

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 28, 2014 at 1:30 p.m.

1. [14-23313](#)-C-13 PAUL/LYNDA FANFELLE CONTINUED MOTION FOR RELIEF
 ANF-2 Peter G. Macaluso FROM AUTOMATIC STAY
 7-21-14 [[31](#)]

 PAWNEE LEASING CORPORATION
 VS.

Tentative Ruling: 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). Consequently, 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. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2014. Fourteen days' notice is required. That requirement was met.

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). 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 -----.

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The Motion for Relief From the Automatic Stay is continued to December 16, 2014 at 1:30 p.m. per stipulation filed October 24, 2014 (Dkt. 76).

PRIOR HEARINGS

The court held an initial hearing on the Motion on August 5, 2014. At the hearing, the parties indicated that they were close to reaching terms for providing for this claim through Debtor's plan. The court continued the hearing on the motion to allow for continued negotiations.

At the August 19, 2014 hearing, Debtor and Movant represented that they were nearing a stipulated resolution. The court granted a further continuance per parties' request.

Debtor filed a Supplemental Opposition on September 2, 2014, which is incorporated into the court's current tentative ruling.

A continued hearing was held on September 9, 2014. During that hearing, the parties requested a continuance to complete settlement negotiations or to determine that no settlement was possible. The court granted a continuance to September 30, 2014.

At the hearing on September 30, 2014, the court granted a further continuance to October 28, 2014. The parties announced at the hearing that they had reached a stipulated agreement that would be "documented in the next few days." See Civil Minutes, Dkt. 62.

STIPULATION

On October 14, 2014, Debtors uploaded to the court's docket (Dkt. 72) a Stipulation with Creditor to continue the hearing on Debtor's Motion to Confirm to December 16, 2014, as Debtors and Pawnee Leasing wanted time to obtain appraisals for the secured equipment. The court finds it safe to assume the secured equipment referenced in that stipulation is the same secured equipment which is subject to this current Motion for Relief from Stay.

On October 16, 2014, the court entered an order approving the Stipulation to continue the Motion to Confirm to December. Therefore, the court will issue an order also continuing the Motion for Relief from Stay to December 16, 2014 at 2:00 p.m. because the appraisals may also have a material effect on this motion.

DISCUSSION

Pawnee Leasing Corporation seeks relief from the automatic stay with respect to the personal property commonly known as a Soft Serve Freezer and 87" Dipping Cabinet. The moving party is seeking to exercise its lawful rights and remedies under the written Lease Agreement entered into with Debtors. Movant provides the Declaration of Sandi Carr to introduce evidence (Dkt. 33).

The Carr Declaration states that on September 16, 2013, Innovative Capital Corp., as Lessor, entered into a Lease Agreement with Crazy for Yogurt Inc. Pursuant to the terms of the Lease Agreement, Innovative Capital Corp. Leased to Crazy for Yogurt a Soft Serve Freezer and 87" Dipping

October 28, 2014 at 1:30 p.m.

Cabinet. On September 16, 2013, Debtors executed a Guaranty whereby they guaranteed payment by Crazy for Yogurt of all sums to be paid under the terms of the Lease Agreement (Exh. 1), together with costs and attorneys' fees incurred in the collection and enforcement of the Guaranty. (Exh. 2).

Prior to Debtors filing for bankruptcy protection, Innovative Capital Corp. assigned its Lease Agreement to Movant, Pawnee Leasing Corporation. The Assignment is attached as Exh. 3 to Movant's Motion. Movant filed a UCC-1 Filing Statement on the personal property with the California Secretary of State's office (Exh. 4).

The Lease Agreement provides that if the Lessee defaults in the performance of any of its obligations, the Movant may repossess the personal property. Movant alleges that Debtors and Lessee failed to pay the pre-petition March 1, 2014 payment and post-petition April-June 2014 payments. In total, the amount due to cure the default is \$4,535.72. The total balance due under the terms of the Lease Agreement is \$35,968.08.

