

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

July 28, 2015 at 1:30 p.m.

1. [13-22312](#)-E-13 DEBRA MCCASTLE MOTION FOR RELIEF FROM
AT-1 David Foyil AUTOMATIC STAY
7-14-15 [[123](#)]
VILLA SAN JUAN OWNERS
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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 14 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.

Villa San Juan Owners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 101 Balcaro Way Unit 94, Sacramento, California (the "Property"). Movant has provided the Declaration of Racheal Leonard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Leonard Declaration states that there are 28 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$7,964.12 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 \$125,655.07 (including \$5,000.00 secured by Movant's assessment lien), as stated in the Leonard Declaration and Schedule D filed by Debra McCastle ("Debtor"). The value of the Property is determined to be \$42,000.00, as stated in Schedules A and D filed by Debtor.

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 does not exist for terminating the automatic stay because the Movant is properly provided for in the confirmed plan. 11 U.S.C. § 362(d)(1)

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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). 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim.

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 Villa San Juan Owners 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 Villa San Juan Owners 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 101 Balcaro Way Unit 94, Sacramento, California .

No other or additional relief is granted.

2. [13-31986-E-13](#) ASHLEY BAKER
AFR-1 Peter L. Cianchetta

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-29-15 [[79](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the July 28, 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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 29, 2015. By the court's calculation, 29 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.

Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., formerly Wachovia Mortgage, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8651 Mountain Drive, Tahoma, California (the "Property").

The Movant seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1), (2), and (4) because there is no equity in the Property, the Property is not necessary to effect a reorganization, ownership of the Property has been transferred to Debtor without the knowledge or consent of the Creditor. FN.1.

FN.1. The pleading titled "Motion" is possibly the thinnest of stating with particularity the grounds upon which relief is requested in the motion as required by Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 (in adversary proceedings) and 9013 (in contested matters). The grounds stated with particularity in this Motion are:

- A. Wells Fargo Bank, N.A. will make a motion at the hearing on a later date for relief from the automatic stay. [Clearly, this

is an inaccurate statement, as the Motion is stated in writing and have been filed with the court. Wells Fargo Bank, N.A. will make oral *arguments* at the hearing, but the Motion, and the grounds upon which it is based, has already been set forth in writing.]

- B. Wells Fargo Bank, N.A. seeks relief from the automatic stay so that it may enforce its lien rights (of an undescribed nature) against real property commonly known as 8651 Mountain Drive, Tahoma, California. [Wells Fargo Bank, N.A. fails to state whether this is a statutory lien, equitable lien, judicial lien, mortgage, or deed of trust.]
- C. Relief is warranted under both 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4) [treating each of these separate and independent statutory provisions as if they have identical grounds upon which relief can be based] because:
 - 1. There is no equity in the Property;
 - 2. The Property is not necessary to effect a reorganization;
 - 3. Ownership of the Property has been transferred to Debtor without knowledge or consent of Wells Fargo Bank, N.A., or the Debtor in a scheme to delay, hinder and defraud Wells Fargo Bank, N.A.

It appears that Wells Fargo Bank, N.A. pleads that each of these grounds are necessary elements for relief to be granted under these Bankruptcy Code provisions. For two of these elements, Wells Fargo Bank, N.A. states merely legal conclusions and not actual facts asserted to be grounds for relief. For the "necessary for effective reorganization" element, alleging that may be fine as it will be Debtor's burden to prove that element pursuant to 11 U.S.C. § 362(g). As to the "no equity" statement, Wells Fargo Bank, N.A. fails to state grounds, but merely parrots the statute with the ultimate legal conclusion. It may be that while Wells Fargo Bank, N.A. appears to admit that ownership of the Property was transferred to Debtor, Debtor appears to dispute that and apparently asserts that she never accepted the deed. See 12 WITKIN SUMMARY OF CALIFORNIA LAW, REAL PROPERTY § 314; acceptance of a deed is a necessary element to transfer title to property.

- D. Wells Fargo Bank, N.A. requests that the order be effective for a period of two years after recording of the order.
- E. Wells Fargo Bank, N.A. requests [without stating the grounds] that the fourteen-day stay of enforcement of Federal Rule of Bankruptcy Procedure 4001(a)(3) be waived.
- F. Debtor, through her counsel, stipulates to the relief requested in the Motion.
- G. That in addition to the motion, the court, Chapter 13 Trustee, U.S. Trustee, and creditors are directed to read the accompanying points and authorities (six pages), declaration

(four pages), first set of exhibits (twenty-six page), and exhibits for which judicial notice is requested (thirty-seven pages), and stipulation (five pages) to assemble for Wells Fargo Bank, N.A. whatever grounds would be proper to be stated with particularity in the Motion. [The court declines the opportunity to provide associate attorney services to parties to re-draft pleadings.]

At best, the grounds upon which the requested relief is stated is that title to the Property is purported to have been transferred to Debtor, Debtor denies ever having received the property or title to the Property, and the appearance of title having been transferred to Debtor is interfering with Wells Fargo Bank, N.A. from exercising some unstated type of lien rights.

STIPULATION

On June 29, 2015, the Movant and the Debtor filed a Stipulation for In Rem Relief from the Automatic Stay as to the Property. Dckt.97. The stipulation states a number of purported facts, which could well have bene grounds stated with particularity in the Motion. They have not and the court does not recast them as such.

The Stipulation does state that:

- A. Debtor does not oppose Wells Fargo Bank, N.A. being granted relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4) to foreclose upon and obtain possession of the Property.
- B. The relief from stay does not include any attempt to pursue any deficiency claim against the Debtor or property of the estate.
- C. The 11 U.S.C. § 362(d)(4) relief includes the court's order having in rem effect for a period of two years.
- D. The fourteen-day stay of enforcement provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) may be waived by the court.
- E. The Stipulation also appears to agree to the court issuing a mandatory injunction ordering that "Any federal, state, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of this order for indexing and recording." [This is the verbatim language enacted by Congress in 11 U.S.C. § 362(d)(4), but there are no such agencies which are parties to this Motion and such injunctive relief must be requested through an adversary proceeding. Fed. R. Bankr. P. 7001.]

DISCUSSION

Having considered the grounds stated in the Motion and the stipulation of the parties, the court finds cause to grant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (4).

11 U.S.C. §§ 362(d)(1) and (4) allows the court to grant relief for cause, and for enhanced, prospective 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. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (ALAN N. RESNICK & HENRY J. SOMMER EDS. 16TH ED.).

The court finds that proper grounds exist for issuing an order pursuant to both 11 U.S.C. § 364(d)(1) and (4). Movant has provided sufficient evidence concerning a series of events that have impeded the Movant with respect to the subject Property. The unauthorized purported transfers of interests in the subject Property to the Debtor who then filed a bankruptcy were an attempt by third-parties to improperly create the appearance of an automatic stay to delay, hinder, or defraud not only Wells Fargo Bank, N.A. in its efforts to enforce lien rights, but the Debtor in her efforts to reorganize her finances under the Bankruptcy Code.

While not stated with particularity in the Motion, the supporting pleadings make reference to Wells Fargo Bank, N.A. having lien rights pursuant to a deed of trust.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., formerly Wachovia Mortgage, FSB, 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 court also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., formerly Wachovia Mortgage, FSB, 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 8651 Mountain Drive, Tahoma, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

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.