

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 19, 2017 at 1:30 p.m.

1. 14-29214-C-13 CLEVELAND BELLARD
RLC-1 Mary Ellen Terranella MOTION FOR RELIEF FROM
CHARLES HUFF TRUST VS. AUTOMATIC STAY
11-20-17 [48]

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 20, 2017. Twenty-eight days' notice is required. That requirement was met.

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. 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 continued to January 23, 2018 at 1:30 p.m.

Charles Huff Trust seeks relief from the automatic stay with respect to the real property commonly known as 15454 County Road 44, Guinda, California. The moving party has provided the Declaration of Carole Rominger to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rominger Declaration states that the Debtor has not made property tax payments to Yolo County in the current amount of \$47,256.02 accruing at 18% annually. 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 \$142,660.58

(including \$142,660.58 secured by movant's first trust deed), as stated in the Rominger Declaration, while the value of the property is determined to be \$165,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds that the taxing authority has not filed a claim for the tax arrearages. Trustee affirms that no disbursements have been made to Yolo County Tax Collector. Trustee points out that debtor is delinquent under the plan and without a refinance of the property, debtor will be unable to complete the plan in 60 months.

Debtor's Opposition

Debtor asserts that the issue with the Yolo County is surprising, and debtor's counsel is getting in contact with Yolo County to ascertain the exact amount due and owing and then a modified plan will be filed. Debtor claims that the property is necessary for a reorganization as the debtor obtains income from the property. Debtor states that he is current on plan payments.

Discussion

The court will continue the Motion for Relief from Stay in order to give the debtor the opportunity to modify the plan to provide for property tax arrears. Cause may exist to grant relief from stay if the debtor does not modify the plan.

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 Motion for Relief from Automatic Stay is continued to January 23, 2018 at 1:30 p.m.

FORD MOTOR CREDIT COMPANY
LLC 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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 9, 2017. Twenty-eight days' notice is required. That requirement was met.

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. 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 continued to January 9, 2018 at 2:00 p.m.

Ford Motor Credit Company LLC, seeks relief from the automatic stay with respect to a 2013 Ford F150 motor vehicle.

The Larson Declaration states that the Debtor has not made nearly 6 post-petition payments, with a total of \$7,078.00 in post-petition payments past 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 \$21,974.47, while the value of the property is determined to be \$12,704.00, as stated in Schedules A and D filed by Debtor.

Debtor's Opposition

Debtor responds by asserting that a Motion to Modify has been filed and has a hearing date of January 9, 2018. The proposed modified plan provides for creditor's secured interest and pays the claim in full with interest over the course of the plan.

The Trustee has asserted that the plan is feasible and the debtor is current under the terms of the modified plan.

The court will continue the Motion for Relief from Stay to coincide with the hearing on the modified

plan. Therefore, the Motion for Relief from Stay is continued to January 9, 2018 at 2:00 p.m.

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 Motion for Relief from Stay is continued to January 9, 2018 at 2:00 p.m.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

Tentative Ruling: The Motion to Value 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, parties requesting special notice, and Office of the United States Trustee on December 1, 2017. 14 days' notice is required.

The Motion for Relief from 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.

The for Relief from the Automatic stay is granted.

Federal National Mortgage Association seeks relief from the automatic stay with respect to the real property commonly known as 5805 Ambler Street, Sacramento, California.

The Wechsler Declaration states that the subject property was foreclosed, and a Trustee's Deed Upon Sale was recorded on October 29, 2014. A Notice to Quit was issued and an Unlawful Detainer Complaint was filed on October 3, 2017. A Judgment for Possession was granted on November 27, 2017.

Debtor filed a response on a form for the Central District, and attached a copy of the state court complaint.

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 no longer has an interest in the property after the foreclosure. The State Court proceeding has concluded and the Movant has right to the property.

The court shall issue a minute order terminating and vacating the automatic stay to allow Federal

National Mortgage Association, 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.

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 Federal National Mortgage 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 5805 Ambler Street, Sacramento, CA.

No other or additional relief is granted.