The declaration offered by Pawnee Leasing Corporation states that it is under penalty of perjury and that the statements are "true and correct to the best of my knowledge and believe [sic]." This could be read two ways. The first is that "whatever I have said is true, to the extent that I have any knowledge about what I am talking about." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

Movant has provided the court with Exhibits demonstrating the leasing and guaranty relationships. Exhibit 1 to the deficient declaration is the Lease Agreement executed between Innovative Capital Corp. and Crazy For Yogurt, Inc. The Lease Agreement is signed by Lynda Fanfelle as "President" of Lessee and dated September 16, 2013. Exhibit 2 to the declaration is the Guaranty executed by Lynda and Paul Fanfelle. The language of the Guaranty provides that the "Guarantor(s) now hereby individually, jointly and severally, absolutely and unconditionally guaranty to the Lessor (and any person or firm the Lessor may transfer its interest to) all payments and other obligations owed by the Lessee to the Lessor under the Lease"

The Assignment of Lease is Exhibit 3 and demonstrates a transfer of interest from Innovative Capital Corp. to Pawnee Leasing Corporation concerning the Crazy For Yogurt, Inc. lease.

Debtors' Opposition

Debtors argue that no cause exists for the relief requested. Debtors argue that the reason Movant has not been paid is because Movant has not filed a proof of claim and Trustee cannot disburse payments to Movant without a proof of claim on file.

Further, Debtor argues that the contract relationship between Debtor and Movant is not a "pure" lease and that Debtors have a beneficial interest in paying the claim in Class 2 of their plan. Debtors propose making an adequate protection payment of \$380.00 per month.

Debtors' Supplemental Opposition

Debtors reiterate that no cause exists for the requested relief. Debtors assert that their counsel prepared a stipulation that was circulated to and rejected by movant. Debtors state that they filed an amended plan providing for payments in full with a payment of no less than \$906.27 per month to movant as a class 2(a) claim.

Discussion

11 U.S.C. § 362(a)(6) provides that the filing of a petition under section 301, 302, or 303 of the Code operates as a stay of any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case. A "claim" consists of a right to payment, whether or not it is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. 11 U.S.C. § 105(5)(A). Here, Movant is seeking to enforce a claim against the Debtors in their role as guarantors under the lease agreement. The claim became fixed in nature when the lessees failed to make the March 1, 2014 pre-petition payment under the lease, triggering the guarantor's responsibility under the Equipment Lease Guaranty, guaranteeing all payments owed by the lessee to the lessor under the lease (Exh. 2, Dkt. 33).

The court maintains the right to grant relief from stay for cause when the 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).

Stipulation

On October 24, 2014, Debtor and Creditor filed a Stipulation to continue the hearing to December 16, 2014 at 1:30 p.m.

The court's decision is to continue the hearing on the matter to December 16, 2014 at 2:00 p.m.

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 is
continued to December 16, 2014 a 1:30 p.m.

October 28, 2014 at 1:30 p.m.

2. [14-29122](#)-C-13 DANIEL/PATRICIA BONACHEA
Dale A. Orthner

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-22-14 [[16](#)]

GRANITE DRIVE PARTNERS L.P.
VS.

Tentative Ruling: 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). Consequently, 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. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 22, 2014. Fourteen days' notice is required. That requirement was met.

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). 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 granted.

PRIOR HEARING

At the initial hearing held October 7, 2014, the court ordered that the matter be continued to October 28, 2014. The court ordered opposition to the motion to be filed and served before October 15, 2014, and reply be filed and served on or before October 22, 2014. The court further ordered that Debtor's counsel mail, or otherwise deliver, the cashiers check for the September 2014 payment to counsel for Movant on or before October 8, 2014.

MOTION

Granite Drive Partners, L.P. ("Creditor") seeks relief from the automatic stay to proceed with an unlawful detainer action against Daniel and Patricia Bonachea ("Debtors"). Debtors and Creditor entered into a lease agreement dated May 17, 2014 whereby Debtors leased from Creditor real property located at 4810 Granite Drive, Unit A-5, Rocklin, California. Pursuant to the terms of the lease, Debtors were required to remit \$5,320.35 per month to Creditor. Debtors failed to make the required lease payments and Creditor cause a three-day notice to be served on Debtors (Exh. 2, Dkt. 16). A complaint for unlawful detainer was filed by Creditor against Debtors on August 28, 2014 (Exh. 4, Dkt. 16). The moving party has provided the Declaration of Brad Sures to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

CHAPTER 13 TRUSTEE

On September 26, 2014, the Chapter 13 Trustee filed a statement of non-opposition to the court granting the requested relief.

