

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 17, 2016

Hearing Room 1568

10:00 AM

2:16-17275 Alan Riche and Wendy Riche

Chapter 7

#1.00 Hearing
RE: [41] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2500 Laurel Pass Los Angeles California 90046 . (McDonald, William)

Docket No: 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 10-3-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Riche

Represented By
Stella A Havkin

Joint Debtor(s):

Wendy Riche

Represented By
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
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Monday, October 17, 2016

Hearing Room 1568

10:00 AM

2:16-20509 Abel Alcazar

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Kia Sorento, VIN 5XYKT4A22DG370003 . (Wang, Jennifer)

Docket No: 10

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt,

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the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Abel Alcazar

Represented By
Peter L Lago

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:16-22009 Hugo Rogelio Corona

Chapter 7

#3.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 536 HILGARD AVE., LOS ANGELES, CA 90024 and proof of service. CORRECTION: Matter is not on calendar for 11-17-16. Correct hearing date is 10-17-16 at 10:00 A.M. See docket 14 for correct hearing date and time; Modified on 9/22/2016 (Evangelista, Maria).

Docket No: 13

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Peter Bear in support of Motion at ¶ 6. Although the transfer to the Debtor occurred on February 15, 2014, well before the Debtor filed a chapter 7 petition on September 9, 2016, the transfer was for no consideration and the Debtor filed the chapter 7 petition merely three days before the foreclosure sale, indicating bad faith. Motion, Ex. 3.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under

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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 that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

Finally, The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Hugo Rogelio Corona

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:16-21248 Leevester Walton

Chapter 7

#4.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 762 W. EL SEGUNDO BLVD., GARDENA, CA 90247 .

Docket No: 10

Tentative Ruling:

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does Not Apply Under 11 U.S.C. § 362 (1) (Unlawful Detainer) ("Motion") [Doc. No. 10]
2. Opposition to U.S. Bank National Association's Motion for Relief from Stay or Confirming that the Automatic Stay Does not Apply under 11 U.S.C. 362(l) with Supporting Declarations [Doc. No. 12]
 1. Amended Opposition to U.S. Bank National Association's Motion for Relief from Stay or Confirming that the Automatic Stay Does not Apply under 11 U.S.C. 362(l) with Supporting Declarations ("Opposition") [Doc. No. 13]

Facts and Summary of Pleadings

U.S. Bank National Association ("Movant") filed the instant motion for relief from the automatic stay pursuant to § 362(d)(1). For the reasons stated below, the Court GRANTS the Motion.

On August 23, 2016, petitioning creditor Roberto Rodriguez ("Petitioning Creditor") filed an involuntary chapter 7 petition ("Involuntary Petition") against debtor Leevester Walton, *aka* Nicholas L. Camacho, *aka* James Mitchell, *aka* Callie Whitmore Estate ("Debtor"). Doc. No. 1. On August 25, 2016, the Court set a hearing for September 21, 2016, requiring the creditor to appear and show cause why the involuntary petition against the Debtor should not be dismissed as having been filed in bad faith ("Show Cause Hearing"). Doc. No. 4. The Court based the Show Cause Hearing on the Involuntary Petition's failure to state the amount of indebtedness

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allegedly owed by the Debtor to the Petitioning Creditor and the suspicious use of the same aliases in two different involuntary cases. Doc. No. 4; *see also* Case No. 2:16-bk-2046-BR. Subsequently, the Court continued the Show Cause Hearing to October, 12, 2016. Doc. No. 7.

