

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 22, 2019 at 1:30 p.m.

1.	<u>19-24312</u> -C-13 DAVID RITCHIE <u>CJO-1</u> Mikalah Liviakis	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-16-19 [20]
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CALIBER HOME LOANS, INC. 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)(1) 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 13 Trustee, creditors, and Office of the United States Trustee on September 16, 2019. By the court’s calculation, 36 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 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.

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

Caliber Home Loans, Inc.(“Movant”) seeks relief from the automatic stay with respect to David Gordon Ritchie’s (“Debtor”) real property commonly known as 4201 Toyon Ct, Shingle Springs, California (“Property”). Movant has provided the Declaration of Karla Price to introduce evidence to

authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Movant primarily relies on the Debtor's treatment of Movant's claim as a Class 3 in the proposed plan (Dckt. 4), which provides for the claim through surrender of the Property.

In the Motion, Movant does not assert a value as to the Property or the claim secured thereby. On Schedule A, Debtor states the Property has a value of \$480,000.00. Dckt. 1. On Schedule D, the claims secured by the Property are stated to total \$488,843.00. *Id.*

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on October 8, 2019, stating there is no confirmed plan, but the prior proposed plan provided for Movant's claim as a Class 3. Dckt. 36.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 lack of adequate protection, and Debtor's expressed intent to surrender the Property. 11 U.S.C. § 362(d)(1).

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.

Requests For Relief Not Stated In the Motion with Particularity

In the Movant's Memorandum of Points and Authorities, Movant makes additional requests for relief that do not exist in the Motion, which are a request for relief from the co-debtor stay provided in 11 U.S.C. § 1301, and request for relief from the 14-day stay provided in Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should

be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

The Motion is a the epitome of “simplicity.” It does not name any person against whom relief is sought. It states that relief is sought pursuant only 11 U.S.C. § 362(d)(1) because the Plan in this case states that the property securing the Movant’s claim is to be surrendered.

The Motion then instructs the court to read, analyze, and state for Movant whatever other grounds can be found in the Memorandum of Points and Authorities and other unnamed, unidentified documents filed in support of the Motion.

The Motion does not identify against whom the relief is sought. A fundamental requirement of a complaint or motion seeking relief against someone is to name that person. Then that complaint or motion seeking the relief is properly served on that person. Those are the fundamental underpinnings of Due Process.

While the court may infer that in this “word efficient” Motion that relief is sought against the Debtor (a statutorily defined term), any identification of a “co-debtor” is missing in action. The court will not grant relief against person who are not named in complaints or motions.

Also, the co-debtor stay is provided for in 11 U.S.C. § 1301(a). Grounds for relief from the co-debtor stay are stated in 11 U.S.C. § 1301(c). On its face, the Motion does not state, even generally, that relief is sought pursuant to that statutory provision. Relief is sought only as provided in 11 U.S.C. § 362(d)(1).

The request for co-debtor relief is denied, without prejudice. ^{FN. 1}

FN. 1. Counsel for Movant may argue that it is just too hard or not as profitable to draft motions that comply with the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. Counsel for Movant may argue that it is too hard or not as profitable if they cannot have a process by which they assign work to the judges and law clerks of the federal court to assemble their motions for them from a pile of pleadings filed. Such “hardships” have to be addressed to the Supreme Court to modify the Rules that have been adopted by the Supreme Court, not merely assign the work to the federal trial judges and tell the federal trial judges that Counsel has overruled the Supreme Court and the Rules are to be ignored.

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 Caliber Home Loans, Inc. (“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 Movant, 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 real property commonly known as 4201 Toyon Ct, Shingle Springs, California, (“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 to obtain possession of the Property.

IT IS FURTHER ORDERED that to the extent that the pleadings could be read to include a request to terminate the co-debtor stay arising under 11 U.S.C. § 1301(a), such relief is denied without prejudice.

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.

SAFE CREDIT UNION VS.

Final Ruling: No appearance at the October 22, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient 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 September 13, 2019. By the court’s calculation, 39 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 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, the court confirming that the stay was terminated by the Confirmed Plan.

