

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

July 22, 2014 at 1:30 p.m.

1. [14-26110](#)-C-13 NATALIYA SHAYNYUK MOTION FOR RELIEF FROM
SMR-1 Pro Se AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
6-23-14 [[16](#)]

BAINS FAMILY INVESTMENTS,
LLC VS.

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 23, 2014. Twenty-eight days' notice is required. That 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 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 respondent 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. No appearance required. The court makes the following findings of fact and conclusions of law:

Bains Family Investments, LLC seeks relief from the automatic stay with respect to the real property commonly known as 3828 Sierra Gold Drive, Antelope, California. The moving party has provided the Declaration of Sid Rosenberg to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rosenberg Declaration states that Movant is the owner of the subject residential property and Debtor is occupying the property. Movant

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obtained a Judgment for Possession on the subject premises in an unlawful detainer action filed in Sacramento Superior Court, Case No. 14UD02855 on May 28, 2014. On May 29, 2014, a Writ of Possession was issued by the Sacramento Superior Court. The filing of Debtor's bankruptcy has precluded Movant from executing upon the Judgment and Writ of Possession.

Chapter 13 Trustee

The Chapter 13 Trustee filed a statement of non-opposition to the court granting the Motion for Relief from the Automatic Stay.

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 and the estate have no interest in the subject property, beyond a mere possessory interest. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Movant further argues that it is entitled to an *in-rem* order on the basis that Debtor has commenced several bankruptcy filings stalling Movant's execution on its Judgment and Writ of Possession. Movant argues that the multiple filings are part of a scheme to hinder, delay, and defraud creditors.

11 U.S.C. § 364(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

Movant has not met its evidentiary burden in demonstrating that Debtor filed successive cases in bad faith. Movant's pleadings with regard to *in-rem* relief falls short of the particularity standard of FRBP 9013. Further, upon its own review of Debtor's case history, the court only finds one previous case filed on January 22, 2014 and later dismissed on March 17, 2014. It was after dismissal of this case that Movant acquired the Judgment and Writ of Possession. At this point, there is insufficient evidence for the court to conclude that Debtor is using the bankruptcy system in bad faith.

The court shall issue a minute order terminating and vacating the automatic stay to allow Bains Family Investments, 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.

The moving party has plead 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 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 Bains Family Investments, 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 3828 Sierra Gold Drive, Antelope, 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 waived for cause.

No other or additional relief is granted.

2. [12-29421](#)-C-13 ALFREDO/ELVIRA AVILA
DVW-1 Richard W. Suh

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-4-14 [[59](#)]

VANDERBILT MORTGAGE AND
FINANCE, INC. VS.

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, and Office of the United States Trustee on July 4, 2014. Fourteen days' notice is required. That requirement was met.

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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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:

Vanderbilt Mortgage and Finance, Inc. seeks relief from the automatic stay with respect to the personal property commonly known as 1997 Oakwood Manufactured Home, Model 3515000, Serial No. HOTX10A02303. The moving party has provided the Declaration of Joe Maples to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Maples Declaration states that the Debtors entered into a monthly Retail Installment Contract in the original principal amount of \$47,591.00. The contract created a security interest in the subject personal property. Movant is the successor in interest of the contract and collateral secured by the contract. Debtors are currently post-petition delinquent for May and June 2014 contract installment payments, totaling \$891.42. Debtors currently owe no less than \$30,938.78 to Movant under the terms of the contract and Movant has not received a request for a loan modification application.

Chapter 13 Trustee

The Chapter 13 Trustee filed a statement of non-opposition to the court granting the Motion for Relief from the Automatic Stay.

