032 and 15-31289 do not exist, that case 11-34288 names Landon Dawes and Juanita Dawes as debtors, and that case 11-31345 names Amrita Gill as debtor.

The Trustee states that he has no basis to oppose the instant Motion.

DISCUSSION

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 13 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

The court shall issue an order terminating and vacating the automatic stay to allow Saratoga Home

Loans, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1485 Crystal Air Drive, South Lake Tahoe, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has 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 Saratoga Home Loans (“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 Saratoga Home Loans and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1485 Crystal Air Drive, South Lake Tahoe, California.

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.

2. [16-23219-E-13](#) **BRANDON/LARISA NICHOLS** **MOTION FOR RELIEF FROM**
ETL-1 **Eric Vandermey** **AUTOMATIC STAY AND/OR MOTION**
 FOR ADEQUATE PROTECTION
 7-30-16 [\[24\]](#)

WELLS FARGO BANK, N.A. VS.
DEBTOR DISMISSED 08/15/16

Final Ruling: No appearance at the August 30, 2016 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 30, 2016. By the court's calculation, 31 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.

Wells Fargo Bank, NA ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4762 Hummingbird Drive, Fairfield, California (the "Property"). Movant has provided the Declaration of Maureen Spratley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Maureen Spratley Declaration provides evidence that there are fifty (50) pre-petition payments in default, with a pre-petition arrearage of \$107,549.68. Dckt. 27.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by Movant's deed of trust is determined to be \$532,615.60 as stated by Movant's proof of claim.

The Motion asserts that Debtor has filed multiple bankruptcies as part of a scheme to delay and hinder Movant's foreclosure efforts.

Prospective Relief from the Automatic Stay

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where the court finds that the petition was filed as a 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 the secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* The Court takes notice of a pattern regarding the Property that involves serial filings.

Movant asserts that there have been no less than four bankruptcy cases filed by Brandon Nichols and Larisa Nichols (“Debtors”) since March 19, 2012. Movant identifies the following cases:

- A. Case No. 12-25245
 - 1. Filed: March 19, 2012
 - 2. Type: Chapter 13
 - 3. Date of Dismissal: August 2, 2013
 - 4. Reason for Dismissal: Failure to make plan payments. Case No. 12-25245, Dckt. 58.
- B. Case No. 14-28887
 - 1. Filed: September 1, 2014
 - 2. Type: Chapter 13
 - 3. Date of Dismissal: October 8, 2014
 - 4. Reason for Dismissal: Failure to comply with the terms of the Order Granting Extension. Case No. 14-28887, Dckt. 21.
- C. Case No. 14-31732
 - 1. Filed: December 1, 2014
 - 2. Type: Chapter 13
 - 3. Date of Dismissal: April 4, 2015
 - 4. Reason for Dismissal: Delinquent in plan payments and failure to provide proof of Social Security number at the First Meeting of Creditors. Case No. 14-31732, Dckt. 27.

The instant case was dismissed on August 15, 2016, for (1) failure to commence plan payments, (2) failure to appear at the Meeting of Creditors, (3) failure to file tax returns, and (4) failure to provide the Trustee with employer payment advices for the sixty (60)-day period preceding the filing of the petition. Dckt. 36.

DISCUSSION

The automatic stay in this case was terminated upon the dismissal of this bankruptcy case. Additionally, the court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect

to the subject property. The filing of serial, nonproductive bankruptcy cases is a problem for Debtors, who have shown an inability to provide information, make timely plan payments, and comply with court orders. Movant has provided the court with evidence that Debtors have engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of August 15, 2016, the automatic stay as it applies to the Property, and as it applies to Debtors, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtors.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtors and Property on August 15, 2016.

The moving party has alleged 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 granted.

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 Wells Fargo, NA (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Debtors pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 4762 Hummingbird Drive, Fairfield, California (the “Property”), pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the August 15, 2016, dismissal of this bankruptcy case filed by Brandon Nichols and Larisa Nichols, the Debtors.

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 not later than two (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.

No other or additional relief is granted.

3. [16-23950-E-13](#) **JOHN BURGESS**
SMR-1 Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-2-16 [18]**

SAHIB HASSAN VS.

Final Ruling: No appearance at the August 30, 2016 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 (*pro se*), Chapter 13 Trustee, non-filing co-debtor, and Office of the United States Trustee on August 2, 2016. By the court's calculation, 28 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.

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

Sahib Lanre Hassan ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1000 La Jolla Court, Roseville, California (the "Property"). Movant seeks relief from the co-debtor stay under 11 U.S.C. § 1301 as well. The moving party has provided the Declaration of Sahib Lance Hassan to introduce evidence as a basis for Movant's contention that John Steve Burgess, III ("Debtor") and Katherine Hookano-Debtor's wife-do 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, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer. Exhibit C, Dckt. 22.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on August 16, 2016. Dckt. 25. The Trustee asserts that the case is not confirmed and that the Debtor is current under the proposed plan. Debtor has paid \$400.00 in plan payments to date, and the Plan does not assume the Property lease.

DISCUSSION

Movant has provided a properly authenticated copy of the Rental Lease Agreement to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the 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 in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (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 Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Sahib Lanre Hassan ("Movant"), and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1000 La Jolla Ct., Roseville, California (the "Property"), including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Movant has provided evidence that Katherine Hookano is a co-debtor on the Rental Lease Agreement. Exhibit A, Dckt. 22. Therefore, the court shall also issue an order terminating and vacating the co-debtor automatic stay of 11 U.S.C. § 1301 as to Katherine Hookano to allow Sahib Lance Hassan ("Movant"), and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1000 La Jolla Ct., Roseville, California (the "Property"), including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has 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 Sahib Lanre Hassan ("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 Sahib Lanre Hassan and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1000 La Jolla Ct., Roseville, California.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of 11 U.S.C. § 1301 as to Katherine Hookano is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Sahib Lance Hassan and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1000 La Jolla Ct., Roseville, California.

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.