

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 21, 2014 at 1:30 p.m.

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1. [14-28099](#)-E-13 YASWANT/KAMINI SINGH MOTION FOR RELIEF FROM
ADS-2 Len Reid Reynoso AUTOMATIC STAY
9-20-14 [[24](#)]
EVELYN SATTERFIELD VS.

Tentative 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).

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 20, 2014. By the court's calculation, 31 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Rudolph and Evelyn Satterfield ("Movant") seek relief from the automatic stay with respect to the real property commonly known as 13711 Cherokee Lane, Galt, California (the "Property"). Movant has provided the Declaration of Evelyn Satterfield to introduce evidence to authenticate the documents upon

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which it bases the claim and the obligation secured by the Property. Dckt. 26.

The Satterfield Declaration states that there are numerous pre-and post-petition defaults in the payments on the obligation secured by the Property, Movant has not received any payments since August 6, 2013. The Satterfield Declaration also states that Yaswant and Kamini Singh ("Debtors") have cancelled their insurance on the Property. The Declaration and Motion also note that Debtors have filed five prior bankruptcy cases since 2011, all of which have been filed immediately preceding Movant's multiple efforts to foreclose on the Property.

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on October 7, 2014. Dckt. 30. The Trustee states that the Debtors are \$3,188.00 delinquent in plan payments and have not paid any amounts into their plan to date.

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 \$373,532.72 (including \$355,032.72 secured by Movant's first deed of trust), as stated in the Satterfield Declaration. The value of the Property is determined to be \$370,000.00, as stated in Schedules A and D filed by Debtor. FN.1.

FN.1. The court notes that in Movant's Motion, the Satterfields value the Property at \$330,000.00. The Motion states that this value is based on a Zillow Valuation performed by Movant. This valuation, however, was not authenticated in the Satterfield Declaration nor was it filed with the Court as an exhibit, so this value is not supported by sufficient evidence. Debtors' Schedules A and B value the property at \$370,000.00 and, as the owners of the Property, Debtors' opinion of the Property's value is evidence. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Movant additionally alleges that they are entitled to relief from the automatic stay under 11 U.S.C. §§ 362(d)(4) because Debtors are in their sixth bankruptcy case involving Movant's claim. Debtors' circumstances have not changed between the filing of the third bankruptcy (Case No. 11-40337) and the filing of the fourth bankruptcy case (Case No. 12-26563-13, which was filed while the third case was open and pending). The Summary of Schedules filed in each of the last two cases are nearly identical. The fifth case was filed the day of the trustee's sale for the Property. The current case was filed the day before the continued trustee's sale. Again, there was no change in circumstances sufficient to overcome the presumption of bad faith generated by Debtors' multiple filings.

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 and the lack of insurance maintained on the Property. 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). 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.

Additionally, 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.

This is now the Debtors' six bankruptcy case since March 9, 2011. Debtor has not been able to prosecute successfully the prior five cases. Debtor has failed, or refuses, to make the payments on the Plan proposed in this case. The Debtors have daisy-chained their bankruptcy protection for three years, without effectively prosecuting their cases, as follows:

| | Case 11-25814 | Case 10-35690 | Case 11-40337 | Case 12-26563 | Case 14-26529 | Current Case |
|------------------------------|------------------|--------------------|---------------------|------------------|------------------|-----------------|
| Filed | March 9, 2011 | | | | | |
| Dismissed | June 16, 2011 | | | | | |
| Filed | | June 24, 2011 | | | | |
| Filed | | | August 22, 2011 | | | |
| Dismissed | | August 23, 2011 | | | | |
| Converted to Chapter 7 | | | January 10, 2012 | | | |
| Filed | | | | April 3, 2012 | | |
| Chapter 7 Discharge | | | July 10, 2012 | | | |

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|-----------|--|--|--|----------------------|------------------|-------------------|
| Dismissed | | | | November 23, 2013 | | |
| Filed | | | | | June 23, 2014 | |
| Dismissed | | | | | July 11, 2014 | |
| Filed | | | | | | August 8, 2014 |

The Debtors have not, and are not prosecuting these Chapter 13 cases in a good faith effort to rehabilitate their finances. Rather, they have linked them, as well as the Chapter 7 case they converted to, to hinder and delay the Movant.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject Property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by the filing of multiple bankruptcy cases.

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 Rudolph and Evelyn Satterfield ("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 Rudolph and Evelyn Satterfield, their 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 13711 Cherokee Lane, Galt, 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 shown by Movant.

No other or additional relief is granted.