DEBTORS' OBJECTION

Debtors state that they sent Movant's counsel a cashier's check for September's pro-rated rent in the amount of \$3,323.48.

Debtors state that the delinquency on their post-petition rent due, regarding the commercial space rented to Debtors, was due to the same factors that precipitated their bankruptcy filing. Specifically, these factors include a lack of business revenue in part attributable to lack of pedestrian traffic at the commercial property. This resulted in continuing shortfalls in funds available to pay the rent owed.

Debtors argue the situation has significantly improved for Debtors to be able to catch-up with, and stay current with, all rents owed to Movant. Debtors state they will be able to pay the full October rent on or before October 20, 2014 and the full November rent on or before November 5, 2014. Debtors state that the December rent will be paid when due, on December 1, 2014.

Debtors cite to the lease for the language that rent is to be paid within "three (3) days after written notice thereof from Landlord to Tenant" before default occurs. Debtors assert that the October rent will be paid prior to this hearing and Debtors will be current with rent starting in December. Debtors argue that other than the arrearage to be paid through the plan, Debtors are only asking for two extra days to pay the November rent, from November 3, 2014 to November 5, 2014.

CREDITOR'S RESPONSE

Creditor argues that the lease was terminated, as a matter of law, prior to Debtors filing the bankruptcy petition. Movant caused a three day notice to be served on Debtors on June 19, 2014. On September 2, 2014, Movant served Debtors with an unlawful detainer complaint (Exh. 4, Dkt. 16). Movant argues that Debtor's right to possess the premises terminated upon expiration of the three day notice to quit in June 2014.

Movant asserts that as of the filing date of the instant petition by Debtors, there were unpaid rents owing to Movant in the amount of \$61,368.66. Movant does not find that Debtors have provided any adequate assurances of being able to allow the Trustee to cure or promptly cure the default owed. Debtors' plan is to pay \$481.63 for sixty (60) months as part of Debtors' overall Chapter 13 plan. Movant argues that this does not cure or promptly cure at the time of the assumption of the lease all of the default. The plan only calls for payment by Debtors to Movant of an amount totaling \$28,897.80. Debtors have no plan for the deficit due of \$32,470.86.

DISCUSSION

Lease Termination

In 1988, the Ninth Circuit Court of Appeals held that:

under California law a lease terminates for nonpayment of rent at least by the time the lessor files an unlawful detainer action, provided that a proper three-days' notice to pay rent or quit has been given, and the lessee has failed to pay the rent in default within the three-day period, and further provided that the lessor's notice contained an election to declare the lease forfeited.

Windmill Farms, Inc. v. Buchbinder, 841 F.2d 1467, 1471 (1988) (citing *In re Escondido West Travelodge*, 52 B.R. 376, 379 (S.D. Cal. 1985)).

Review of the three day notice is essential to determining whether the lease was terminated at the time of filing. Movant attached copies of the three day notice and the proof of service as Exhibits 2 and 3 in Docket Entry 16. The proof of service provides that the three day notice was served on June 19, 2014 on "Trisha Bonachea" by posting a copy on the property and via first class mail. The court finds "Trisha Bonachea" to be the same person as co-Debtor, "Patricia Bonachea." The three day notice also included an election to declare the lease forfeited and describes the conduct supporting the notice. The court finds that the notice is adequate and that it was properly served.

Debtors did not cure the three day notice and Movant/Lessor filed an unlawful detainer action on August 28, 2014 (Exh. 4, Dkt. 16).

Based upon the evidence, the court concludes that the Movant filed an unlawful detainer action on August 28, 2014, Movant served an adequate three-day notice on Debtor on June 19, 2014, Debtor did not pay the rent in default within the three-day notice period, and the notice contained an election to declare the lease forfeited. As a result of these actions and inactions, and pursuant to *Windmill Farms, Inc.*, the lease was terminated before Debtors filed for Chapter 13 relief.

