

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

October 8, 2015 at 9:30 a.m.

1. 11-36557-E-7 MARTHA RAMIREZ MOTION FOR RELIEF FROM
RWR-1 AUTOMATIC STAY
9-9-15 [304]
TULARE COUNTY TAX COLLECTOR
VS.

Final Ruling: No appearance at the October 8, 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 7 Trustee, and Office of the United States Trustee on September 9, 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.

Tulare County Tax Collectors ("Movant") seeks relief from the automatic stay with respect to three parcels of real property:

1. Assessor's Parcel Number ("APN") 205-232-003-000, commonly known as 232 S. Mirage Avenue, Lindsay, California
 2. APN 205-271-025-000, commonly known as 2537 S. Elmwood Avenue, Lindsay,

California

3. APN 205-271-026-000, with no address but a legal description of "Lots 11 and 12 in Block 26 of the City of Lindsay, County of Tulare, State of California as per map recorded in Book 17, Page 57 of maps in the office of the county recorder of said county."

("parcels of property," or collectively the "Property"). Movant has provided the Declaration of Stacy Mawhiney to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckt. 306.

The Mawhiney Declaration states that the parcels of property have been tax defaulted since June 30, 2008. Dckt. 306, ¶ 5. The court notes that this tax default is a year before Martha Masiel Ramirez, also known as Martha Masiel Acevedo ("Debtor") filed her first petition for Chapter 13 relief on June 26, 2009, and three years prior to the filing for the instant Chapter 7 conversion. Bankr. E.D. Cal. Case No. 09-33215; Dckt. 1, 306 ¶ 4.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the value of, and total debt secured by, each parcel is determined to be:

1. For APN 205-232-003-000, a fair-market value of \$18,738.00 and a total secured debt of \$4,791.31.
2. For APN 205-271-025-000, a fair-market value of \$34,624.00 and a total secured debt of \$6,516.58.
3. For APN 205-271-026-000, a fair-market value of \$25,244.00 and a total secured debt of \$5,290.22.

Dckt. 306, 308 Exs. A-C; Dckt. 15 Schedules A, D. Movant asserts it has been more than five years since the taxes were declared in default; Movant alleges this default makes the property subject to sale for non-payment of taxes under Revenue and Taxation Code § 3691. Dckt. 306 ¶ 5. Further, since the case was converted to Chapter 7 on March 20, 2012, no discharge has been entered; a review of the court's docket shows Trustee has not moved to sell the property in the five years since conversion to Chapter 7. *Id.*

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. 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 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 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 Tulare County Tax Collector ("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 Tulare County Tax Collector, 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 properties described as:

1. Assessor's Parcel Number ("APN") 205-232-003-000, commonly known as 232 S. Mirage Avenue, Lindsay, California;
2. APN 205-271-025-000, commonly known as 2537 S. Elmwood Avenue, Lindsay, California; and
3. APN 205-271-026-000, with no address but a legal description of "Lots 11 and 12 in Block 26 of the City of Lindsay, County of Tulare, State of California as per map recorded in Book 17, Page 57 of maps in the office of the county recorder of said county."

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 shown by Movant.

No other or additional relief is granted.

2. 14-30265-E-7 FRANK/MARINA YAVROM
HDP-2
HOME EXPO FINANCIAL INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-16-15 [[101](#)]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 16, 2015. By the court's calculation, 22 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 denied without prejudice.

Home Expo Financial Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3005 Puffin Cir., Fairfield, California (the "Property"). Movant has provided the Declaration of Jeremy Geng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant failed to provide notice to Sheri Carello, the Chapter 7 Trustee. Fed. R. Bankr. Proc. 9013 requires that the moving party serve the

motion on the trustee or, if applicable, the debtor in possession. Here, a Chapter 7 Trustee has been appointed, and thus must be provided notice. Movant failed to do so. Dckt. 105.

Furthermore, a review of the "Motion" shows that it fails to comply with Local Bankruptcy Rule 9004-1 and Revised Guidelines for Preparation of Documents, which requires that the Motion be filed separate from the exhibits, points and authorities, notice of hearing, and other pleadings. Here, the Movant's "Motion" is 49-pages long, which includes exhibits and the Motion for Relief From Stay Summary Sheet. This is improper and an additional ground for denying the Motion.

The court's review of its files indicates that counsel for movant has appeared in connection with only three bankruptcy cases since 2013. His failure to comply with the Local Bankruptcy Rules appears to be an oversight and not a continuing problem. The court waives the failure to comply in connection with this contested matter. However, such waiver should not be taken as a license not to comply with the basic pleading rules in this District. While the judges in the other two cases waived the non-compliance because it appeared to be an isolated occurrence, further waiver before any judges in this District is unlikely.

The Geng Declaration states that there are 11 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,701.48 in post-petition payments past due. The Declaration also provides evidence that there are 19 pre-petition payments in default, with a pre-petition arrearage of \$2,938.92.

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 \$329,727.15 (including \$310,572.45 secured by Wells Fargo Bank, N.A., as trustee for WaMu pass-through Certificates Series' recorded deed of trust), as stated in the Geng Declaration and Schedule D filed by Debtor. FN1. The value of the Property is determined to be \$, as stated in Schedules A and D filed by Debtor.

FN.1. Schedule D, filed by Debtor, lists the value of the property as \$300,000.00 and describes two liens against the Property held by "Chase" for \$317,121.00 as a first mortgage, and "National City c/o Bucks Financial" for \$17,490.00 as a second mortgage; no amended Schedule D was filed. Dckt. 1 Schedule D.

Home Expo Financial Inc.'s Proof of Claim No. 5, filed January 2, 2015, claimed \$14,530.06 for a note and deed of trust, and valued the property at \$329,000.00; Movant's Proof of Claim provides attachments that describe how the interest held by Buck's Financial was assigned to Movant. Proof of Claim No. 5, p. 22.

Despite these discrepancies, the result is the same regardless of whether the court uses the Schedule D or Proof of Claim No. 5 values: the real property is under-collateralized.

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. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Further, 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). 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).

However, due to the defect in service, the Motion is denied without prejudice.

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 Home Expo Financial Inc. ("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 Motion For Relief From the Automatic Stay is denied without prejudice.