

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 8, 2013 at 9:30 a.m.

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1. [12-26785-E-7](#) LARRY GLENN MOTION FOR RELIEF FROM
PD-1 Michael Rinne AUTOMATIC STAY
7-12-13 [[103](#)]
**DEUTSCHE BANK NATIONAL TRUST
COMPANY 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 12, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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:

Movant Deutsche Bank National Trust Company, solely as Trustee for MASTR Specialized Loan Trust 2006-2 Mortgage Pass-Through Certificates, Series 2006-2 seeks relief from the automatic stay with respect to the real property commonly known as 1513 Coolidge Street, Fairfield, California. The moving party has provided the Declaration of Kathy Santin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Santin Declaration states that the Debtor has not made 14 post-petition payments, with a total of \$22,009.54 in post-petition payments past

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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 \$268,597.05 (including \$185,113.98 secured by movant's first trust deed), as stated in the Santin Declaration, while the value of the property is determined to be \$118,300.00, as stated in Schedules A and D filed by Debtor.

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).

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). 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 Debtor was granted a discharge on July 26, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Deutsche Bank National Trust Company, solely as Trustee for MASTR Specialized Loan Trust 2006-2 Mortgage Pass-Through Certificates, Series 2006-2, 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's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including the provisions of the deed of trust and any other contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what "non-bankruptcy law" is being asserted as the basis for attorney fees. Though the points and authorities makes reference to the deed of trust, the movant was unable to direct the court to any specific provision. Further, no information is given as to the amount of legal fees requested, the legal fees counsel is actually being paid for the motion, or how the court could determine if the fees were reasonable. As such, the request for attorney fees is denied.
FN.1

FN.1. Notwithstanding denying the request for attorneys' fees in this contested matter, this creditor and counsel have presented a plausible basis for the court awarding reasonable attorneys' fees in connection with a motion

for relief which a creditor could include as part of its bid or payoff demand in connection with a non-judicial foreclosure. While not part of the secured claim to be paid through bankruptcy, 11 U.S.C. § 506(b), and not knowing whether there is an unsecured claim, California Code of Civil Procedure §§ 580b and 580d anti-deficiency issues, such may well not be an impediment to the awarding of reasonable attorneys fees, actually incurred and paid or to be paid, for the legal services rendered.

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 Deutsche Bank National Trust Company, solely as Trustee for MASTR Specialized Loan Trust 2006-2 Mortgage Pass-Through Certificates, Series 2006-2, 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 1513 Coolidge Street, Fairfield, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.