

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 18, 2016, at 1:30 p.m.

1. [16-25803-E-13](#) **DAVID BELL**
ASW-1 Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-19-16 [12]**

**DEBTOR DISMISSED:
09/19/2016
GMAT LEGAL TITLE TRUST
2014-1, U.S. BANK, N.A. VS.**

Final Ruling: No appearance at the October 18, 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 on September 19, 2016. By the court's calculation, 29 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

GMAT Legal Title Trust 2014-1, U.S. Bank, National Association, as Legal Title Trustee ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 7401 Grenfell Court, Elk Grove, California ("Property"). The moving party has provided the Declaration of Kayo

Manson-Thompkins to introduce evidence as a basis for Movant's contention that David Bell ("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 August 17, 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 Sacramento and received a judgment for possession, with a Writ of Possession having been issued by that court on August 18, 2016. Exhibit 5, Dckt. 15.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership Writ of Possession. 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).

The instant case was dismissed on September 19, 2016, for failure to timely file documents. Dckt. 11.

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 September 19, 2016, the automatic stay as it applies to the Property, and as it applies to Debtor, 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 Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on September 19, 2016.

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 California Housing Finance (“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 the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 7401 Grenfell Court, Elk Grove, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the September 19, 2016 dismissal of this bankruptcy case filed by David Bell, the Debtor.

2. [16-24358-E-13](#) SHARON HICKMAN
KAZ-1 Sally Gonzales

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-8-16 [\[17\]](#)

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 18, 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, Debtor's Attorney, Chapter 13 Trustee, parties in interest, and Office of the United States Trustee on September 8, 2016. By the court's calculation, 40 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5744 Mendocino Blvd., Sacramento, California ("Property"). Movant has provided the Declaration of Cecilia Amantina Flores to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Flores Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of \$1,027.16 in post-petition payments past due.

DEBTOR'S NON-OPPOSITION

Sharon Sue Hickman ("Debtor") filed a statement of non-opposition on September 21, 2016. Dckt. 27. Debtor indicates that she has no past or present interest in the property that is the subject of the Instant Motion. Debtor claims no knowledge of the Milams or of the property involved in this motion.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on October 3, 2016. Dckt. 30. The Trustee notes that Debtor has not included the Property in her Chapter 13 Plan, nor has she included it in any of her Schedules. Accordingly, the Trustee has no basis for objection.

DISCUSSION

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375–76 (1988); 11 U.S.C. § 362(g)(2). 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's Declaration provides evidence that James W. Milam, Sr., executed a promissory note secured by a mortgage or deed of trust. Dckt. 19. The Declaration also provides testimony that Mr. Milam's transfer to Debtor was not authorized by Movant. Movant has provided a copy of the quitclaim deed of June 27, 2016, that shows the transfer from Mr. Milam to Debtor. Exhibit 4, Dckt. 22. Based upon Movant's testimony and Debtor's non-opposition, the court believes that Mr. Milam may be attempting to hijack into Debtor's bankruptcy case to protect his own property unlawfully.

The court shall issue an 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.

Additional Relief Pursuant to 11 U.S.C. § 362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay and order that the stay in a subsequently filed case will not be effective as to specific property where the court finds that the petition in the case before the court 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. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

In this Motion, it is alleged that title was transferred from James W. Milam, Sr. to the Debtor. Further, it is alleged that such transfer was done without the consent of Movant. The Motion does not state

with particularity that such one transfer was done as “part of a scheme” to delay, hinder, or defraud creditors. Rather, it is merely alleged that the contractual clause that makes an unconsented-to transfer grounds for asserting a default and accelerating payment of the debt a possible outcome. The mere existence of a “due on sale clause” does not defease a property owner of the right to alienate property.

Debtor helps Movant on the “for cause” grounds for relief under 11 U.S.C. § 362(d)(1), confirming that she does not assert an interest in the property or how she has come into title. Therefore, she does not oppose allowing Movant to obtain an order granting relief from the stay in Debtor’s case.

