

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 1, 2016 at 1:30 P.M.

1. [12-34627](#)-C-13 DOROTHY SMITH MOTION FOR RELIEF FROM
PPR-1 W. Scott de Bie AUTOMATIC STAY
1-29-16 [[81](#)]
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the March 1, 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 January 29, 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.

Deutsche Bank National Trust Company seeks relief from the automatic stay with respect to the real property commonly known as 140 Calhoun Street #71, Vallejo, California. The moving party has provided a Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has not made 5 post-petition payments, with a total of \$4,550.98 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 \$208,059.10 (including \$208,059.10 secured by movant's first trust deed), as stated in the Declaration, while the value of the property is determined to

be \$63,000, 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 shall issue a minute order terminating and vacating the automatic stay to allow Deutsche Bank National Trust Company, 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.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 Deutsche Bank National Trust Company, 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 140 Calhoun Street #71, Vallejo, California.

No other or additional relief is granted.

2. [15-29069](#)-C-13 SVETLANA TYSHKEVICH
ASW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-29-16 [[29](#)]

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, Chapter 13 Trustee, and Office of the United States Trustee on January 29, 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 granted.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 10115 Lupine Lane, Auburn, California. The moving party has provided a Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that Movant is the beneficiary under a Deed of Trust which secures a Promissory Note ("Note") in the principal sum of \$1,360,000.00 and that there was a default under the terms of the Note and Deed of Trust and on October 22, 2014, whereby Movant caused to be recorded a Notice of Default and Election to Sell. On March 12, 2015, Movant caused to be recorded a Notice of Sale.

Pursuant to 11 U.S.C. § 362(d)(4), Movant contends that the Debtor's

filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the Property and the transfers of all or part ownership of, or other interest in the Property without the consent of Movant or court approval.

On March 7, 2006, a grant deed was executed in which Svetlana Tyshkevich ("Borrower") purportedly granted interest in the Property to Aleksandr Tyshkevich and Svetlana Tyshkevich, Trustees of the Aleskandr and Svetlana Tyshkevich 2004 Family Trust.

On August 24, 2010, Aleksandr Tyshkevich filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code and was assigned case number 10-42477. The case was dismissed on October 28, 2010 and terminated on March 11, 2011.

On June 4, 2015, a grant deed was executed in which Aleksandr Tyshkevich and Svetlana Tyshkevich, Trustees of the Aleskandr and Svetlana Tyshkevich 2004 Family Trust purportedly granted interest in the Property to Aleskandr and Svetlana Tyshkevich, husband and wife, as Community Property with Right of Survivorship.

On June 5, 2015, Aleksandr Tyshkevich filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code and was assigned case number 15-24584. The case was dismissed on September 17, 2015 for failure to file information and terminated on December 15, 2015.

On October 20, 2015, Aleksandr Tyshkevich filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code and was assigned case number 15-28172. The case was dismissed on November 9, 2015 for failure to file information and terminated on December 23, 2015.

Trustee's Statement of Nonopposition

The Chapter 13 Trustee filed a statement of nonopposition to the Motion.

Debtor's Opposition

The original "Lender" was a non-existing entity (Request for Judicial Notice). The Lender's identity in the loan documents was, allegedly, false. Further, presence of a third undisclosed party, who might really provide the funds for the alleged loan, not only nullifies the contract. It puts Debtor in danger for owing money to the third party, but being foreclosed by strangers. Svetlana Tyshkevich pleads this court to make an effort to identify the true and real creditor of the subject loan in dispute. This issue and others are part of a pending litigation in the United State District Court Eastern District of California, CASE NO. 2:15-cv-02010-JAM-AC: SVETLANA TYSHKEVICH v. WELLS FARGO BANK, et al (Exhibit A).

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's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the Property and the transfers of all or part ownership of, or other interest in the Property without the consent of Movant or court approval. 11 U.S.C. § 362(d)(4).

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 Wells Fargo Bank, N.A., 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 10115 Lupine Lane, Auburn, California.

No other or additional relief is granted.

3. [14-32390](#)-C-13 JOSE/LORENA CHAVEZ
BHT-1 Thomas Gillis

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-29-16 [[67](#)]

PROF-2013-S3 LEGAL TITLE
TRUST VS.

Final Ruling: No appearance at the March 1, 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 January 29, 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 granted.

Creditor, PROF-2013-S3 Legal Title Trust, by U.S. Bank, N.A., as Legal title Trustee its assignees and/or successors in interest, seeks relief from the automatic stay with respect to the real property commonly known as 3240 Castalia Avenue, Los Angeles, California. The moving party has provided the Declaration of La'Tricia Hemphill to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hemphill Declaration states that the Debtor has not made 13 post-petition payments, with a total of \$68,428.23 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 \$1,136,050.35 (including \$1,136,050.35 secured by movant's first trust deed), as stated in the Hemphill Declaration, while the value of the property is unknown because the property was not scheduled.

Pursuant to 11 U.S.C. § 362(d)(4), Movant contends that the Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the Property and the transfers of all or part ownership of, or other interest in the Property without the consent of Movant or court approval.

Trustee's Statement of Nonopposition

The Chapter 13 Trustee filed a statement of nonopposition to the Motion.

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's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved multiple bankruptcy filings affecting the Property and the transfers of all or part ownership of, or other interest in the Property without the consent of Movant or court approval. 11 U.S.C. § 362(d)(4).

The court shall issue a minute order terminating and vacating the automatic stay to allow PROF-2013-S3 Legal Title Trust, by U.S. Bank, N.A., as Legal title Trustee its assignees and/or successors in interest, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 PROF-2013-S3 Legal Title Trust, by U.S. Bank, N.A., as Legal title Trustee its assignees and/or successors in interest, 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 3240 Castalia Avenue, Los Angeles, California.

No other or additional relief is granted.
