

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 6, 2016 at 1:30 P.M.

1. [16-25901](#)-C-13 KEISHA RUNNELS MOTION FOR RELIEF FROM
SW-1 Thomas Amberg AUTOMATIC STAY
11-17-16 [[17](#)]
ALLY FINANCIAL, INC. VS.

Tentative Ruling: The Motion to Value 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 November 17, 2016. 14 days' notice is required. That requirement is met.

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 granted.

Creditor, Ally Financial, seeks relief from the automatic stay with respect to a 2014 Dodge Charger owned by the debtor.

The Tianna Green Declaration states that the Debtor has not made 2 post-petition payments and 1 pre-petition payment, with a total of \$24,271.16 due to Ally Financial. The Debtor's schedules list the value of the vehicle at \$13,649.

Pursuant to the debtor's Chapter 13 Plan, the vehicle is to be surrendered.

The Chapter 13 Trustee filed a non-opposition to the motion. The debtor has filed a non-opposition to the motion.

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).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2) and the vehicle, having no equity, is not necessary to an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow Ally Financial, and its agents, representatives and successors, and all other creditors having lien rights against the property, to repossess and/or dispose of the vehicle.

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 Ally Financial, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the vehicle, commonly referred to as a 2014 Dodge Charger.

No other or additional relief is granted.

SETERUS, INC. 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 November 4, 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 denied.

Seterus, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 939 Vanderbilt Way, Sacramento, California. The moving party has provided the Declaration of Riki Lachica to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lachica Declaration states that the Debtor has not made 4 post-petition payments, with a total of \$8,946.76 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 \$313,948.45 (including \$291,157.00 secured by movant's first trust deed), as stated in the Lachica Declaration, while the value of the property is determined to be \$291,157.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds to the motion to assert that the debtor is current on plan payments. The Trustee points out that the plan states that the bankruptcy stay is modified to allow a creditor in this position to exercise its rights against the collateral in the event of a default.

Debtor's Response

The debtor responds that she was behind on payments to the creditor only due to a misunderstanding and attached a receipt from the creditor indicating that the debtor is now current on payments.

Discussion

The stay is not applicable with respect to this property. The creditor can utilize non-bankruptcy applicable law to exercise its rights. Based upon the evidence before the court, granting this motion is not warranted.

Moving party's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is not applicable on these facts. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

The court shall issue a minute order denying the request for relief from the automatic stay.

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.

No other or additional relief is granted.

WELLS FARGO BANK, N.A. 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 14, 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 denied.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 5028 El Cemente Ave, Davis, California. The moving party has provided the Declaration of Teresa Barnette to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Barnette Declaration states that the Debtor has not made 58 pre-petition payments and 3 post-petition payments, with a total of \$10,352.39 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 \$732,995.72, as stated in the Barnette Declaration, while the value of the property is determined to be \$660,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

The Debtor is current under the proposed plan but that plan was denied confirmation. The debtor does not have any pending plan and a motion to dismiss was set for November 16, 2016 which was denied. Debtor is paying Creditor with direct payments. The Trustee has no means to verify if the payments are being made. The Trustee recommends the court grant relief from stay.

Debtors' Response

Debtors respond that they are in the process of obtaining a loan modification through Wells Fargo. Debtors respond that the Creditor is unable to move forward with foreclosure proceedings while also accepting a loan modification. Debtors have made trial payments of the loan modification.

November 22, 2016 Hearing

The court ordered that on or before November 30, 2016, the Debtor shall file and serve supplemental pleadings in opposition of the motion. The court further ordered that on or before November 30, 2016, Debtor shall pay to the Trustee an amount equal to 10% of the payments made directly to the Wells Fargo Bank, N.A. by Debtor without court authorization.

Debtors' Supplemental Opposition

Debtors filed a supplemental opposition indicating that:

1. The Debtors' loan modification has been approved.
2. Debtors have submitted the December mortgage payment to Trustee.
3. Debtors made a good faith installment payment on the 10% of the dollar amount of direct payments to Wells Fargo.