With respect to the alleged Quit Claim Deed (Exhibit 4) filed by Movant, it has not been authenticated, but merely appears as an exhibit. Ms. Flores, Movant’s witness, merely states that Movant received a copy of the Quitclaim Deed from some unidentified source. The court is not presented with a self-authenticated certified copy of the Quitclaim Deed (Fed. R. Evid. 902(4)), nor the testimony of a witness with personal knowledge who can authenticate it (Fed. R. Evid. 601, 602).

The presentation of unauthenticated evidence by Movant and counsel is surprising as Movant’s counsel regularly appears in this court and knows that the Federal Rules of Evidence apply in federal court. Wells Fargo Bank, N.A., as the movant, merely having one of its employees testify that somehow the Bank received a copy of this document is not sufficient. (In light of the recent revelations as to the inaccuracy of Wells Fargo Bank, N.A. records with respect to accounts being “opened” by customers, one would expect the Bank and its attorneys to dot the “i’s” and cross the “t’s” when presenting their matters to any court.)

How the court needs, if at all, to address this serious evidentiary deficiency will turn on the response of counsel for Movant at the hearing.

A James William Milam filed a bankruptcy case in the Eastern District of California in 2011—Chapter 7 Case No. 11-46491, receiving a discharge February 6, 2012. Debtor James W. Milam Sr. and Co-Debtor Frances Carolyn Milam list their street address as “5744 Mendocino Blvd.” 11-46491; Petition Dckt. 1. The same property with that address is listed on Schedule A. *Id.* On Schedule D, a creditor identified as “Wfm/wbm” is stated to have a \$200,258.00 claim secured by the property (with a stated value of \$71,500.00).

On Schedule I, James Milam and Frances Milam list having one dependent, a fifty-eight-year-old daughter. *Id.*

In the present case, Sharon Sue Hickman, this Debtor, lists on Schedule I that she is disabled and not employed. Dckt. 1 at 26. On Schedule B, she lists having a CalPers pension. *Id.* at 13. This would cause one to question whether she is the daughter listed as a dependent by James Milam and Frances Milam.

This is not Debtor’s first bankruptcy filing in the past decade. A prior Case was filed in 2013—Chapter 13 Case No. 13-33202. On Schedule I in the prior Chapter 13 case, Debtor disclosed that she had been employed by the State of California for thirty-four years and had gross income of \$6,660.00. 13-33202, Dckt. 1. Again, it appears less likely that she was a dependent of James Milam and Frances Milam.

In another recent case, Debtor filed a Chapter 13 under the name “Sharon S. Wilson,” which was converted to one under Chapter 7—Case No. 10-44512. Debtor received her Chapter 7 discharge on May 26, 2011. In that case, Debtor listed owning real property at 3200 Ardenridge Drive. 10-44512; Schedule A, Dckt. 1. In the Statement of Financial Affairs, it was disclosed that Debtor and her husband at that time were prosecuting a dissolution action in state court. *Id.*, Dckt. 1.

There is nothing even in the court’s records (presuming that Movant’s counsel expended the time to review them) to tie Debtor to part of a scheme by James Milam. Further, if he has now placed title in Debtor, which he cannot transfer, then the relief from stay in this case will have the effect of continuing against the property—as long as this case is open.

The request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-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 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 Wells Fargo Bank, N.A. (“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 immediately vacated to allow Wells Fargo Bank, N.A., 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 that 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 5744 Mendocino Blvd., Sacramento, California.

IT IS FURTHER ORDERED that the fourteen-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.

3. [11-45395](#)-E-13 NADER SHAHCHERAGHI
APN-1 Peter Macaluso

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
4-21-16 [\[84\]](#)**

**LAKESIDE GREENS HOMEOWNERS
ASSOCIATION VS.**

The court having issued an adequate protection order resolving all issues in this contested matter (Order, Dckt. 112), **the Motion has been removed from the calendar.**