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 Vanderbilt Mortgage and Finance, 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 plead 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 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 Vanderbilt Mortgage and Finance, 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 1997 Oakwood Manufactured Home, Model 3515000, Serial No. HOTX10A02303.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

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3. [11-31959](#)-C-13 JOSE/CONCEPCION PEREZ
MDE-1 Thomas O. Gillis

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-23-14 [[39](#)]

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

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 23, 2014. Twenty-eight days' notice is required. That 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 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 respondent 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. No appearance required. The court makes the following findings of fact and conclusions of law:

U.S. Bank National Association seeks relief from the automatic stay with respect to the real property commonly known as 6051 Penela Way, El Dorado Hills, California. The moving party has provided the Declaration of Michele Crampton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Crampton Declaration states that the Debtor has not made 34 post-petition payments, with a total of \$144,427.27 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 \$696,440.04 (including \$696,440.04 secured by movant's first trust deed), as stated in the Crampton Declaration, while the value of the property is unknown as Debtors did not disclose this interest on their bankruptcy petition.

Chapter 13 Trustee

The Chapter 13 Trustee does not oppose the court granting the Motion for Relief from the Automatic Stay. He notes that neither the Movant nor the property address is included in any of the Debtors' filed schedules.

Discussion

Nature of Debtors' Interest in 6051 Penela Way

Movant asserts that on February 18, 2005, Marcial Villarino III made and delivered a Note in the amount of \$608,000, secured by the Deed of Trust recorded on March 21, 2005, as to the subject property. Marcial Villarino III and Patricia Villarino are owners of record of the property.

Movant asserts that on June 18, 2012, Marcial Villarino III, as co-Trustee of The Marcial Villarino III Revocable Trust, purportedly transferred title to the property to Marcial Villarino III, Patricia Villarino, Jose Perez (co-Debtor), and Silvestre Rojas, all as co-Trustees. The transfer was made without the consent or knowledge of Movant. The Trust Transfer Grant Deed was recorded on June 18, 2012 (Exh. E, Dkt. 45).

On August 27, 2012, Villarino, as co-Trustee, purportedly transferred title to the property to Marcial Villarino III, Patricia Villarino, Maria Cortez, and Fabio Ariza. The transfer was made without the knowledge or consent of Movant and the Trust Transfer Grant Deed was recorded on August 27, 2012 (Exh. F, Dkt. 45).

There was one recorded deed involving co-Debtor Jose Perez and the court will proceed to consider relief from the stay to the extent that Debtors and the estate hold an interest in the property under that deed of trust. (Exh. E, Dkt. 45).

Disposition

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).

As far as the Debtors have an interest in the subject property, the court determines that cause exists for terminating the automatic stay since the debtors have 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 U.S. Bank National Association, 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 plead 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 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 U.S. Bank National Association, 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 6051 Penela Way, El Dorado Hills, 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 waived for cause.

No other or additional relief is granted.

4. [14-25173](#)-C-13 CHRISTOPHER/SARA VENTURA MOTION FOR RELIEF FROM
PD-1 Pro Se AUTOMATIC STAY
6-18-14 [[19](#)]
CENTRAL MORTGAGE COMPANY VS.

Final Ruling: The case having previously been dismissed on July 14, 2014, the Motion is denied as moot.

No appearance required. The court makes the following findings of fact and conclusions of law:

Despite the Motion being denied as moot as a result of the dismissal of Debtors' bankruptcy case, the court will address the *in rem* relief requested pursuant to 11 U.S.C. § 362(d)(4), as this is an issue that transcends mere dismissal of a bankruptcy case.

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

Movant argues it is entitled to an *in rem* order on the basis that Debtors filed multiple bankruptcy cases in bad faith, involving the subject property, 2881 Autumn Falls Lane, Lincoln, California. In support of its argument, Movant merely states in its Motion that Debtor as filed multiple bankruptcy cases affecting the property.

While a review of associated cases reveals the Debtors' two previous cases, these are not mentioned by Movant. Movant has not met its evidentiary burden in demonstrating that Debtor filed successive cases in bad faith. Movant's pleadings with regard to *in-rem* relief fall short of the particularity standard of FRBP 9013 and the relief requested under 11 U.S.C. § 362(d)(4) is denied.

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 having been presented to the
court, the case having been previously dismissed,
and upon review of the pleadings, evidence,
arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied
as moot.

No additional relief is granted.