

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 5, 2023 at 10:00 a.m.

1. [23-22639-E-7](#)
[CJC-112](#)

PATRINA LAUGHLIN
Matthew Grech

**MOTION FOR RELIEF FROM
AUTOMATIC STAY (FILING FEE NOT
APPLICABLE)
9-18-23 [16](#)**

**MG WATERFIELD SQUARE
APARTMENTS L.P. VS.**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

~~Sufficient Notice Provided.~~ The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 18, 2023. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, -----
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The Motion for Relief from the Automatic Stay is granted.

MG Waterfield Square Apartments L.P. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 8105 Mariners Drive, #1005, Stockton, California (“Property”). The moving party has provided the Declaration of Marisa Soto Ybanez to introduce evidence as a basis for Movant’s contention that Patrina Shawntis Laughlin (“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 and that Debtor’s lease of the Property has been terminated. 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 San Joaquin on June 26, 2023. (No. STK-CV-LUDR-2023-6744).

Before the trial was scheduled on the unlawful detainer action, the Movant and Debtor entered into a written settlement agreement in which the Debtor agreed to vacate by September 15, 2023. Declaration, Dckt. 18. The Debtor filed bankruptcy on August 7, 2023 and the did not vacate the Property as agreed. *Id.*

Movant contends that good cause exists to vacate the automatic stay on the grounds that the Debtor has no equity in the property and the property is not necessary to an effective reorganization. Motion, Dckt. 16. Movant further argues that the Debtor has no ownership interest in the subject property, nor may the Debtor generate income by transferring her interest in the lease.

TRUSTEE’S NON-OPPOSITION

Nikki B. Farris (“the Chapter 7 Trustee”) filed an Non-opposition on September 25, 2023.

DISCUSSION

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

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 Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

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 MG Waterfield Square Apartments L.P. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8105 Mariners Drive, #1005, Stockton, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.