

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

December 12, 2017 at 1:30 p.m.

1. [17-24072](#)-C-13 THOMAS/JOY GALINDO  
[USA](#)-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY (FILING FEE NOT  
APPLICABLE), MOTION FOR  
ADEQUATE PROTECTION  
11-9-17 [[68](#)]

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FARM SERVICE  
AGENCY VS.

\*\*\*\*

**Final Ruling:** No appearance at the December 12, 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 November 9, 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.**

The United States, acting on behalf of its agency, the United States Department of Agriculture, Farm Service Agency seeks relief from the automatic stay to allow FSA to setoff program payments of \$13,653.

The court finds, for the purposes of this motion only, that the amount owed to FSA by the debtors for ARC/PLC coverage is \$15,653.

The 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 indicated an intention to surrender the property, the debtors have no equity, and the amount is owed to the creditor without adequate protection payments being made or proposed.

The court shall issue a minute order terminating and vacating the automatic stay to allow United States Department of Agriculture, Farm Service Agency, 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.

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 the United States, acting on behalf of its agency, the United States Department of Agriculture, Farm Service Agency, to exercise its nonbankruptcy rights and allow FSA to setoff program payments of \$13,653.00.

No other or additional relief is granted.

\*\*\*\*

PROVIDENT FUNDING  
ASSOCIATES, L.P. VS.

\*\*\*\*

**Final Ruling:** No appearance at the December 12, 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 November 8, 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.**

Provident Funding Associates, L.P. seeks relief from the automatic stay with respect to the real property commonly known as 338 Cherry Avenue, Vacaville, California.

The Cameron Chaves Declaration states that the Debtor has not made 7 post-petition payments, with a total of \$16,231.74 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 \$448,999.0 as stated in the Chaves Declaration, while the value of the property is determined to be \$390,000.00, as stated in Schedules A and D filed by Debtor.

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 finds that the filing of this petition, is part of a scheme to delay, hinder, or defraud the movant as there have been several cases filed post-default with respect to this property, this being the fourth filed case. As a result, the court finds that relief under § 362(d)(4) is appropriate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Provident Funding Associates, L.P., 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.

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 Provident Funding Associates, L.P., 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 338 Cherry Avenue, Vacaville, California.

**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, and 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 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case file during that period.

No other or additional relief is granted.

\*\*\*\*