

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 11, 2019 at 1:30 p.m.

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1. [18-25212-C-13](#) **EDDY AGUILAR** **MOTION FOR RELIEF FROM**
[JCW-1](#) **Peter G. Macaluso** **AUTOMATIC STAY**
5-13-19 [47]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient 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 May 13, 2013. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is ~~XXXXX~~.

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Eddy Aguilar’s (“Debtor”) real property commonly known as 4460 Lineras Way, Sacramento, California (“Property”). Movant has provided the Declaration of Charice Gladden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Charice Gladden Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$4,344.80 in post-petition payments past due. The Declaration also provides evidence that there are forty-one pre-petition payments in default, with a pre-

petition arrearage of \$36,912.91.

Movant states that the Debtor's confirmed Plan provides for adequate protection payments while Debtor attempted to modify the loan. The Plan also provides for the Plan to be modified within 14 days of a denial of the requested loan modification. Movant states that formal denial letters were sent to both Debtor and Debtor's Attorney on August 12, 2019 and February 21, 2019. The Debtor has not proposed a modified plan in compliance with requirements set forth in the confirmed plan.

CHAPTER 13 TRUSTEE'S RESPONSE:

David Cusick ("the Chapter 13 Trustee") filed a Response on May 28, 2019. Dckt. 53. The Trustee asserts that the confirmed plan provides for adequate protections to Movant, a Class 1 creditor, which Debtor is current. The adequate protection payments are \$1,060.00 against principal and interest. The confirmed plan also references a pending HAMP Application requiring the Debtor to file a motion to modify the plan within 14 days of a denial of the loan modification. The Trustee also notes that Movant's Motion includes letters that suggest that Debtor has had more than 14 days notice of the denial of the loan modification request and no motion to modify that plan has been filed.

DEBTOR'S RESPONSE:

Debtor's counsel responds that Debtor is current on plan payments under the confirmed Plan and appears to acknowledge that Debtor was required to file and serve a motion to confirm a modified plan within 14 days of the denial of the loan modification request. Debtor's counsel claims that a modified plan and accompanying motion to confirm will be filed prior to the hearing date.

DISCUSSION

At the hearing Debtor states that a Motion to Modify the Plan was filed on -----

~~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 \$198,705.97, as stated in the Charice Gladden Declaration and Schedule D. The value of the Property is determined to be \$355,560.00, as stated in Schedules A and D.~~

~~Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. See *J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.~~

~~—————The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.~~

~~—————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 Wells Fargo Bank, N.A. (“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 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 that is recorded against the real property commonly known as 4460 Lineras Way, Sacramento, California, (“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 to obtain possession of the Property.~~

~~—————No other or additional relief is granted.~~

SAFE CREDIT UNION VS.

Final Ruling: No appearance at the June 11, 2019 hearing is required..

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient 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 May 8, 2019. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.

Safe Credit Union (“Movant”) seeks relief from the automatic stay with respect to Jeffrey Macilraith’s (“Debtor”) real property commonly known as 11817 Corino Way, Rancho Cordova, California (“Property”). Movant has provided the Declaration of Victoria Wolff to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Victoria Wolff Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$9,491.65 in post-petition payments past due. The Declaration also provides evidence that there are seventeen pre-petition payments in default, with a pre-petition arrearage of \$31,563.47. Movant also states that Debtor lists its claim in Class 3 that will be satisfied by the surrender of the Property.

CHAPTER 13 TRUSTEE’S RESPONSE:

David Cusick (“the Chapter 13 Trustee”) filed a Response on May 23, 2019. Dckt. 155. The Trustee flags for the courts that the Debtor is current under plan and that Movant is provided for in Class 3.

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 \$209,287.34 secured by Movant's deed of trust, as stated in the Victoria Wolff Declaration and Schedule D. The value of the Property is determined to be \$475,793.00, as stated in Schedules A and D.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432. The court also notes that Debtor, who did not file an Opposition, provides for Movant in Class 3, proposing to surrender the property to satisfy the debt

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.

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 Safe Credit Union ("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 Safe Credit Union, 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 that is recorded against the real property commonly known as 11817 Corino Way, Rancho Cordova, California, ("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 to obtain possession of the Property.

No other or additional relief is granted.