Discussion

The Debtors have shown evidence of 3 payments on the loan modification and have submitted evidence of payment to the Chapter 13 Trustee. As a result, the motion for relief from the automatic stay is not warranted.

The court shall issue a minute order denying the motion for relief from the automatic stay. The court is satisfied that adequate protection payments along with timely mortgage payments by the debtors will suffice to cure the deficiency on the mortgage while also paying regular mortgage payments.

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 motion for relief from the automatic stay is denied.

No other or additional relief is granted.

SETERUS, INC. 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 26, 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 denied.

Seterus, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 3714 6th Avenue, Sacramento, California. The moving party has provided the Declaration of Daniel Cranston to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Cranston Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$1,731.63 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 \$59,588.53 (including \$59,588.53 secured by movant's first trust deed), as stated in the Cranston Declaration, while the value of the property is determined to be \$111,000.00, as stated in Schedules A and D filed by Debtor.

Debtor's Response

Debtor responds that the motion is unnecessary because upon confirmation of the Chapter 13 plan on April 30, 2012, the moving party's predecessor in interest, Bank of America N.A., received relief from automatic stay. Because the automatic stay is already terminated as to the moving party, they should not be entitled to

assess any attorney fees or court costs.

Trustee's Response

Trustee responds that the confirmed plan provides for the creditor to be paid directly by the Debtor, and the plan has completed.

Discussion

The creditor was to be paid in Class 4 of the confirmed plan. The automatic stay has been lifted with regards to this creditor. As a result, there is no basis for requesting the court to grant relief from the automatic stay. The creditor has the ability to assert its rights in a nonbankruptcy forum.

The court shall issue a minute order denying the motion for relief from automatic stay.

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 motion for relief from the automatic stay is denied.

No other or additional relief is granted.

5. 16-25181-C-13 LIONEL/SHIRLEY JACKSON
JHW-1 Candace Brooks

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-27-16 [[29](#)]

FORD MOTOR CREDIT COMPANY,
LLC VS.

* * * *

Final Ruling: No appearance at the December 6, 2016 hearing is required.

The Creditor, Ford Motor Credit Company LLC having filed a Withdrawal of the Motion for Relief from the Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar .**

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6. [14-29287](#)-C-13 ERIC/MOLLY ELLIS
BPR-1 Mohammad Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-3-16 [[50](#)]

U.S. BANK, N.A. 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.

Local Rule 9014-1(f)(1) Motion - 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 November 3, 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). 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.

U.S. Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 2429 Patterson Road, Escondido California.

Debtors' Response

Debtors respond that they have no interest in the property and have submitted a declaration stating the same.

Discussion

The court has examined the record and has found no evidence that the debtors have any interest in the property. The court is also persuaded by the debtors' declaration which states both that the debtors have no interest in the property and that the debtors have no relation to, or knowledge of, the current borrowers of the property.

The court shall issue a minute order denying the motion for relief from automatic stay.

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.

7. [15-28991](#)-C-13 ANTHONY/HOLLY BEAVEN
BAW-1 David Brady

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
11-2-16 [[24](#)]

CERASTES, LLC VS.

Final Ruling: No appearance at the December 6, 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 November 2, 2016. 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.

Cerastes LLC seeks relief from a 2008 Kawasaki Motorcycle. The moving party has provided the Declaration of Holly Chaffin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Chaffin Declaration states that the Debtor has not made 12 pre-petition and 1 post-petition payment, with a total of \$4,431.91 payments past due. The movant values the property at \$6,235.00 while the debtors did not list the asset on their schedules.

The chapter 13 trustee does not oppose the motion.

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 Cerastes LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to repossess and/or dispose of the vehicle.

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 Cerastes LLC, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the 2008 Kawasaki Motorcycle.

No other or additional relief is granted.
