UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 19, 2018 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 2. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE DECEMBER 17, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 3, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 10, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEM 3 AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON NOVEMBER 26, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-26619-A-13 WILLIAM RUTHERFORD — MOTION FOR RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 11-1-18 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

Inasmuch as the bankruptcy was dismissed on November 9, there is no need to terminate the automatic stay. See 11 U.S.C. § 362(c)(1) & (c)(2).

The automatic stay, however, will be annulled.

The movant held a deed of trust encumbering the debtor's home. The movant or its agents conducted a nonjudicial foreclosure of that property on October 22, 2018 at approximately 2:09 PM. This case was filed at 12:31 PM that same day. Before conducting the sale, at approximately 8:09 AM on October 22, the movant or its agent conducted a search of the bankruptcy courts' electronic record to determine whether or not a case had been filed. No case was found. It was not until 2:20 PM that the debtor's real estate broker gave notice of the bankruptcy filing.

The court will annul the automatic stay. In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997); In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003).

Here, the movant did not know of the bankruptcy case when it conducted a foreclosure sale. Given the failure of the debtor to give the movant prompt notice of the bankruptcy filing, the movant conducted the sale without knowing of the case. The property, which is not the debtor's home, is rented by the debtor to third parties. It appears the debtor continues to collect the rent. When this case was filed on October 22, the debtor filed no plan, schedules, or statements. These documents were never filed and the court dismissed the case on November 9 pursuant to an earlier order issued on October 22 and served on the debtor.

Given these facts, it appears this case was filed without any intention on the debtor's part of reorganizing his finances. It was filed to acquire the automatic stay in order to hinder and delay the movant. There is little doubt that had the movant asked for relief from the automatic stay before its foreclosure sale, it would have received it. These facts are sufficient to warrant annulment. See In re Schwartz, 954 F.2d at 572); Algeran, Inc. v. Advance Ross Corp., 759 F.2d 1421, 1425 (9th Cir. 1985); Jewett v. Shabahangi (In re Jewett), 146 B.R. 250, 252 (B.A.P. 9th Cir. 1992).

11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court

shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is not "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant or its successor now is the owner of the property. The movant does not hold a debt secured by the property. Relief under section 362(d)(4) is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant or its successor is the owner of the property.

In rem relief will be denied under 11 U.S.C. § 105 as such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

2. 18-26068-A-13 JOHN LAFFITTE — ORDER TO SHOW CAUSE 10-31-18 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on October 26 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

FINAL RULINGS BEGIN HERE

3.	16-20673-A-13 GSJ-1	GLENN GILKERSON AND THEALISE WAGER	MOTION TO MODIFY PLAN 9-28-18 [87]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party 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 as consent to the granting of the motion. 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 trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.