Safe Credit Union (“Movant”) seeks relief from the automatic stay with respect to Jeffrey Tod Macilraith’s (“Debtor”) real property commonly known as 11817 Corino Way, Rancho Cordova, California (“Property”). Movant has provided the Declaration of Scott Burris to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 4 post-petition payments, with a total of \$5,957.21 in post-petition payments past due. Declaration, Dckt. 170. Movant also argues the Confirmed Plan provides for its claim as a Class 3. Dckts. 127, 143.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating Creditor is provided for as a Class 3 under the Confirmed Plan. Dckt. 177.

DISCUSSION

As noted by the Trustee, the Confirmed Chapter 13 Plan provides for Movant's claim as a Class 3. Dckts. 127, 143. The Confirmed Plan states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Id.

Based on the plain language of the Plan, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral. Therefore, the relief requested by the Motion is moot.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic say when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic “discretion is the better part of valor” principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dckt. 127, in this bankruptcy case, “the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral.”

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 TD Auto Finance LLC (“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 relief is granted pursuant to the Motion, the court confirming that “the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3

secured claim to exercise its rights against its collateral.” Confirmed Chapter 13 Plan, Dckt. 127; Order Confirming, Dckt. 143.

US BANK NATIONAL ASSOCIATION
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.

Local Rule 9014-1(f)(1) 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 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2019. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXX.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to Francisco Solorio's ("Debtor") real property commonly known as 2968 Tourbrook Way, Sacramento, California ("Property"). Movant has provided the Declaration of Javier Gonzalez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made seven post-petition payments, with a total of \$13,190.66 in post-petition payments past due. Declaration, Dckt. 95.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 22, 2019. Dckt. 98. The Trustee asserts that Debtor's confirmed Plan provides for plan payments of \$6,125.00 for months 1 through 5, \$3,058.00 for months 6 and 7, and then \$3,243.89 for the remaining 53 payments. The Trustee states that debtor has paid \$10,868.80 into the plan and that as of the date of the filing is delinquent \$4,670.00.

The Trustee notes that the Movant is provided for as Class 1 creditor for ongoing mortgage

payments, pre-petition arrears, and post-petition arrears. The Trustee states that the mortgage payments are current under the confirmed Plan and the Trustee has disbursed a total of \$5,801.78 to date. A total of \$0.00 has been disbursed to date regarding pre-petition and post-petition arrears.

DEBTOR'S OPPOSITION:

On August 26, 2019, the Debtor filed an Opposition. Dckt. 101. The states that on July 30, 2019, the court confirmed Debtor's Amended Chapter 13 Plan. Dckt. 97. The confirmed plan provides for repayment of Movant's mortgage through the plan as a Class 1 debt. The Debtor claims that the plan payments he has made provide Movant's ongoing mortgage payments and post-petition arrears.

SEPTEMBER 10, 2019 HEARING

At the September 10, 2019 hearing the Parties agreed to a continuance to allow the Debtor to provide for curing the default. Civil Minutes, Dckt. 104.

TRUSTEE'S SUPPLEMENTAL RESPONSE

Trustee filed a Supplemental Response on September 30, 2019. Dckt. 107. Trustee states Debtor is delinquent \$7,913.80 under the plan, and that \$2,033.02 in principal payments are due on Movant's claim. Dckt. 107.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$249,631.25 (Declaration, Dckt. 95), while the value of the Property is determined to be \$308,000.00, as stated in Schedules B and D filed by Debtor.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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 U.S. Bank National Association ("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 Movant, 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 real property commonly known as 2968 Tourbrook Way, Sacramento, California, ("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 to obtain possession of the Property.~~

**FIRST INVESTORS FINANCIAL
SERVICES VS.**

Final Ruling: No appearance at the September 5, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and the United States Trustee on September 5, 2019. By the court's calculation, 47 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 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.

First Investors Financial Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Cadillac ATS, VIN ending in 4030 ("Vehicle"). The moving party has provided the Declaration of Virginia Nichols to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Patrick Moore ("Debtor").

Movant argues Debtor has not made 2 post-petition payments, with a total of \$1,030.50 in post-petition payments past due. Declaration, Dckt. 26. Movant also provides evidence that there are approximately 7 pre-petition payments in default, with a pre-petition arrearage of \$4,670.25. *Id.*

Debtor does not list the Vehicle on his Schedules, instead indicating on his Statement of Financial Affairs that the Vehicle was repossessed in May 2019. Dckt. 1.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant argues this relief is warranted because of past due payments and the rapidly depreciating nature of the Vehicle.

