

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

April 5, 2016 at 1:30 P.M.

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1. [11-34825](#)-C-13 GUSTAVO PEREZ-ZAPATA AND MOTION FOR RELIEF FROM
DJD-1 JENNY PEREZ AUTOMATIC STAY
Seth Hanson 3-16-16 [[45](#)]
SETERUS, 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, parties requesting special notice, and Office of the United States Trustee on March 16, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value 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.

Federal National Mortgage Association c/o Seterus, Inc. seeks relief

from the automatic stay with respect to the real property commonly known as 2699 Rogue Way, Roseville, California. The moving party has provided the 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 2 post-petition payments. 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 \$411,979.40 (including \$271,362.40 secured by Movant's first deed of trust), as stated in the Declaration, while the value of the property is determined to be \$266,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

The motion states that the current monthly payment is \$1,447.77, but the most recent notice of mortgage payment change filed by Movant on 7/10/15 indicates that the payment is \$1,584.27.

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 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 Federal National Mortgage Association c/o Seterus, Inc., 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 Federal National Mortgage Association c/o Seterus, Inc., 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 2699 Rogue Way, Roseville, California.

No other or additional relief is granted.

2. [12-40948](#)-C-13 STEVEN/GINA SERIO
MRG-1 W. Steven Shumway

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-1-16 [[78](#)]

U.S. BANK, N.A. VS.

Tentative Ruling: The Motion to Value 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value 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 for Relief from the Automatic stay is set for evidentiary hearing on [DATE] at [TIME].

Creditor, U.S. Bank, N.A. as Trustee for Stanwich Mortgage Loan Trust, Series 2011-4, seeks relief from the automatic stay with respect to the real property commonly known as 5000 Silverhawk Way, Auburn, California. The moving party has provided the Declaration of Irissa Staggers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Staggers Declaration states that the Debtor has not made 5 post-petition payments, with a total of \$12,402.65 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 \$541,280.61 (including \$425,842.61 secured by movant's first trust deed), as

stated in the Staggers Declaration, while the value of the property is determined to be \$440,000, as stated in Schedules A and D filed by Debtor.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee has filed a statement of non-opposition.

FEBRUARY 23, 2016 HEARING

At the hearing on February 23, 2016, Debtors appearing to voice opposition to the motion, the court ordered additional supplemental pleadings.

MOVANT'S SUPPLEMENTAL DECLARATION

Creditor-Movant filed the supplemental declaration of Irissa Staggers in order to further substantiate the Motion for Relief from Automatic Stay. The Staggers Declaration provides an update to the court, stating that there are now six missed monthly post-petition payments, amounting to over \$13,000 in missed payments. The last payment was received by Creditor on February 11, 2016, which was applied to the September 1, 2015 post-petition monthly mortgage payment. Movant's loan is contractually due for the October 1, 2015 payment and all subsequent payments.

DEBTORS' SUPPLEMENTAL OPPOSITION

Debtors provide that they, having reviewed their records, agree with the list of payments made with the exception of the January 2013 payment. Debtors' records reflect that they made a \$2,400 payment. Debtors have submitted a billing statement for this payment, Exhibit A, Dckt. 88. Debtors records also show that some payments were made that were not conveyed by Creditors:

1. June 2, 2014, \$2,500.00, Check No. 4418, Exhibit B, Dckt. 88.
2. February 24, 2015, \$2,500.00, Check No. 4697, Exhibit C, Dckt. 88.
3. December 4, 2015, \$2,480.53, by phone to Renard, Exhibit D, Dckt. 88.
4. January 14, 2016, \$2,480.53, by phone to Jane, Exhibit D, Dckt. 88.

Debtors further provide that they can find no record of making a \$2,506.19 payment in October 2013, but the payment history submitted by Movant shows that it has \$2,056.37 in suspense. Therefore, Debtors are only delinquent for a partial payment in the amount of \$449.82. Debtors promise to make this partial payment along with their April 2016 payment.

CREDITOR'S SUPPLEMENTAL DECLARATION

On March 29, 2016, Creditor submitted the supplemental declaration of Declarant Irisa Staggers. Ms. Staggers confirms that there are no less than 5 missed monthly post-petition mortgage payments.

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 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).

Here, Debtors aver that rather than being delinquent in 5 post-petition payments, they are in fact only delinquent in a single partial payment in the amount of \$449.82, providing to the court copies of checks and bank statements to support this assertion.

It appearing that a factual, evidentiary dispute has arisen, the court will set this matter for evidentiary hearing.

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 motion is set for evidentiary hearing to resolve the amount of post-petition payment past due, on [DATE] at [TIME].
