

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California**

October 23, 2018 at 1:30 p.m.

1.	<u>18-24602</u>-E-13 PATRICIA KOKASON <u>CJC-3</u> Peter Cianchetta	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-9-18 [18]
VILLAGIO, LLC 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 13 Trustee, and Office of the United States Trustee on October 9, 2018. 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, -----

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The Motion for Relief from the Automatic Stay is granted.
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Villagio LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4101 Innovator Drive, #205, Sacramento, California ("Property"). The moving party

has provided the Declaration of Hatranh Moore to introduce evidence as a basis for Movant's contention that Patricia Kokason ("Debtor") is merely a tenant at Movant's property and does not have an ownership interest in or a right to maintain possession of the Property. Dckt. 20. The Declaration further states that Debtor failed to pay rent for month of August 2018, amounting to \$203.67. *Id.*

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response to the Motion on October 16, 2018. Dckt. 26. The Trustee notes that Debtor includes Movant on Schedule G as an executory contract/unexpired lease (Dckt. 1 at p. 28), but does not provide for Movant's claim in the proposed Amended Plan. Dckt. 9. Trustee further notes Movant filed a Proof of Claim, No. 3, and that Debtor is delinquent \$155.48 under the proposed Amended Plan (no motion to confirm the plan having been filed to date). Trustee does not oppose the Motion.

DEBTOR'S SCHEDULE G

Debtor's Schedule G list Movant as holding a contract or lease for the Property. Schedule G, Dckt. 1 at p.22, line 2.2. Describing what the lease is for, Debtor states:

If I do not pay rent by the 15th of this month I will be evicted from the property. I paid your fees instead to get this done.

Id.

No further explanation is provided as to Debtor's statement and any intent as to the rental Property.

DISCUSSION

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted, Debtor would be at best a tenant at sufferance with no interest in the Property. 11 U.S.C. § 362(d)(2). It is unclear what Debtor means to convey on her Schedule G (whether she paid attorney's fees or filing fees in place of rent). *See* Schedule G, Dckt. 1 at p.22, line 2.2. On the evidence presented (*See* Amended Plan, Dckt. 9) and there having been no opposition by the Debtor, the court determines further that the Property is not necessary for any effective rehabilitation in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Villagio LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4101 Innovator Drive, #205, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Villagio 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Villagio LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4101 Innovator Drive, #205, Sacramento, 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.

2. [16-20743-E-7](#) ANNA PETERSON
[17-2234](#) Pro Se

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
12-8-17 [\[1\]](#)

THOMPSON V. PETERSON

Plaintiff's Atty: Pro Se
Defendant's Atty: Eric John Schwab

Adv. Filed: 12/8/17
Summons Reissued: 3/2/18
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury
Dischargeability - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Substitution of Attorney [for Defendant-Debtor] filed 10/12/18 [Dckt 61]

Stipulation for Order of Nondischargeability of Claim filed 10/12/18 [Dckt 62];

OCTOBER 22, 2018 STATUS CONFERENCE

On October 12, 2018, a Stipulation for "Order" of Nondischargeability of Claim Pursuant to 11 U.S.C. 523(a)(5) was filed. Dckt. 62. That Stipulation provides:

Prior to general discharge, Plaintiff. Kevin Thompson filed this Adversary Proceeding alleging that Defendant owed Plaintiff a pre-petition Claim for domestic support. Defendant does not Dispute the claim. Therefore Defendant and Plaintiff stipulate and agree that the Court may enter an order in this adversary proceeding determining that Plaintiffs prepetition claim for domestic support is not discharged pursuant to 11 U.S.C. 523 (a) (5) .

Stipulation, Dckt. 62.

In this Adversary Proceeding, Plaintiff seeks a judgment determining that the \$100.00 a month payment for Debtor's share of child support expenses and an \$100.00 a month for the arrearage on child support expenses are nondischargeable. Complaint, Dckt. 1. The "Stipulation" is not clear as to what monetary obligations are agreed to be nondischargeable. Defendant-Debtor now being represented by two attorneys (family law dispute with Plaintiff and bankruptcy counsel in this Adversary Proceeding), it is not

unreasonable to expect any stipulation to be very clear and precise (unless one or more of the parties to this litigation was seeking to make it opaque to foment future litigation).

Additionally, since this is an adversary proceeding in which the court enters a judgment determining that a specified obligation is nondischargeable, the court is unsure as to why it would be entering an order.