Motion

On September 22, 2016, the Movant filed the Motion. Doc. No. 10. The Movant seeks stay-relief under §§ 362(d)(1) and (d)(2) in the context of an unlawful detainer with respect to real property located at 762 W. El Segundo Blvd., Los Angeles, CA 90247 ("Property"). The Movant argues that the Debtor had no right to occupy the Property because the Movant served a notice to quit on the Debtor on June 15, 2016. *Id.*, Ex. B. The Movant commenced a forcible entry and forcible detainer proceeding against James Mitchell (Debtor), Ronald White, and Ray Sparks, in the Superior Court of California, Los Angeles County, proceeding ("Forcible Entry Proceeding") on August 25, 2016. Decl. of Michael Zeff ¶ 5. The Movant additionally requests annulment stating that neither the Petitioning Creditor nor the Debtor filed a Notice of Bankruptcy Filing in the state court or notified the Movant's counsel of the filing. *Id.* at ¶ 4. Finally, the Movant requests termination, modification or annulment of the co-debtor stay and waiver of the 14-day stay prescribed by FRBP 4001(a)(3).

Opposition

On October 5, 2016, the Petitioning Creditor filed the Opposition. Doc. No. 13. The Petitioning Creditor argues that the Movant violated the automatic stay by filing the Forcible Entry Proceeding. The Petitioning Creditor avers that even if the Involuntary Petition was filed without a Notice of the Bankruptcy Filing, the failure to give notice is only relevant when assessing liability for "damages or punitive damages." *Id.* at 2. The Petitioning Creditor contends that the Movant's wrongful commencement of the Forcible Entry Proceeding cannot be the basis for affirmative relief. *Id.*

Reply

As of the date of this tentative ruling, the Movant has not filed a reply.

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Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.")

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. at 566.

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). Here, the Court finds sufficient cause to permit stay-relief under § 362(d)(1) based on the Petitioning Creditor's bad faith filing of the Involuntary Petition. The Petitioning Creditor's failure to appear at the Show Cause Hearing, the Involuntary Petition's failure to state the amount of debt owed by the Debtor, and the same aliases being used in two different involuntary cases indicate bad faith. Doc. No. 4; see Case No. 2:16-bk-20426-BR. The stay is terminated as to the Debtor and the Debtor's bankruptcy estate

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with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

Regarding annulment, 11 U.S.C. § 362(d)(1) states: "on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." The proper standard for determining "cause" to retroactively annul the automatic stay is a "balancing of the equities" test. *In re Fjeldsted*, 293 B.R. 12, 24 (9th Cir. B.A.P. 2003). In *In re Fjeldsted*, the BAP suggested twelve factors to consider when deciding whether to annul the stay: "(1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of circumstances test); (5) whether creditors knew of stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the *status quo ante*; (8) the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; (12) whether stay relief will promote judicial economy or other efficiencies." *Id.* at 25. These factors are "merely a framework for analysis and not a scorecard." *Id.*

Here, the Court grants annulment based on the Petitioning Creditor's bad faith filing and the failure of both the Petitioning Creditor and the Debtor to file a Notice of Bankruptcy in the state court or notify the Movant's counsel of the Involuntary Petition. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived and the co-debtor stay is terminated as to any co-debtors on the same terms and conditions as the Debtor. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

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Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Leevester Walton

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, October 17, 2016

Hearing Room 1568

10:00 AM

2:15-15423 Sam F Hindsman

Chapter 11

#5.00 Hearing
RE: [181] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 25888 Oakbrooke Court, Stevenson Ranch, CA 91381 . (Tashjian, Lisa)

FR. 8-8-16; 9-6-16; 10-3-16

Docket No: 181

***** VACATED *** REASON: CONTINUED 10-24-16 AT 10:00 AM..**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam F Hindsman

Represented By
Stella A Havkin

Movant(s):

Westridge Valencia Master Homeowne:

Represented By
Lisa A Tashjian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 17, 2016

Hearing Room 1568

10:00 AM

2:16-22581 Michael Barnhart

Chapter 7

#6.00 Hearing
RE: [23] and [26]Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1324 Oak Dr., Los Angeles, CA 90041 on 7 days Notice. (Guiab, Olen-Keith)

Docket No: 23

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with the court's procedures. Oppositions, if any, will be considered at the hearing.

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Olen Guiab in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This

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order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order 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 that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

Further, this order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the subject property for a period of 180 days from the hearing of this motion without further notice. This order is also binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Michael Barnhart

Represented By
Robert A Brown

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

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