

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 5, 2017 at 1:30 p.m.

1.	15-22313 -C-13	VONDA RILEY	MOTION FOR RELIEF FROM
	APN -1	Daphne Yeldell	AUTOMATIC STAY
			10-30-17 [32]
	LIGHTHOUSE AT BRIDGEPORT		
	OWNERS ASSN. 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 October 30, 2017. 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 denied.

Lighthouse at Bridgeport Owners Association seeks relief from the automatic stay with respect to the real property commonly known as 327 Lighthouse Dr., Vallejo, California.

The Movant states that the Debtor has not made 10 post-petition payments, with a total of \$5,102.77 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 \$5,102.77 while the value of the property is determined to be \$127,660.00, as stated in Schedules A and D filed by Debtor.

TRUSTEE'S RESPONSE

Chapter 13 Trustee filed a response indicating that the debtor is delinquent in plan payments in the amount of \$522.00 and has paid a total of \$22,697.00 into the plan to date. The creditor is included in Class 2 A of the plan and receives a monthly dividend.

DEBTOR'S OPPOSITION

Debtor filed an opposition claiming that the motion for relief from stay is improper because debtor has been making adequate protection payments and there is equity in the property.

DISCUSSION

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion 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). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

The property has sufficient equity such that the movant has not adequately plead cause for granting relief from stay. It appears that the debtor is making regular payments into the plan, notwithstanding a slight delinquency, and that the creditor is sharing in the distribution from the Trustee.

The motion for relief from stay will be denied.

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 Stay is denied without prejudice.

2. [17-24656](#)-C-13 ULYSSES ANDRY
[AP-2](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-17 [[40](#)]

DEUTSCHE BANK TRUST COMPANY
AMERICAS VS.
DEBTOR DISMISSED: 11/05/2017

Final Ruling: No appearance at the December 5, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 13 Trustee, and Office of the United States Trustee on October 23, 2017. 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 denied as moot.

Deutsche Bank Trust Company Americas seeks relief from the automatic stay with respect to the real property commonly known as 5835 41st Street, Sacramento, California.

The Movant states that the Debtor has not made 2 post-petition payments, with a total of \$2,443.44 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 \$354,069.47 (including \$190,000.00 secured by movant's first trust deed) while the value of the property is determined to be \$190,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds that the case has been dismissed and that the relief from stay summary sheet reflects that Movant's motion relates to a 1st and 2nd deed of trust whereas the pleadings and supporting documents appear to only relate to a 1st deed of trust.

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). However, the case was dismissed on November 5, 2017. Pursuant to 11 U.S.C. § 362(c), the automatic stay is no longer in effect once a case is dismissed. As a result, there is no automatic stay with respect to the property. The Motion for Relief from Automatic Stay is therefore 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 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 the Automatic Stay is denied as moot.

3. [17-24697](#)-C-13 PATRICK MALONE
[APN](#)-1 Pauldeep Bains

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-25-17 [[21](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the December 5, 2017 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 October 25, 2017. 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.

Santander Consumer USA, Inc. seeks relief from the automatic stay with respect to a 2013 Chevrolet Cruze motor vehicle.

The Movant states that the Debtor has not made 3 post-petition payments, with a total of \$1,166.49 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 \$16,159.38, while the value of the property is determined to be \$8,075.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds that the debtor is delinquent \$880.00 under the plan and has paid a total of \$1,940.00 into the plan to date.

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 moving party has not pleaded adequate facts and presented sufficient evidence to support the court waiving 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 Santander Consumer USA, Inc., its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non-bankruptcy rights with respect to the 2013 Chevrolet Cruze.

No other or additional relief is granted.
