

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 21, 2015 at 1:30 p.m.

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1. **11-37716-E-13** MILTON FLOWERS AND
JCW-1 TANISHA GORDON-FLOWERS
Peter G. Macaluso
SELECT PORTFOLIO SERVICING,
INC. VS.
WITHDRAWN BY M.P.
- MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-19-15 [[111](#)]

Final Ruling: No appearance at the April 21, 2015 hearing is required.

U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association as Trustee as successor by merger to LaSalle Bank, National Association as Trustee for WaMu Mortgage Pass-Through Certificate Series 2007-OA2 Trust, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. ("Movant") filed a Withdrawal of the Motion for Relief From Automatic Stay, which the court construes as a voluntary dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

The Motion for Relief From Automatic Stay having been dismissed, **the matter is removed from the calendar.**

2. 13-27986-E-13 DEBORAH CANDATE
Mary Ellen Terranella

VALLEJO CERROS HOMEOWNERS
ASSOCIATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-25-15 [[86](#)]

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.

Notice Provided. The Movant failed to file a Proof of Service. However, in light of the Debtor and Chapter 13 Trustee filing responsive pleadings, the defect is waived.

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 -----.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Vallejo Cerros Homeowners' Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 248 Kathy Ellen Drive, Vallejo, California (the "Property"). Movant has provided the Declaration of Denise Digregorio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

A review of the docket shows that the Movant has failed to provide a copy of the Proof of Service. However, in light of the Debtor and the Trustee

responding to the instant Motion, the failure to attach the Proof of Service is waived.

The Digregorio Declaration states that there are 13 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,847.60 in post-petition payments past due. The Declaration also provides evidence that there are 32 pre-petition payments in default, with a pre-petition arrearage of \$15,240.39.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on March 3, 2015. The Trustee states that the Motion has been scheduled on March 26, 2015, which is a day that is not normally for Chapter 13 matters. Additionally, the Trustee notes that Debtor has paid a total of \$13,479.00 to date.

On March 4, 2015, the Motion was reset for 1:30 p.m. on April 21, 2015. Dckt. 97.

On April 6, 2015, the Trustee filed an additional response stating that Debtor has paid a total of \$13,904.00, attaching a history of the receipts and the disbursements. Dckt. 98.

DEBTOR'S OPPOSITION

Deborah M. Candate ("Debtor") filed an opposition to the instant Motion on April 7, 2015. Dckt. 101. The Debtor asserts that she has paid the post petition dues on or about March 21, 2015 in the amount of \$4,800.00. Dckt. 102, Exhibit A. Furthermore, the Debtor asserts she paid the remaining balance of the post petition HOA dues on or about April 7, 2015. Dckt. 102, Exhibit B.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$238,195.99 (\$20,087.99 in past Homeowners Association dues owed to Movant), as stated in the Digregorio Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$74,925.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when a 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 existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Here, the Debtor has provided evidence of cashier's checks which cure the post-petition delinquencies as alleged by the Movant. Therefore, the Movant appears to be adequately protected and not entitled to relief from the automatic stay for cause.

Furthermore, because Movant has failed to establish the grounds necessary for relief from the automatic stay, Movant is not awarded attorneys' fees.

No other or additional relief is granted by the court.

The court shall issue an 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 Vallejo Cerros Homeowners' Association ("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 Motion is denied without prejudice.