

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

September 16, 2014 at 1:30 p.m.

1. [14-27525](#)-C-13 DEVENDRA SHARMA AND MOTION FOR RELIEF FROM
 APN-1 MIRDULA SINGH AUTOMATIC STAY
 Stan E. Riddle 8-13-14 [[16](#)]
NISSAN-INFINITI, LT VS.

Final Ruling: No appearance at the September 16, 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 August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Relief from 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 the Automatic Stay is granted.

Lessor, Nissan-Infiniti, LT seeks relief from the automatic stay with respect to an asset identified as a 2013 Nissan Sentra, VIN # ending in 6299. The moving party has provided the Declaration of Jessica Laubler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Laubler Declaration asserts that Debtors executed a written lease agreement for the 2013 Nissan Sentra on November 27, 2013. The Declaration asserts that the vehicle was involved in an accident and is reportedly unrepairable. The obligation due is not provided for in Debtor's plan and the

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loan is past due for the payment due on June 5, 2014. Lessor is informed and believes that insurance coverage may exist to cover the loss and seeks relief from the stay to apply the insurance proceeds, if any, to Debtor's account and dispose of the salvage from the vehicle in a commercially reasonable sale in the normal course of business.

Debtor's presently have an outstanding balance of \$17,463.78 on the account with Lessor.

Chapter 13 Trustee Response

Chapter 13 Trustee states that Debtor is current under the proposed plan and has paid a total of \$100.00 to date. No disbursements have been made to Lessor.

Discussion

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).

Lessor will be permitted to pursue state remedies to regain possession, if necessary, and dispose of the vehicle. The court shall issue a minute order terminating and vacating the automatic stay to allow Nissan-Infiniti to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow Nissan-Infiniti to gain immediate possession of the property and dispose of the same in a commercially-reasonable sale.

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 Nissan-Infiniti to pursue nonbankruptcy remedies with regard to the property commonly known as 2013 Nissan Sentra, VIN # ending in 6299.

2. [14-28061](#)-C-13 LINDSAY GLOVER
DO-1 C. Anthony Hughes

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-18-14 [[11](#)]

FIVE STAR BANK 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 August 18, 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). 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.

Five Star Bank seeks relief from the automatic stay with respect to the real property commonly known as 1670 Del Dayo Drive, Carmichael, California. The moving party has provided the Declaration of John Walton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Walton Declaration states that the loan is in default due to the Debtor's failure to pay the entire loan balance before the extended maturity date of October 1, 2013. At the time the petition was filed, the pre-petition default was \$638,418.62. No post-petition payments were received on the loan during a previous filing made by Debtor's husband, Anthony Glover, and no post-petition payments have been received since this case has been pending.

Movant initiated foreclosure proceedings earlier this year. The Notice of Default was recorded on January 29, 2014 and the Trustee's Sale was recorded on May 14, 2014. The Trustee's Sale was set for June 5, 2014; however it was stayed when Debtor's husband filed a Chapter 13 petition. The husband's petition was dismissed while Movant's Motion for Relief from Stay was pending. The re-scheduled Trustee's Sale was set for August 8, 2014; however, Debtor filed the current petition on August 7, 2014, again staying the sale.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is \$1,129,395.18 and is comprised of the following:

Lienholder	Amount	Source
Five Star Bank	\$693,167.19	Moving papers
Brother Home Improvement Inc.	\$9,656.96	Abstract of Judgment. Trustee Sale Guarantee (Exh. 8, Dkt. 15)
Commerce Printing Services	\$12,026.63	Abstract of Judgment. Trustee Sale Guarantee
Franchise Tax Board	\$26,181.48	State tax lien. Trustee Sale Guarantee
Franchise Tax Board	\$23,057.33	State tax lien. Trustee Sale Guarantee
James Hudgens	\$110,000	Deed of Trust. Trustee Sale Guarantee
Ellington Investments, LLC	\$85,000	Deed of Trust. Trustee Sale Guarantee
American Express Bank, FSB	\$22,448.03	Abstract of Judgment. Trustee Sale Guarantee
Federal Tax Lien	\$86,043.11	Movant's Information Sheet
Abstract of Judgment	\$15,820.78	Movant's Information Sheet
2013-2014 Property Taxes	\$8,710.04	Trustee Sale Guarantee
Delinquent Property Taxes	\$37,283.63	Movant's Information Sheet
TOTAL LIENS	\$1,129,395.18	