On August 24, 2018, the court ordered Defendant-Debtor to pay \$1,500.00 in civil sanctions to the Clerk of the court for failing to comply with this court's prior order for her to appear at the August 21, 2018 hearing. Order, Dckt. 46. No evidence of the payment of said sanctions has been provided to the court.

At the Status Conference, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

3. [16-20743-E-7](#) ANNA PETERSON
[17-2234](#) Pro Se

**CONTINUED STATUS CONFERENCE
RE: DEFENDANT-DEBTOR'S
OBJECTION TO NOTICE OF
ADVERSARY PROCEEDING
5-21-18 [22]**

THOMPSON V. PETERSON

Plaintiff's Atty: Pro Se
Defendant's Atty: Eric John Schwab

Adv. Filed: 12/8/17
Summons Reissued: 3/2/18
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury
Dischargeability - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Substitution of Attorney [for Defendant-Debtor] filed 10/12/18 [Dckt 61]

Stipulation for Order of Nondischargeability of Claim filed 10/12/18 [Dckt 62]; **proposed order submitted**

OCTOBER 23, 2018 STATUS CONFERENCE

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

THOMPSON V. PETERSON

**No Telephonic Appearance is Permitted
for Anna Krin Peterson**

No 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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (Pro Per) and other such other parties in interest as stated on the Certificate of Service on August 1, 2018. The court computes that 20 days' notice has been provided.

The Order to Show Cause is ~~XXXXXXXXXXXXXXXXXX~~.

The Order to Show Cause was issued due to the failure of Anna Krin Peterson, Defendant-Debtor in Pro Per ("Debtor" or "Defendant") to appear at regularly noticed hearing in this Adversary Proceeding. Dckt. 40. The Order instructs Debtor to appear in person at the August 21, 2018, hearing and show cause why the court should not impose sanctions. *Id.*

Kevin Thompson, Plaintiff in Pro Se ("Plaintiff") filed the Complaint in this Adversary Proceeding on December 8, 2017 seeking determination of nondischargeability of Debtor's child support obligations. Dckt. 1. Debtor had previously filed a Chapter 7 case on February 10, 2016, and was granted a Chapter 7 discharge on December 19, 2017. 16-20743; Discharge Order, Dckt. 138. Debtor failed to appear at either the February 21, 2018, or May 30, 2018, hearings set for this Adversary Proceeding. Dckt. 9, 24.

DEBTOR'S OPPOSITION TO ENTRY OF DEFAULT

While Debtor has apparently not filed any responsive pleadings or made any appearance, she did file an opposition to Plaintiff's Motion for Entry of Default summarized as follows:

- A. The Pleading is titled "Objection to Notice of Adverse Action." Dckt. 22 at 1.
- B. Debtor states that United Law Center formerly represented her as counsel in Debtor's related bankruptcy case, but is no longer representing Debtor. *Id.*, ¶ 2.
- C. Debtor states that she does not have a PACER Account. *Id.*, ¶ 5.

- D. Through an online search, Debtor discovered that this Adversary Proceeding is pending. *Id.*, ¶ 6.
- E. Debtor states that she has not been "personally served" with the Complaint, summons, or any other document. *Id.*, ¶ 7.
- F. Debtor then requests that the court order Plaintiff to properly serve the summons and Complaint as required by Federal Rule of Bankruptcy Procedure 7004. *Id.*, ¶ 6. The court notes that Debtor manifests a knowledge of the Federal Rules of Bankruptcy Procedure, a level of sophistication not shown by many pro se debtors and defendants who appear in this court.
- G. In paragraphs 9, 10, 11, and 12 Debtor makes some factual arguments about the debt that is the subject of the Complaint. *Id.*, at p. 2.
- H. In her prayer, all Debtor "requests" is that the court order Plaintiff to "personally serve" the summons and complaint, the court continue proceedings, and the court allow Debtor to appear telephonically. *Id.*, at p. 2:25–26, 3:1–5.

The date and time listed for the Objection to Notice of Adverse Action is stated to be May 30, 2018 at 2:00 p.m. *Id.* at 1. No notice of hearing was filed, and Debtor did not set a hearing on the request for relief from the court. Local Bankr. R. 9014-1.

The pleading does not appear to be an answer or motion in response to the Complaint. Rather, Debtor, who expressly cites to Federal Rule of Bankruptcy Procedure 7004, believes that she can require "personal service" to be made, rather than the rules for service as enacted by the Supreme Court in the Federal Rules of Bankruptcy Procedure.