Movant has 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 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 First Investors Financial Services (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all

other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Cadillac ATS, VIN ending in 4030 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

RAKESH VU 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 October 8, 2019. 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). Debtor, creditors, the Chapter 13 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, -----.

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

Rakesh Vij ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 890 Wedgewood Court, West Sacramento, California ("Property"). The moving party has provided his own Declaration to introduce evidence as a basis for Movant's contention that Gavin Gregory Mehl ("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 March 12, 2019. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Furthermore, the Debtor has not presented argument that the Property is necessary for an effective rehabilitation, and the court finds no evidence in support of such an argument.

The Motion further alleges that there is pending an unlawful detainer proceeding in the California Superior court for Yolo County, for which there is pending a motion for summary judgment by Movant. Motion, p. 9-12; Dckt. 8.

Request for a Continuance

Debtor has filed a detailed, ten-page Application for Services to Persons With Communications Disabilities, requesting a thirty-day continuance to allow Debtor to seek employment of counsel and obtain a recording device for the proceeding. The Application is filed under seal.

The Application is signed “:gavin :mehl. : copy right/cobclaim:.” The name of the person filing this bankruptcy case is “Gavin Gregory Mehl.” Dckt.1. It is not clear from the above signature whether “Gavin Mehl” has signed the Application or someone else has, whose last name is “copy right.”

Review of Bankruptcy Case

Debtor has not yet filed a Chapter 13 Plan; Form 122C-1 Statement of Monthly Income; Schedules A/B, C, D, E/F, G, H, I, or J; Statement of Financial Affairs; or Summary of Assets and Liabilities. Notice of Incomplete Filing, Dckt. 3. These documents are required to be filed by December 1, 2019.

On the Bankruptcy Petition Debtor lists his residence as being the property which is the subject of this Motion.

Prior Bankruptcy Cases Filed by Debtor

The court’s files contain three prior bankruptcy cases filed by Debtor. These cases are summarized as follows:

- A. 17-21617 - Chapter 7 Case, In *Pro Se*
 - 1. Filed.....March 13, 2017
 - 2. Dismissed.....March 31, 2017
 - 3. Dismissed for failure to file Schedules, Statement of Financial Affairs, and other basic documents required of a debtor to prosecute a bankruptcy case.
 - 4. On the Petition Debtor lists as his address the Property that is the subject of this Motion.
- B. 16-24634 - Chapter 7 Case, In *Pro Se*
 - 1. Filed.....March 13, 2016
 - 2. Discharge Entered.....October 27, 2016
 - 3. Case Reopened October 2, 2019 and Chapter 7 Trustee reappointed to administer undisclosed assets consisting of potential claims against “Country Wide, N.A.” as the lender which relate to the Property that is the

subject of the present Motion. 16-24634; Motion to Reopen, Order Reopening, and Order Reappointing Chapter 7 trustee; Dckts. 49, 50, 56.

4. On the Petition Debtor lists as his address the Property that is the subject of this Motion. The Property is also listed on Schedule A/B and is not the undisclosed assets at issue. On Schedule D Debtor lists the Property that is the subject of this Motion, providing the following information:

- a. Value of Property.....\$500,000
- b. Bank of America, 1st DOT.....(\$1,026,000)
- c. City of West Sac, Utilities.....(\$ 1,525)
- d. FILA Card Services, Abstract..(\$ 30,000)
- e. First National Mtg, Abstract.....(\$ 150,000)

- (1) For the two judgment liens, the court denied without prejudice Debtor's motions to avoid judicial liens.

C. 16-23987 - Chapter 7 Case, In Pro Se

1. Filed.....June 20, 2016
2. Dismissed.....July 1, 2016
3. Dismissed for failure to file Schedules, Statement of Financial Affairs, and other basic documents required of a debtor to prosecute a bankruptcy case.
4. On the Petition Debtor lists as his address the Property that is the subject of this Motion.

REVIEW OF MOTION

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).

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.

October 22, 2019 at 1:30 p.m.

Page 16 of 20

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.