The value of the property is alleged to be \$1,110,000.00. While present Debtor did not filed Schedules, in her husband's previous case (14-25981), he Schedule the property with a value of \$1,110,000.00 (See Docket No. 16, Case No. 14-25981). The previous case was voluntarily dismissed by Debtor's husband.

Movant requests *in rem* relief under 11 U.S.C. § 362(d)(4) on the basis that the current petition is part of a scheme to hinder or delay the creditor. Alternatively, Movant seeks relief under §§ 362(d)(1) & (2).

Debtor's Response

Debtor argues that the court should not grant the Motion under 11 U.S.C. § 362(d)(1), (2), or (4) because sufficient cause does not exist, the property has equity, debtor agrees to provide adequate protection, and the property is necessary for an effective reorganization.

Debtor responds to the request for *in rem* relief. Debtor states the original case was filed by her husband to prevent Five Star from foreclosing on the property. Debtor states that at the time of the other case, she and her husband did not understand that they could pay all their debts through a bankruptcy case. Debtor's response further states that Debtor's husband dismissed the previous case because the couple thought they would have been able to close the sale and then pay all debts from the sale. Debtor's now realize they should have remained in bankruptcy and completed the sale through the case. Debtor anticipates paying 100% of creditors through the current case.

Debtor is working diligently on selling the home, but was caught off guard by buyers backing out of the sale process. The plan will propose 100% repayment and \$3,800 per month as adequate protection to Five Star pending the sale.

Debtor states that they did not make loan payments for a one-year period because Five Star gave no options on payment plans that would fit their budget.

Debtor asserts that there should be equity in the property. Debtor states the secured claim of Five Star should be \$611,000 and not \$693,000. Debtor has been working with attorney, James Hudgens and Ellington Investments, LLC to subordinate their liens against the home for the sake of the sale. Debtor argues that if Movant's lien is reduced to \$611,000 and the \$110,000 Hudgens lien and \$85,000 Ellington lien are subordinated, then the amount of debt is \$824,395.18, leaving \$305,000.00 in equity.

The only evidence presented by Debtor is her own declaration.

Five Star's Response

Five Star takes direct issue with Debtor's eligibility for Chapter 13 relief. At the Meeting of Creditor's in the husband's previous case, Debtor's husband allegedly testified that his wife did not work and only an individual with regular income may be a debtor under Chapter 13. 11 U.S.C. § 109(e).

Debtor has not filed Schedules or a Plan of Reorganization despite the court issuing a Notice of Intent to Dismiss Case if Documents are Not Timely Filed on August 7, 2014.

Five Star takes issue with Debtor's position that they mistakenly exited the previous bankruptcy case. In the previous case, Debtor's husband was represented by competent counsel, Matthew Eason. Mr. Eason signed Mr. Glover's bankruptcy petition and declared that he informed petition he could

proceed under Chapter 13. Similarly here, Debtor is represented by counsel.

Five Star reiterates that it established the Debtor lacks an equity interest in the property based on the liens against the home and the value of the home.

Discussion

Based on the evidence presented, the court finds sufficient grounds to grant the Motion for Relief from the Automatic Stay. 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 existence of missed payments by itself does not guarantee relief from stay. If the equity cushion provides enough protection to the creditor, the moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). The Debtor has not provided sufficient evidence to convince the court that it has an equity interest in the property. Specifically, the Debtor asserts that Movant's claim is inflated and that it is working out subordination agreements with two significant lien holders, yet offers no evidence, beyond a self-serving Declaration, in support of these contentions. Meanwhile, Movant presented the court with independent evidence, in the form of the Trustee Sale Guarantee and Title documents detailing the liens against the property. Moreover, Debtor does not contest that any of the liens (other than Movant's) are incorrect or no longer in existence.

