

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

March 22, 2016 at 1:30 p.m.

1. [13-31109](#)-E-13 RONALD DICKERSON AND MARY CONTINUED MOTION FOR RELIEF
DVW-1 SANER FROM AUTOMATIC STAY
1-19-16 [[62](#)]
VANDERBILT MORTGAGE AND
FINANCE, INC. VS.

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.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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, Borrowers, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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). 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. At the hearing -----.

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The Motion for Relief From the Automatic Stay is granted.

Ronald Neal Dickerson and Mary Ellen Saner ("Debtor") commenced this bankruptcy case on August 23, 2013. Vanderbilt Mortgage and Finance, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California (the "Asset"). The moving party has provided the Declaration of Jessica Tenbroeck to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Movant asserts that on May 10, 2001, *Patricia and William Vanheekhoven* (who are not Debtors in this bankruptcy case) entered into a security agreement to purchase the Asset in the amount of \$69,162.00. The Movant asserts that the Debtors are not the obligors under the Note. However, the Movant asserts that the Debtor moved to the Asset in December 2014. The Movant argues that the Debtors are tenants on the property.

The Tenbroeck Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of \$2,902.30 in post-petition payments past due.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 27, 2016.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$55,990.14, as stated in the Tenbroeck Declaration.

However, neither the Movant nor the Debtor value the Asset. The Debtor failed to list the Asset on Schedule B.

FEBRUARY 9, 2016 HEARING

At the hearing, the court continued the hearing to 1:30 p.m. on March 22, 2016. Dckt. 69. The court ordered that opposition to the Motion be filed by February 23, 2016. Any replies were ordered to be filed by March 1, 2016.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on February 23, 2016. The opposition states the following with particularity:

1. 6207 Gattysburg Lane, Citrus Heights, CA is debtors' residence and is necessary to an effective reorganization.
2. There is equity in the subject property. Pursuant to 11 U.S.C. § 362(d)(2), the motion should not be granted.
3. Moving party has failed to provide any evidence regarding equity in the subject property and as such their motion should be denied. Pursuant to debtor Mary Saner's declaration, there is \$10,000.00

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equity in the subject property.

4. Debtors entered into an agreement with William Vanheekhoven to purchase the subject property for \$55,114.00. William Vanheekhoven passed away about six months ago. Debtors have been attempting to deal with Mr. Vanheekhoven's heirs so this matter can be presented to the court for approval.
5. It is requests that the matter be continued for 4 months to give debtors time to deal with Mr. Vanheekhoven's heirs and to present the matter to the court for approval if the motion is not denied.
6. Debtors' plan is a 100% plan.

Accompanying the Opposition is the Declaration of Debtor Mary Saner. While essentially stating the same as what is pleaded in the Opposition, Debtor Mary Saner states:

I believe the subject property is worth \$66,000.00 and there is \$10,000.00 in equity in said property.

Dckt. 71, ¶ 3.

MOVANT'S REPLY

The Movant filed a reply to the Debtor's Opposition on March 1, 2016. Dckt. 73. The Movant asserts that the Debtor are not Movant's borrowers but rather "tenants" or "occupants" of the personal property/manufactured home in which the Movant holds a security interest. The Movant's borrowers are, in fact Patricia and William Vanheekhoven.

The Movant asserts that the Vaneekhovens have defaulted on their obligations, failing to tender payments for seven months. Since the Movant's borrowers are deceased, the Movant does not anticipate that nay payment from them or their estate will be forthcoming.

The Movant argues that the Debtor would need to enter into an agreement to approve or ratify any agreement in the purchase of the Property.

The Movant argues that the Debtors have been aware of the Vanheekhoven's death for approximately seven months. The Movant argues that no continuation should be given since the Debtors have had ample time to discuss with the Vanheekhoven's estate on the purchase of the Property.

The Movant concludes by arguing that the Debtor does not have an interest in the collateral and therefore there is no equity. The Movant requests that the Motion be granted.

DEBTOR'S OBJECTION TO MOVANT'S REPLY BRIEF

The Debtor filed an objection to Movant's reply brief on March 11, 2016. Dckt. 77. The Debtor merely states the following:

Objection is made to Vanderbilt Mortgage's reply brief in that it seeks to introduce new set of factual information and

consequently, legal theories based on those facts and as such should not be considered by the court.

Issues raised for the first time in a reply brief should not be addressed by the court. . . .

Dckt. 77 [citations omitted].

**THE BASICS OF THIS CONTESTED MATTER
AND DEBTOR'S BANKRUPTCY CASE**

Ronald Neal Dickerson and Mary Ellen Saner are the Chapter 13 debtors in this bankruptcy case. Movant does assert having any business dealings with Debtor. Key grounds stated with particularity (Fed. R. Bank. P. 9013) include the following:

"The Debtors herein are not Movant's Borrowers nor are they obligors on the Note in any other fashion. At the time of the Debtors' Bankruptcy filing the Debtors did not reside in the Property. It appears that the Debtors moved to the Property in December 2014 after surrendering possession of their principal place of residence.. Debtors are not Movant's borrowers but appear to be tenants in the Property."