CONTINUANCE FOR FINAL HEARING

Debtor commenced this Chapter 13 bankruptcy case fifteen days before the hearing on the present motion. This Motion has been filed and notice given pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which only fourteen days notice is required and no written opposition is required to be filed. Oral opposition may be stated and the court may (based on the opposition) set a briefing schedule for opposition, reply, and final hearing.

Here, Debtor is requesting a thirty day continuance to obtain the assistance of counsel and for an accommodation based upon asserted physical limitations. The court notes that Debtor has, in *pro se*, navigated three prior cases, successfully obtaining his Chapter 7 discharge. Debtor has also attempted to avoid judicial liens, with the denials being without prejudice based on service and issues concerning identification of the judgment creditor.

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. Section 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.

While Movant may find it frustrating, setting the Motion for final hearing, affording Debtor, who is experienced in filing and prosecuting bankruptcy cases, to obtain the assistance of counsel, and then finally adjudicating the summary issues of modification of the automatic stay so that the State Court can adjudicate the underlying substantive issues concerning the right to possession of the property based on the trustee's deed is not of prejudice to Movant.

As filed, even if the court were to grant relief on this Motion, the fourteen day stay of enforcement would not be waived. Effectively, there would be at least a twenty-one day delay in there being an enforceable order.

Because the court is continuing the case, the court will deed the Motion to state grounds for waiving the fourteen day stay of enforcement to be those justifying relief from the stay - asserted ownership, there having been a foreclosure sale, and there being pending a dispositive motion in the State Court proceeding. The court will not require Movant to expend the time (and money) in filing a supplement to the Motion stating such grounds.

The court continues the hearing to 1:30 p.m. on November 26, 2019. Opposition shall be filed and served on or before November 12, 2019. If no written opposition is filed, the default of Debtor

shall be entered and Movant may lodge with the court at any time after November 13, 2019 a proposed order granting the relief requested. The request for the thirty-day continuance is dated October 9, 2019. Having written opposition due by November 12, 2019 affords Debtor (who is experienced in filing and prosecuting bankruptcy cases) more than sufficient time to engage knowledge, competent bankruptcy counsel, and that counsel filing opposition or other appropriate responsive pleading. Reply, if any, to the opposition shall be filed and served on or before November 19, 2019.

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 Rakesh Vij (“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 hearing on this Motion for Relief From the Automatic Stay (noticed for hearing pursuant to Local Bankruptcy Rule 9017-1(f)(2)) is continued to 1:30 p.m. on November 26, 2019, for final hearing. The court has deemed the Motion to state the asserted grounds for the additional relief for waiver of the Federal Rule of Bankruptcy Procedure 4001(a)(3) fourteen-day stay of enforcement.

IT IS FURTHER ORDER that Opposition, if any, shall be filed and served on or before November 12, 2019. If no written opposition is filed, the default of Debtor shall be entered and Movant may lodge with the court at any time after November 13, 2019 a proposed order granting the relief requested. A Reply, if any, to the opposition shall be filed and served on or before November 19, 2019.

The continuance and setting the final hearing for November 26, 2019, also serves as the reasonable accommodation to Debtor as requested in his Request (filed under seal) for a thirty day continuance. The Request for the thirty-day continuance is dated October 9, 2019, and is sought for the purpose of Debtor employing competent bankruptcy counsel. Having written opposition due by November 12, 2019 affords Debtor (who is experienced in filing and prosecuting bankruptcy cases) more than sufficient time to engage knowledge, competent bankruptcy counsel, and that counsel filing opposition or other appropriate responsive pleading.

YI WU 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 (*pro se*) and the Chapter 13 Trustee on October 7, 2019. By the court's calculation, 15 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). Debtor, creditors, the Chapter 13 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, -----.

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

Yi Wu ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 10232 Nick Way, Elk Grove, California ("Property"). The moving party has provided his own Declaration to introduce evidence as a basis for Movant's contention that Damian Avalos ("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 Debtor is merely a lessee. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Debtor has not presented argument that the Property is necessary for an effective rehabilitation, and the court finds no evidence in support of such argument.

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.

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 Yi Wu (“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 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 10232 Nick Way, Elk Grove, California.

No other or additional relief is granted.