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:

Action	Date	Disposition	Note
Trustee Sale Date	06/05/2014	Stayed & Cancelled	
Case Filing	06/04/2014	Voluntarily Dismissed 07/15/14	Debtor's husband's case (14-25981)
Trustee Sale Date	08/08/2014	Stayed	Rescheduled date
Case Filing	08/07/2014	Pending	

Movant also provides the following in support of *in rem* relief:

1. Debtor and her husband filed separate serial bankruptcies despite being co-borrowers on the Bank's loan.
2. Debtor is a "stay-at-home mom" with \$0.00 income and is not

eligible for Chapter 13 relief.

3. Significant assets were omitted from Mr. Glover's first bankruptcy case. At his Meeting of Creditor's he referenced interest in an inheritance and a sub-division value at more than \$840,000.
4. Mr. Glover initially listed his income as \$0.00 on his Schedules and then amended the Schedules and listed \$15,000 per month in income. He described the change as "just a rough patch" and that he re-launched his magazine company, taking it national as opposed to local. Meanwhile, his expenses (\$18,920) still exceeded his income by approximately \$4,000.00 per month.

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.

A combination of factors drive the court to find that *in rem* relief is proper. First, the bankruptcy petitions were both skeleton in nature and filed the day before the scheduled Trustee' Sale dates. It is especially curious that Debtor in the instant case did not submit schedules since her husband eventually prepared and filed them in his case and her case was soon to follow. The fact that Debtor likely does not individually qualify for Chapter 13 relief suggests that the case was not filed with the intent of ever confirming a Chapter 13 plan (also, a plan has yet to be filed in the case). The issues with disclosure in Mr. Glover's case and the major discrepancies in his income and eventually negative net income further suggest there was never an intent of confirming a Chapter 13 plan. The court is not persuaded that the previous case was dismissed based on a misunderstanding of how Chapter 13 cases operate because Debtor's were represented by competent counsel that would have advised them correctly on the matters.

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 Five Star Bank, 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 has not pleaded 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 Five Star Bank, 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 1670 Del Dayo Drive, Carmichael, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 162(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 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case file 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.

Tentative Ruling: The Motion to Extend 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors on August 28, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Extend 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.

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by under 11 U.S.C. § 362(c) extended beyond thirty days in this case. Debtor served a list of initial creditors, according to the Certificate of Service (Dkt. 17). The Certificate of Service does not show that Debtor served the United States Trustee or the Chapter 13 Trustee, two significant parties-in-interest.

If the US Trustee and Chapter 13 Trustee appear or make statement of non-opposition to the motion, the court will make the following findings of fact and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's

first bankruptcy case (No. 14-23093) was filed on March 26, 2014 and dismissed on June 30, 2014, for unreasonable delay that prejudiced creditors. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c). Here, the presumption arises because Debtor's previous case was in part dismissed because of a failure to file required tax documents. See Dkt. 23, Case No. 14-23093.

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor asserts the instant case was filed in good faith. She declares that dismissal of the prior case was not due to the willful inadvertence or negligence on her part and that, not being an attorney, she was unable to determine whether she was properly advised as to her rights and responsibilities to the court and the Trustee in the prosecution of the prior case.

Debtor has filed all Schedules in the new Chapter 13 case and filed a plan, Amended Plan, and Motion to Confirm Amended Plan. The court has a confirmation hearing date scheduled for October 21, 2014 for the Amended Plan. Debtor is making efforts at timely prosecuting her Chapter 13 case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by further order of this 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 to Extend the Automatic

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Stay the Chapter 13 Plan filed by the Debtor 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 is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.