The story may not end here; however, because even though the lease was terminated, the Debtors may be entitled to relief from forfeiture of the lease under California law (which would permit Debtors to assume the lease in their Chapter 13 plan). See *Windmill Farms, Inc.*, 841 F.2d at 1471-72.

California Code of Civil Procedure § 1179 provides that a tenant can obtain relief from forfeiture of a lease in case of hardship. That process requires the tenant to file an application for relief against forfeiture at any time prior to restoration of the premises to the landlord. Here, the court has no evidence that the Debtors, as tenants, made any application for relief against the forfeiture. As there was no effort made by Debtors to obtain relief from forfeiture, the court perceives no grounds upon which Debtors can assume the lease under the Chapter 13 plan or the Trustee can consider the lease assumed.

Based upon the evidence submitted, the court determines the subject lease agreement between Debtors' and Movant terminated prior to Debtors' filing bankruptcy and there is no equity in the property for either the Debtor or the estate. 11 U.S.C. § 362(d)(2). The court shall issue a minute order terminating and vacating the automatic stay to allow Granite Drive Partners, L.P., and its agents, representatives and successors, to pursue the unlawful detainer action under applicable nonbankruptcy law.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 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 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Granite Drive Partners, L.P., its agents, representatives, and successors, to pursue the unlawful detainer action under applicable nonbankruptcy law to obtain possession of the real property commonly known as 4810 Granite Drive, Unit A-5, Rocklin, California.

No other or additional relief is granted.

3. [14-27492](#)-C-13 RONALD NEALY-SWIFT
ASW-1 James L. Keenan

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-30-14 [[38](#)]

BUDGET FUNDING I, LLC VS.

Final Ruling: No appearance at the October 28, 2014 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 30, 2014. Twenty-eight 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). 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.

Budget Funding I, LLC ("Creditor") seeks relief from the automatic stay with respect to the real property commonly known as 4919 15th Avenue, Sacramento, California. The moving party has provided the Declaration of Debbie Sara to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Sara Declaration states that the Debtor has not made 2 post-petition payments, with a total of \$1,891.86 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 \$143,203.92 (including \$143,203.92 secured by movant's first trust deed), as stated in the Sara Declaration, while the value of the property is determined to be \$200,000, as stated in Schedules A and D filed by Debtor.

CHAPTER 13 TRUSTEE

The Trustee informs the court that Debtor is delinquent \$1,100 under the proposed plan (one payment). Debtor has paid a total of \$1,100 to date, with the last payment totaling \$1,100 having posted September 19, 2014. Under the proposed plan, \$2,200 has become due.

To date, there is a principal balance due of \$892.39 to Budget Funding I, LLC for Class 1 ongoing mortgage payments, representing one payment of \$892.39.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Budget Funding I, LLC, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 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 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Budget Funding I, LLC, 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 which 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 4919 15th Avenue, Sacramento, California.

No other or additional relief is granted.

4. [14-26412](#)-C-13 BERNICE SCARBOROUGH
RCO-1 Pro Se

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY, MOTION FOR
RELIEF FROM CO-DEBTOR STAY, AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-18-14 [[35](#)]

CHAMPION MORTGAGE COMPANY
VS.

CASE DISMISSED 9/23/14

Final Ruling: No appearance at the October 28, 2014 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 18, 2014. Twenty-eight 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). 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.

Champion Mortgage Company seeks relief from the automatic stay with respect to the real property commonly known as 5817 64th Street, Sacramento, California. The moving party requests the court enter an order pursuant to 11 U.S.C. § 362(j), confirming that the stay terminated. The moving party has provided the Declaration of Tiffany Dearmon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dearmon Declaration states that the Debtor had two previous cases pending within the previous year that were dismissed. On April 11, 2014, Debtor filed a Chapter 13 case (14-23740) that was dismissed on April 29, 2014. On May 12, 2014, Debtor filed a second Chapter 13 petition (14-24976) that was dismissed on May 30, 2014. On June 19, 2014, Debtor filed the instant Chapter 13 case. Movant argues that pursuant to 11 U.S.C. § 362(c)(4)(A)(I), the automatic stay never took effect upon the filing of this instant case.

