

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 25, 2016 at 1:30 P.M.

1. [16-26441](#)-C-13 LUCINDA BAKER MOTION FOR RELIEF FROM
JBC-1 Pro Se AUTOMATIC STAY
10-11-16 [\[13\]](#)

ELAINE FONG VS.

Final Ruling: No appearance at the October 25, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on October 11, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value 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. At the hearing -----.

The Motion for Relief from the Automatic stay is denied as moot.

Elaine Wang Fong seeks relief from the automatic stay in order to enforce the judgment entered by the Superior Court of California, County of Sacramento, Case No. 16UD04120, for restitution and possession of the real property located at and commonly described as 7731 Frost Way, Sacramento, California. Further, Movant requests that the court enter its order waiving Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Movant purchased the property on May 5, 2016. On June 22, 2016, Movant served a 5 Day Demand to Surrender Real Property on the Debtor. On July 1, 2016 filed a complaint for forcible detainer against Debtor in the Sacramento County Superior Clerk. On August 1, 2016 judgment was entered against the Debtor in the Superior Court. The Debtor has no right, title, or interest in the subject property and is forcibly detaining the property.

On October 17, 2016, the case was dismissed for failure to file documents.

Accordingly, the motion will be denied as moot.

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 Elaine Wang Fong 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 for Relief from the Automatic Stay is denied as moot as the case was dismissed on October 17, 2016 for failure to timely file documents.

RICHARD RILEY VS.

Final Ruling: No appearance at the October 25, 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, and Office of the United States Trustee on September 22, 2016. Twenty-eight days' notice is required. That requirement is 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). 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 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.

Richard Riley seeks relief from the automatic stay in order to proceed with the pending Request for a Domestic Support Order, with the Honorable Judge Cynda Unger, in Solano Family Court, Case #FFL-116752, Preszler-Riley, Collette vs. Richard Riley.

The Chapter 13 Trustee filed a non-opposition to the motion for relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(b)(2)(A)(ii) that the automatic stay does not apply to the above referenced pending Request for a Domestic Support Order.

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 Richard Riley, 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Richard Riley to proceed with the pending Request for a Domestic Support Order in Solano Family Court, Case #FFL-116752.

CAM IX TRUST 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 24, 2016. 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion for Relief From the Automatic Stay is denied.

CAM IX Trust seeks relief from the automatic stay with respect to the real property commonly known as 418 Salisbury Circle, Vacaville, California. The moving party has provided the Declaration of Natalie Owens and David Ha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ha Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$12,600.00 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$571,130.02 (including \$548,000.00 secured by movant's first trust deed), as stated in the Owens Declaration, while the value of the property is determined to be \$548,000, as stated in Schedules A and D filed by Debtor.

TRUSTEE'S RESPONSE

Trustee responds that debtor's proposed plan was denied confirmation at hearing July 19, 2016, and the debtor has not filed and set for hearing a new plan. Debtor has made no payments to the Trustee. Trustee has filed and set for hearing on October 12, 2016 a Motion to Dismiss Case. On October 12, that hearing was continued to November 22, 2016.

DEBTOR'S OPPOSITION

Debtor objects to the motion on the grounds that approximately 50 houses have been sold in the last 6 months which exceed \$550,000.00 which leads Debtor to believe that the value of the home presently exceeds \$650,000.00. Debtor has contacted a realtor named Lisa McKee to put her house on the market and sell it in short order. Debtor requests that the Motion for Relief from the Automatic Stay is denied, or in the alternative that Debtor be allowed 6 months to sell the home.

October 4, 2016 Hearing

The court has no evidence that favors Debtor's valuation. If the Debtor can prove that she retains equity in the property, the motion should be denied in order to allow her to sell the Vacaville property on the market.

Debtor opposes the Motion, stating that she had determined that the property could be sold for in excess of this claim and will prosecute such sale within six months. Debtor is engaging the services of Lisa McKee, a real estate broker, to immediately market the property. Ms. McKee was present at the hearing and demonstrated that she understood that such employment was to proceed with a prompt sale of the property and not merely keep the house for six months and market it at an unrealistic price.

As a condition of the court setting the matter for further hearing, in addition to Debtor actively prosecuting a Chapter 13 Plan to sell the property and engaging the services of the real estate broker, the Debtor must also provide adequate protection payments to Movant. The first payment, in the amount of \$1,400.00 shall be made on or before October 14, 2016 by the Debtor, paid directly to Movant (not through the Chapter 13 Trustee) and delivered to Movant's counsel.

Additionally, the Chapter 13 Trustee is authorized to immediately disburse \$841.00 from monies paid into the Plan by Debtor to Movant, to be sent to Movant's counsel.

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion potentially provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). The court will grant the Debtor time to obtain a valuation in accordance with the alleged valuation of the Vacaville property.

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 Motion for relief from Automatic Stay is denied and the automatic stay will not be vacated.

No other or additional relief is granted.

WHEELS FINANCIAL GROUP, LLC
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 September 27, 2016. 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 continued until November 22, 2016 at 2:00 p.m.

Creditor, Wheels Financial Group, LLC, dba Loanmart, seeks relief from the automatic stay with respect to the vehicle commonly referred to as the 2004 Nissan Maxima.

The Francis Wambu Declaration states that the Debtor has not made any post-petition payments on the note, with a total of \$7,122.04 in post-petition payments past due. Debtor obtained the note six days prior to filing for bankruptcy and has made no payments on the note at any time.

DEBTOR'S RESPONSE

Debtor responds that Debtor and Wheels Financial Group, LLC, dba Loanmart have tentatively agreed to an arrangement in which Debtors would pay the principal amount, \$3,434.00, at 10 percent interest, as opposed to the interest rate of over 100% specified in the loan contract.

TRUSTEE RESPONSE

The Trustee points out that this creditor is not listed in the debtors' filed schedules nor provided for in the confirmed plan. The Trustee asks that this hearing be continued to allow the debtors to file and set for

hearing a modified plan to resolve this issue.

The court shall issue a minute order continuing this motion until November 22, 2016 at 2:00 p.m. in order to give the debtors time to file and set for hearing a motion to modify their Chapter 13 plan.

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 hearing is continued until November 22, 2016 at 2:00 p.m.

No other or additional relief is granted.
