

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

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

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1. [13-29907](#)-E-13 SYAMPHAI LIEMTHONGSAMOUT MOTION FOR RELIEF FROM
EAT-1 Scott D. Shumaker AUTOMATIC STAY
6-10-15 [[81](#)]
MIDFIRST BANK VS.

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).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, mortgagors, parties requesting special notice, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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 defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Midfirst Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3669 Reel Circle, Sacramento, California (the "Property"). Movant has provided the Declaration of Misty Honeysuckle to

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introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Honeysuckle Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,934.18 in post-petition payments past due.

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 \$72,038.15 (including \$21,489.15 secured by Movant's first deed of trust), as stated in the Honeysuckle Declaration and Schedule D filed by Syamphai Liemthongsamout ("Debtor"). The value of the Property is determined to be \$90,000.00, as stated in Schedules A and D filed by Debtor.

David P. Cusick, the Chapter 13 Trustee, filed a statement of non-opposition on June 15, 2015.

Debtor, in his timely filed reply, states that the Movant's claim is for a second deed of trust on real property where his mother resides, which was only mistakenly left out of Debtor's Confirmed Plan. However, Debtor indicated on his Schedule D that Movant holds a first deed of trust, on which his mother pays directly. Schedule D, Dckt. 1. Debtor further asserts that he will cure the arrears by the time of this hearing, and will file a Modified Plan within 7 days of his reply. A review of the Docket shows that Debtor has not yet filed a Modified Plan.

The Debtor requests that the court conditionally deny this Motion, contingent on whether Debtor cures post-petition arrears prior to the hearing on this matter. In the alternative, Debtor also states that he is in discussions with Movant's counsel, and requests a continuance so that they can work to resolve this matter.

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 court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due, and a failure to provide for Movant's claim in the Confirmed Plan. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not 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 not granted.

The Movant in passing requests relief from the co-debtor stay of 11 U.S.C. § 1301. However, the Movant does not state with particularity why the co-debtor

stay should be lifted as required by Fed. R. Bankr. P. 9013. Therefore, this request is denied without prejudiced.

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 Midfirst ("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 immediately vacated to allow Midfirst Bank, 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 3669 Reel Circle, Sacramento, 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 not waived for cause shown by Movant.

No other or additional relief is granted.

2. [15-24796-E-13](#) CHRISTOPHER/SARA VENTURA
GHW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-22-15 [[13](#)]

FEDERAL NATIONAL MORTGAGE
ASSOCIATION 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 29 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 -----.

The Motion for Relief From the Automatic Stay is granted.

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2881 Autumn Falls Lane, Lincoln, California (the "Property"). Movant has provided the Declaration of Glenn Wechsler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Under 11 U.S.C. § 541(a)(1), property of the estate includes all interests of the debtor in property as of the commencement of the case. The Wechsler

Declaration provides testimony that the Property was foreclosed upon and sold August 15, 2014. Daniel and Mercedes Riggleman ("Debtor") subsequently filed for bankruptcy, June 15, 2015. Because the Property was sold before commencement of Debtor's case, Debtor had no interest in the Property at the time of filing, and the Property is not property of the estate.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate due to the Property being sold prior to the bankruptcy being filed, establishing cause. 11 U.S.C. § 362(d)(1).

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).

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.

Movant has not 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 not granted.

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 Federal National Mortgage 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 automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Federal National Mortgage Association, its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the real property commonly known as 2881 Autumn Falls Lane, Lincoln, 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 not waived for cause shown by Movant.

No other or additional relief is granted.

3. [15-24798-E-13](#) LELAND CLARK
SMR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-22-15 [[11](#)]

DEBTOR DISMISSED:
06/26/2015
NATOMA MEADOWS HOMEOWNERS
ASSOCIATION VS.

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

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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). 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 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.

Natoma Meadows Homeowners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California (the "Property"). Movant has provided the Declaration of Scott Bland to introduce evidence as a basis for Movant's contention that Leland Clark ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on January 28, 2015. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit B, Dckt. 14.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. 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).

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).

Pursuant to 11 U.S.C. § 362(c)(2) "the stay of any other act under subsection (a) of this section continued until the earliest of - ... (B) the time the case is dismissed." Here, the case was dismissed on June 26, 2015. Dckt. 17. Therefore, the automatic stay is no longer effective as a matter of law, as to any other act except acts against property of the estate, pursuant to 11 U.S.C. § 362(c).

The court shall issue an order terminating and vacating the automatic stay to allow Natoma Meadows Homeowners Association, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Natoma Meadows 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Natoma Meadows Homeowners Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California.

IT IS FURTHER ORDERED that the Movant party having established that the value of the Property subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees.

No other or additional relief is granted.