

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge
Sacramento, California

July 1, 2014 at 1:30 p.m.

1. 14-24145-C-13 CANDY VILLANUEVA MOTION FOR RELIEF FROM
PD-1 Stephen Chang AUTOMATIC STAY
COLFIN AH-CALIFORNIA 7, LLC 5-29-14 [23]
VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, , and Office of the United States Trustee on May 29, 2014. Twenty-eight days' notice is required. That requirement was met.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant 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:

COLFIN AH-California 7, LLC seeks relief from the automatic stay with respect to the real property commonly known as 156 Roundhill Court, Vallejo, California. The moving party has provided the Declaration of Michael Baker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Baker Declaration states that the Movant acquired title to the property at a pre-petition foreclosure sale held on October 7, 2013. A Notice of Quit was served on Debtor on November 20, 2014. An unlawful detainer complaint was filed in the Superior Court of Solano County on December 17, 2013.

Chapter 13 Trustee Response

The Chapter 13 Trustee informs the court that Debtor is current under the proposed plan and has paid a total of \$1,150.57 to date. Chapter 13 Trustee states that the Movant is not provided for in the plan or Schedules filed by Debtor.

Discussion

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

Movant provided the court with a copy of the Trustee's Deed Upon Sale, which states in the recitals that Candy F. Villanueva (Debtor) and Crisostomo Villanueva (Debtor's husband) executed the Deed of Trust subject to the foreclosure sale. Further, the attached Notice to Quit and Unlawful Detainer Complaint are directed at Debtor and her spouse. (Dkt. 27). 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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow COLFIN AH-California 7, LLC , 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 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 COLFIN AH-California 7, LLC , 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 156 Roundhill Court, Vallejo, California.

2. 14-24184-C-13 DONCELLA LOGAN MOTION FOR RELIEF FROM
APN-1 Lucas B. Garcia AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-30-14 [14]
TOYOTA MOTOR CREDIT
CORPORATION VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2014. Twenty-eight days' notice is required. This requirement was met.

Final Ruling: 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). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to continued the hearing on the Motion to July 29, 2014 at 2:00 p.m. 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:

Creditor, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to an asset identified as a 2004 Nissan 350Z, VIN # ending in 2233. The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nishimura Declaration asserts that Debtor and non-filing Co-Debtor, Mitchell Logan, executed a written contractual agreement on March 6, 2009 to purchase a 2004 Nissan 350Z. The Security Agreement was assigned by Lexus of Sacramento to Movant on March 6, 2009. Pursuant to the terms of the agreement, Debtor and/or non-filing co-Debtor are obligated to pay Movant forty-eight (48) monthly payments of \$549.55. Under the Chapter 13 Plan proposed by Debtor, Movant is to be paid directly, under the terms of the prevailing agreement.

The agreement reach maturity on November 7, 2013 and Debtor remains in possession of the vehicle. The contractual balance of \$11,569.91 is due and owing. Movant asserts that the vehicle is valued at \$11,835.91.

Chapter 13 Trustee

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

Debtor's Opposition

Debtor argues that the vehicle is a necessity for her to work and maintain a stable income. Debtor states that she amended her plan to allow for payment of the Creditor.

Discussion

On June 12, 2014, Debtor cause to be filed an amended Chapter 13 Plan and Motion to Confirm the amended Plan. The hearing on the plan is set for July 29, 2014.

In the Amended Plan, Debtor moves Movant's claim from Class 4 to Class 2 and lists the amount claimed by Movant as \$7,000.00 and proposes a monthly dividend of \$120.00. Based on the information provided by Movant, the claim amount is \$11,569.91. Debtor may be attempting to improperly modify Movant's claim through the Plan. Ultimately, that is an issue for the confirmation hearing.

The court's decision is to continue the hearing on the Motion for Relief from Stay to July 29, 2014 when the court will review the proposed plan for confirmation. Movant can review the proposed treatment and determine whether it can work with Debtor in receiving payment of its claim through a Chapter 13 plan.

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 continued at July 29, 2014 at 2:00 p.m.