Motion, p. 3:12-17. Movant alleges that somehow Debtor has taken possession of the Asset which is located at Movant's mobile home park.

On the Petition, Debtor states that Debtor resides at 5632 Sapunor Way Carmichael, California. Dckt. 1. On Schedule A Debtor lists the Sapunor Way property as an asset, but states that the property will be surrendered. *Id.* at 12. On Schedule J Debtors list having a mortgage or rent payment of \$1,100.00. *Id.* at 29. By Debtor's calculation, after all of Debtor's necessary monthly expenses, there is only \$75.00 of Monthly Net Income to fund a Chapter 13 Plan. *Id.*

Debtor's First Amended Plan which was confirm provides for \$75.00 a month payments for six months and then \$350.00 a month for thirty-six months. First Amended Chapter 13 Plan, Dckt. 49. This plan was confirmed on April 30, 2014. Order, Dckt. 60.

On December 31, 2014, Debtor filed a Notice of Change of Address, which states under penalty of perjury that 6207 Gettysburg Lane is their residence. Dckt. 61. By Debtor's statement, for the past fifteen months Debtor has resided in the Asset.

Debtor Mary Sander testifies that she entered into a contract to purchase the asset from Mr. Vanheekhoven, who passed away approximately six months prior to February 23, 2016 (the date the declaration was filed). Dckt. 71. Therefore, Debtor states that since at least August 2015, Debtor purports to be in contract to buy the Asset. The Motion states as grounds the **failure of Vanheekhoven to make the monthly loan payments beginning with August 2015** - the same month Debtor Mary Sander purports to have entered into a contract to purchase the asset.

While stating that there is a contract to purchase the Asset, no copy of

such a contract is provided. While stating that there is a contract, no terms (such as Debtor being responsible for paying the monthly payment due Movant) are stated.

RULING

In the instant case, the Debtor has failed to provide any evidence to rebut the evidence presented by the Movant as to the instant Motion. The Debtor's opposition does not provide any evidence that the Debtor does in fact hold a legal ownership interest in the Property. The Debtor states that there is an alleged agreement that is being "worked out" between the Debtor and the Movant's borrower's estate to purchase the Property. However, like argued by the Movant, the Debtor has had nearly a year to address the sale of the Property and requests an additional four months to complete such. The court does not believe a further continuance would rectify the issues here.

Furthermore, the Debtor's objection fails to specifically state the grounds for the objection. Rather, the Debtor files a blanket proposition without citing specifics in the reply that the Debtor objects. The court, as stated in the prior tentative, found there to be sufficient evidence that the Debtor does not have an interest in the Property. Nothing presented to date has countered that conclusion.

Movant has provided a copy of the Department of Housing and Community Development Certificate of Title to substantiate its claim of ownership. Dckt. 67, Exhibit 3. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

Debtor's Opposition admits that Debtor currently has no interest in the Asset, but a purported contract to obtain some interest in the future. To support confirmation of the First Amended Plan in this case, Debtor filed Amended Schedule J in which there is no expense item for rent or mortgage, but instead state that they will cut other expenses in order to afford **rent**. Dckt. 48 at 5. Debtor does not purport to have sufficient funds to buy a residence, or as in this case both buy the Asset and then pay rent for a space on which the Asset is located.

As to value, again, Debtor admits to at best having some *contract*, on some unstated terms, to buy the Asset, at some unstated date. If the Debtor was the owner, Debtor could testify as to the value of the Asset. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). But Debtor is not the owner.

Movant has shown cause for termination of the automatic stay. Its

collateral, the Asset, is being occupied by Debtor, who has not interest in the Asset and has no contract with Movant. By Debtor's testimony, the defaults in payment to Movant occurred in the same month that Debtor states to have been in contract to purchase the Asset.

Debtor, which is not in contract with Movant, is holding the Asset, without either making the payments that come due or insuring that the seller purportedly in contract with Debtor makes the payments to protect the Asset. In reality, Debtor's argument as understood by the court boils down to the following:

"Debtor has the right to live in the Asset for free, for so long as Debtor chooses to do so, and Debtor refuses to make any payments to Movant to protect Movant's interests - because Debtor does not want to pay for Debtor's current residence."

The court shall issue an order terminating and vacating the automatic stay to allow Vanderbilt Mortgage and Finance, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the property commonly known as 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is 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 Vanderbilt Mortgage and Finance, Inc. ("Movant") 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 Vanderbilt Mortgage and Finance, Inc. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived.

No other or additional relief is granted.