Pursuant to 11 U.S.C. § 362(c)(4)(A)(i), if two or more single cases of the debtor were pending within the previous year but were dismissed, the stay under 11 U.S.C. § 362(a) shall not go into effect upon the filing of the most recent case and on request of a party in interest, the court shall promptly enter an order confirming the stay did not go into effect.

A review of the record confirms the filing history detailed in the Dearmon Declaration and the court finds that upon the filing of the instant case the automatic stay did not go into effect. Debtor did not file a motion to invoke the stay. Therefore, the court will issue an order that the stay did not go into effect, pursuant to 11 U.S.C. § 362(c)(4)(A).

Movant further argues that it is entitled to an *in-rem* order on the basis that the instant case was filed as part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4)(B).

On December 13, 2013, Movant caused a Notice of Default to be recorded (Exh. E) and on March 13, 2014, Movant cause a Notice of Trustee's Sale to be recorded (Exh. F). The Trustee's Sale was set for April 11, 2014. On April 11, 2014, Debtor filed a Chapter 13 case (14-23740) that was dismissed on April 29, 2014. On May 12, 2014, Debtor filed a second Chapter 13 petition (14-24976) that was dismissed on May 30, 2014. Debtor filed the instant case on June 19, 2014.

A review of the docket in this case confirms the filing history detailed by Movant. 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition 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.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute order terminating and vacating the automatic stay to allow Champion Mortgage Company, 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.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-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 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Champion Mortgage Company, 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 which 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 5817 64th Street, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two (2) years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

No other or additional relief is granted.

5. [14-27762](#)-C-13 CESAR RAMAGOZA
JCW-1 Jennifer C. Wong

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-10-14 [[23](#)]

CESAR RAMAGOZA VS.

Final Ruling: No appearance at the October 28, 2014 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, Debtors' Counsel, Chapter 13 Trustee, and Office of the United States Trustee on September 10, 2014. 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). 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.

Federal Home Loan Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as a 8121 Port Royale Way, Sacramento, California. The moving party has provided the Declaration of Bounlet Louvan and David Rankin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Louvan & Rankin Declaration states that on October 7, 2011, Movant recorded a Notice of Default and that a Notice of Sale was published on August 23, 2013. The foreclosure sale of the subject property took place on December 9, 2013 and the Trustee's Deed Upon Sale was recorded on December 18, 2014 (Exh. 1).

Based upon the evidence submitted, the court determines there is no equity in the property for either the Debtor or the estate. 11 U.S.C. § 362(d)(2). The court shall issue a minute order terminating and vacating the automatic stay to allow Federal Home Loan Mortgage Corporation, and its agents, representatives, assignees and successors, to pursue all remedies available under applicable nonbankruptcy law.

Movant further argues that it is entitled to an *in-rem* order on the

basis that the Debtor's filing was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy cases affecting the property. 11 U.S.C. § 362(d)(4)(B). In support of its motion, Movant asserts that the subject case is the fourth filing that affects the property. Filings affecting the property include:

Case Number	Date Filed	Debtor Name	Disposition	Notes
13-26161	05/03/13	Maylene Ramagoza	Dismissed 08/06/13	No relief granted.
14-21204	02/10/14	Cesar Ramagoza	Dismissed 04/04/14	No relief granted
14-24266	04/25/14	Maylene Ramagoza	Dismissed 07/14/14	No relief granted.
14-27762	07/30/14	Cesar Ramagoza	Dismissed 10/20/14	No relief granted.

A review of the docket in this case confirms the filing history detailed by Movant. 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition 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.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The moving party has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-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 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Federal Home Loan Mortgage Corporation, its agents, representatives, and successors, and trustee under the trust deed, and any other

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beneficiary or trustee, and their respective agents and successors under any trust deed which 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 8121 Port Royale Way, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two (2) years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

No other or additional relief is granted.