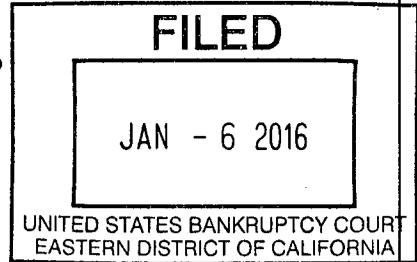


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 15-27861-B-7
)	
JESUS RIVAS ACEVEDO and)	DC No. MDE-1
EVENGELINA CHACON RIVAS,)	
)	
)	
Debtor(s).)	

**ORDER GRANTING WELLS FARGO BANKS' MOTION FOR RELIEF FROM
 AUTOMATIC STAY**

Introduction

Presently before the court is a motion for relief from the automatic stay of 11 U.S.C. § 362(a) filed by Wells Fargo Bank, N.A. Wells Fargo requests relief from the automatic stay of § 362(a) to commence and/or continue post-foreclosure unlawful detainer proceedings under applicable non-bankruptcy law. Wells Fargo seeks to recover possession of real property located at 177 Buckeye Street, Woodland, CA. Debtors Jesus Acevedo and Evengelina Rivas have opposed the motion. For the reasons explained below, Wells Fargo's motion will be granted.

Background

Wells Fargo's motion was filed on October 28, 2015. The debtors' opposition was filed on November 23, 2015. The court held a hearing on November 24, 2015. Because that hearing was

1 set on less than 28-days' notice, the court continued the hearing
2 to January 5, 2016, to allow Wells Fargo additional time to reply
3 to the debtors' opposition. Wells Fargo filed a supplemental
4 declaration and related exhibits on December 22, 2015. The
5 debtors also filed supplemental declarations on December 23,
6 2015.

7 The relevant facts are generally not in dispute. Wells
8 Fargo foreclosed on the debtors' residence on June 15, 2015. The
9 debtors contend that foreclosure was wrongful for a number of
10 reasons but, primarily, because Wells Fargo engaged in "dual-
11 tracking."¹ Nevertheless, a Trustee's Deed Upon Sale was
12 executed and delivered to Wells Fargo on or about June 15, 2015.
13 That trustee's deed was recorded with the Yolo County Recorder on
14 or about June 18, 2015.

15 Wells Fargo served the debtors with a notice to vacate the
16 foreclosed property on or about July 8, 2015. On or about July
17 31, 2015, Wells Fargo filed an unlawful detainer complaint in
18 Yolo County Superior Court and on September 29, 2015, an unlawful
19 detainer judgment was entered in favor of Wells Fargo and against
20 the debtors. A writ of possession also issued on September 29,
21 2015. The debtors filed this chapter 7 case on October 7, 2015.
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25 ¹"Dual-tracking" is a practice unlawful under California law
26 in which a lender pursues foreclosure while a loan modification
27 is pending. See Cal. Civ. Code § 2923.6; Singh v. Bank of
America, 2013 WL 1858436 (E.D. Cal. May 1, 2013).

1 **Discussion**

2 Relief From the Automatic Stay

3 The debtors oppose Wells Fargo's motion on three grounds:
4 (1) Wells Fargo lacks standing to prosecute the motion and seek
5 stay relief; (2) the debtors have wrongful foreclosure claims
6 against Wells Fargo; and (3) Wells Fargo has not established
7 cause.

8 The court overruled and disposed of the debtors' first
9 objection during the hearing on November 24, 2015. Wells Fargo
10 produced, and the court took judicial notice of, a valid and
11 properly recorded trustee's deed which vested title in the
12 aforementioned real property in Wells Fargo. Based on that
13 trustee's deed, the court concluded that Wells Fargo did in fact
14 have standing. See Cruz v. Stein Strauss Trust # 1361, PDO
15 Investments, LLC (In re Cruz), 516 B.R. 594, 602 (9th Cir. BAP
16 2014) (citations omitted); see also Budd v. Fidelity Asset
17 Management, LLC (In re Budd), 2011 WL 4485190 at *2-4 (9th Cir.
18 2011) (trustee's deed upon sale issued upon conclusion of
19 California nonjudicial foreclosure sufficient to establish
20 colorable claim and standing). The court now reaffirms that
21 earlier ruling, which disposes of the debtors' first objection.

22 Regarding the debtors' second objection, the court need not
23 reach the merits of any claims the debtors may have against Wells
24 Fargo in order to determine if stay relief is warranted. A
25 motion for relief from the automatic stay is a summary proceeding
26 that does not involve an adjudication of the merits of claims.

