

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 26, 2016 at 1:30 P.M.

1. [16-24506](#)-C-13 MARCO SIERRA MOTION FOR RELIEF FROM
CPG-1 Pro Se AUTOMATIC STAY
7-12-16 [[9](#)]
SARATOGA HOME LOANS 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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 12, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value 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 -----
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The Motion for Relief from the Automatic stay is granted.
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Saratoga Home Loans seeks relief from the automatic stay with respect to the real property commonly known as 1485 Crystal Air Drive, South

Lake Tahoe, California. The moving party has provided the Declaration of Daniel Morrisson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Movant is the legal owner of the property acquiring title by foreclosure sale pre-petition on February 16, 2016 and recording the deed within the time period imposed by state law. Movant seeks to proceed with the unlawful detainer action filed in state court on May 25, 2016.

Discussion

Movant presents evidence that it is the owner of the Property. 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 El Dorado (Case No. SCU20160079).

Movant has provided a properly authenticated/ 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).

The court shall issue an order terminating and vacating the automatic stay to allow Saratoga Home Loans, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has not pleaded 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 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 Saratoga Home Loans ("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 Saratoga Home Loans
and its agents, representatives and successors, to exercise
and enforce all nonbankruptcy rights and remedies to obtain
possession of the property commonly known as 1485 Crystal
Air Drive, South Lake Tahoe, California.

No other or additional relief is granted.
