

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 4, 2014 at 1:30 p.m.

1. [13-35188](#)-C-13 MARIA ESPINOZA MOTION FOR RELIEF FROM
DJD-1 Steele Lanphier AUTOMATIC STAY
2-13-14 [[34](#)]
SETERUS, INC. VS.

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, all creditors, and Office of the United States Trustee on February 13, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

- A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

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FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code §2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust.

- B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.
- C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.
- D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total \$2,400.93.
- E. No post-petition payments have been made to Movant.
- F. The principal amount due and owing on the Note is \$129,274.36 and there is also an additional deferred principal of \$56,479.13 owed under the modification Agreement.
- G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of \$141,611.00.
- H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$2,400.93 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 \$129,274.36, as stated in the Robinson Declaration, while the value of the property is determined to be \$141,611, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee Response, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent \$1,105.00 and the plan is not confirmed. Debtor has paid a total of \$1,105.00 to date. The Trustee will disburse \$807.00 to Seterus on February 28, 2014.

No Legal Authority Cited

Creditor's Motion does not cite any legal authority. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d) (5), 1001-1(g). LBR 9014-1(f) (1) requires that each motion, opposition, and reply cite legal authority relied upon by the filing party.

While for a "simple" motion for relief from the automatic stay a points and authorities would not be required, the Motion does not provide the court with the legal basis for which relief is requested. It may be for cause, pursuant to 11 U.S.C. § 362(d) (1). It may be based on the contention that there is a lack of equity and the property is not necessary for an effective reorganization pursuant to 11 U.S.C. § 362(d) (2). The court is left to guess, or become the law clerk for Movant's attorney to state grounds and advocate for Movant, what possible legal basis is being asserted.

Discussion

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, while Movant provides the court with information concerning the subject property and related debt, it does not specify under what grounds it is seeking relief.

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause." Moreover, because the property has equity, Movant cannot be granted relief under 11 U.S.C. § 362(d) (1).

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 without prejudice.