1 As stated by the Ninth Circuit Bankruptcy Appellate Panel in In
2 re Luz Intern., Ltd., 219 B.R. 837 (9th Cir. BAP 1998):

3 Given the limited grounds for obtaining a motion for
4 relief from stay, read in conjunction with the
5 expedited schedule for a hearing on the motion, most
6 courts hold that motion for relief from stay hearings
7 should not involve an adjudication of the merits of
8 claims, defenses, or counterclaims, but simply
9 determine whether the creditor has a colorable claim to
10 the property of the estate.

11 Id. at 842 (citations omitted); see also Veal v. Am. Home Mortg.
12 Servicing, Inc. (In re Veal), 450 B.R. 897, 914-15 (9th Cir. BAP
13 20111); Budd, 2011 WL 4485190 at *2-4.²

14 Having determined that Wells Fargo has shown a colorable
15 claim to the foreclosed property, the only remaining question is
16 whether Wells Fargo has established cause under § 362(d)(1) to
17 permit it to commence and/or continue with unlawful detainer
18 proceedings. The court is persuaded that it has.

19 Following foreclosure and the entry of an adverse unlawful
20 detainer judgment, the debtors no longer have any interest in the

21 ²Although a determination of the merits of the debtors'
22 wrongful foreclosure claims is beyond the scope of this decision,
23 there may indeed be valid "dual-tracking" claims against Wells
24 Fargo. The declaration of Erica Loftis filed on December 22,
25 2015, states that Wells Fargo denied the debtors' loan
26 modification application on March 23, 2015, and published a
27 notice of sale twenty-three days later on April 15, 2015. That
28 may violate Cal. Civ. Code § 2923.6(d) (borrower entitled to 30
days to appeal denial of loan modification application) and §
2923.6(e)(1) (absent an appeal notice of sale may not be
published for at least 31 days after loan modification
application denied). The denial letter of March 23, 2015,
included with the Loftis declaration, may also be defective and
violate Cal. Civ. Code § 2923.6(f). The completed set of
documents the debtors' agent submitted to Wells Fargo on or about
May 1, 2015, might also be construed as a valid loan modification
application. That would mean when Wells Fargo foreclosed on or
about June 15, 2015, it foreclosed while there was a loan
modification application pending.

1 foreclosed property. In essence, their status is effectively
2 that of "squatters" even if they have claims against Wells Fargo
3 for wrongful foreclosure. See Budd, 2011 WL 4485190 at *4-5.
4 Courts routinely find these circumstances are cause under
5 § 362(d)(1). This court agrees. Therefore, Wells Fargo's motion
6 will be granted and the parties may proceed with their respective
7 claims in an appropriate state court forum.

8
9 Waiver of the 14-Day Stay of Federal Rule of Bankruptcy Procedure
10 4001(a)(3)

11 Wells Fargo has requested a waiver of the 14-day stay of
12 Federal Rule of Bankruptcy Procedure 4001(a)(3). That request
13 will be denied. In cases involving real property, a debtor's
14 residence in particular, the court will not waive the 14-day stay
15 of Federal Rule of Bankruptcy Procedure 4001(a)(3) as a matter of
16 course. Doing so would render the Rule meaningless. Thus, if a
17 party seeks a waiver of the 14-day stay of Rule 4001(a)(3), it
18 will need to plead and provide evidence of a real harm if the
19 order granting relief is stayed. Wells Fargo has not done so.

20 Therefore, based on the foregoing;

21 IT IS ORDERED that Wells Fargo's motion is GRANTED and the
22 automatic stay of 11 U.S.C. § 362(a) is terminated and vacated
23 for cause under 11 U.S.C. § 362(d)(1) to permit Wells Fargo, its
24 agents, representatives, successors, and/or assigns to exercise
25 rights under applicable non-bankruptcy law including, but not
26 limited to, the commencement and/or continuation of unlawful
27 detainer proceedings to recover possession of the real property

1 located at 177 Buckeye Street, Woodland, California.

2 IT IS FURTHER ORDERED that the request by Wells Fargo for
3 waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure
4 4001(a)(3) is DENIED.

5 IT IS FURTHER ORDERED that all other relief requested by
6 Wells Fargo is denied.

7 IT IS FURTHER ORDERED that nothing prohibits the debtors or
8 the trustee from pursuing any claims against Wells Fargo in an
9 appropriate forum.

10 Dated: January 5, 2016.

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13 UNITED STATES BANKRUPTCY JUDGE

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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Robert McCann
2100 Watt Avenue, Suite 100
Sacramento CA 95825

Mark D. Estle
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San Diego CA 92130

Alan S. Fukushima
5050 Laguna Blvd #112-580
Elk Grove CA 95758