As Debtor is aware from reviewing Federal Rule of Bankruptcy Procedure 7004, service may be made several ways in an adversary proceeding, and provides, as relevant to this Adversary Proceeding:

(a) Summons; service; proof of service.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(1), (e)–(j), (l), and (m) F. R. Civ. P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F. R. Civ. P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.

(b) Service by first class mail. Except as provided in subdivision (h) [federally insured financial institutions], in addition to the methods of service authorized by Rule 4(e)–(j)

F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

. . .

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing. . . .

Fed. R. Bankr. P. 7004(a)(1), (2) & (b)(1) (9) [emphasis added].

In the Objection to Notice of Adverse Action, Debtor lists her address on her pleading for this Adversary Proceeding to be P.O. Box 469, Carmichael, California. The post office address is an address designated by Debtor in this Adversary Proceeding. In her Chapter 7 bankruptcy case (originally filed as a Chapter 13 case and converted to Chapter 7 by Debtor), 16-20743, Debtor listed in her Petition a street address as 5105 Fair Oaks Blvd, 101-251, Carmichael, California. 16-20743, Dckt. 1. Debtor was represented by counsel in filing the Petition. Using Google Maps, 5105 Fair Oaks, Blvd, 101, Carmichael, California is identified as a UPS Store which has mail boxes in addition to its shipping services.

The address shown by the court for Debtor in her bankruptcy case is:

Anna Krin Peterson
PO Box 469
Carmichael CA 95609
Date Added: 2/10/2016
(Debtor)
(aka) Krin Peterson
Clerk's Records, 16-20743.

On Schedule A/B, Debtor does not list any interests in real property. *Id.* at 11. For her personal property, Debtor states that it is located at 5150 Fair Oaks Blvd. 101-251, Carmichael CA 95608. *Id.* On Schedule G, Debtor states that she has no unexpired leases. *Id.* at 38.

On Schedule I, when the bankruptcy case was filed, Debtor stated that her occupation was a paralegal at United Law Center (her attorneys in the bankruptcy case). *Id.* at 41. Debtor working as a paralegal at a consumer bankruptcy firm may explain her knowledge of Federal Rule of Bankruptcy Procedure 7004 and bankruptcy court proceedings.

Debtor's Chapter 7 case has not been closed.

The Certificate of Service for the Reissued Summons and Complaint is stated to be Post Office Box 469, Carmichael, CA 95609. Dckt. 17. That is the address designated by Defendant Debtor in her bankruptcy case and now in this adversary proceeding (Dckt. 22).

For purposes of entering the Default, it appears that Debtor has been served at the address that she has designated in this Adversary Proceeding and her related bankruptcy case.

Though filing an Objection to Notice of Adversary Proceeding and requesting that the court make the provisions of Federal Rule of Bankruptcy Procedure 7004(b)(1) and (9) ineffective in this Adversary Proceeding, rather than filing an answer or motion, Debtor may intend to diligently prosecute any actual opposition or defense she may have to the claims asserted in the Complaint. Though Debtor appears to have specialized knowledge (having worked as a paralegal for a bankruptcy law firm), this ineffective Objection may be by mistake and not part of an intentional strategy to abuse the federal judicial process to cause unnecessary expense and improper delay. This led to the court *sua sponte* setting this Conference on the Notice of Objection.

AUGUST 21, 2018 HEARING & ORDER

At the August 21, 2018 hearing Debtor failed to appear. The court sustained the Order to Show Cause and issued an Order requiring Defendant-Debtor to pay a civil sanction in the amount of \$1,500.00 to the Clerk of the United States Bankruptcy Court for the Eastern District. Order, Dckt. 46.

The court further continued the hearing on the Order to Show Cause to October 2, 2018, required Debtor's appearance, and set a penalty for failure to appear at \$15,000.00 in monetary sanction in addition to whatever other enforcement remedies may be necessary (including the U.S. Marshals taking Debtor into custody and presenting her at court). *Id.*

APPLICATION TO CONTINUE HEARING

Plaintiff filed a Motion for Continuance on September 4, 2018. Dckt. 53. The court granted Plaintiff's Motion and continued the hearing to October 23, 2018, at 1:30 p.m. Order, Dckt. 55.

DISCUSSION

At the October 23, 2018 hearing, Debtor xxxxxxxxxxxxxx

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 Order to Show Cause 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 Order to Show Cause is **xxxxxxx**