

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 9, 2024 at 1:30 p.m.

1. [23-22845](#)-E-13
[PGM-1](#)

**GEORGENE HICKS AND
RICARDO ESPARZA**
Peter Macaluso

**CONTINUED AMENDED MOTION TO
IMPOSE AUTOMATIC STAY
9-20-23 [42]**

Tentative Ruling: 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, then the court will make the following findings of fact and conclusions of law:

The Order Setting the Hearing on the Motion to Impose the Automatic Stay was served by the Clerk of the Court on Debtor (*pro se*), Creditors, and Chapter 13 Trustee as stated on the Certificate of Service on August 29 and 30, 2023. The court computes that 14 and 13 days' notice has been provided.

The Motion to Impose the Automatic 362(a) Stay is granted.

As set forth in the Ruling, the court is present with an unexplored, unaddressed, and unadjudicated set of nonjudicial foreclosure laws only recently enacted. Those rights and interests must be determined in an adversary proceeding or contested matter if consented to by the Parties in Interest.

Additionally, in light of the nature of this dispute and the Debtor using the automatic stay in lieu of an injunction, adequate protection will be needed to provide for the competing interest holder in the Property.

REVIEW OF THE MOTION

**INITIAL MOTION FILED BY
DEBTORS *IN PRO SE***

On August 22, 2023, Debtors Georgene Hicks and Ricardo Esparza, Jr., the Chapter 13 Debtors in this Case, (“Debtor”) delivered to the court a letter requesting “an automatic 30 day bankruptcy stay.” The letter describes some family matters that Debtor has been addressing and difficulty using the online filing program. Additionally, it states that Debtor is seeking to engage counsel to represent them in this Bankruptcy Case.

Debtor has filed two prior cases which were pending and then dismissed within one year of the August 22, 2023 filing of the current Bankruptcy case. The two prior cases and their dismissal dates are: 23-21587, dismissed on June 14, 2023, and 22-22894, dismissed on November 21, 2022.

Congress has provided that in the event of there having been two or more bankruptcy cases of an individual debtor that were pending and dismissed within one year of the subsequently filed bankruptcy case, then no automatic stay goes into effect into the subsequently filed bankruptcy case. 11 U.S.C. § 362(c)(4)(A). The statute further provides in 11 U.S.C. § 362(c)(4)(B) and (C) that the Bankruptcy Court may impose the stay provided for in 11 U.S.C. § 362(a), stating:

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; . . .

With respect to the obligation on the debtor or other party in interest seeking imposition of the § 362(a) stay to show that the filing of the subsequent case is in good faith, 11 U.S.C. § 362(c)(4)(D) (emphasis added) provide for a presumption of the filing not being in good faith as follows:

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(I) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

Looking at the Debtors' two prior cases that were pending and dismissed within the prior two years: (1) case 23-21587 was dismissed due to Debtors' failure to file the Schedules, Statement of Financial Affairs, and a Chapter 13 Plan; and (2) case 22-22894 was dismissed due to Debtor's failure to file Schedules, Statement of Financial Affairs, and a Chapter 13 Plan.

The presumption of the subsequent case not being filed in good faith must be overcome by evidence demonstrating good faith filed by Debtors.

The court construes Debtor's Letter to be a Motion for the Imposition of the Automatic Stay as provided in 11 U.S.C. § 362(c)(4)(B). Such Motion must be set for noticed hearing; however, the court can consider imposing the automatic stay on an *ex parte* basis pending a hearing on the Motion. In reviewing the Motion, there is no evidence submitted in support of the Motion and it does not clearly state the grounds upon which the requested relief is proper.

The court issued its Amended Order Imposing the Automatic Stay on an interim basis and setting the hearing on the Motion to Impose the Stay. Order; Dckt. 15.

DEBTOR'S AMENDED MOTION TO IMPOSE AUTOMATIC STAY

Debtor filed an Amended Motion for an Order Obtaining and Imposing the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4)(B) on September 20, 2023. Dckt. 42. The Debtor notes that the original motion to obtain and impose the automatic stay was filed before the expiration of the initial 30 days required by statute. Further, the Debtor argues that under 11 U.S.C. § 362(c)(3)(B), the code allows for a party to request for an extension of the automatic stay upon motion from a party in interest, and the party must show that the most recent filing was filed in good faith. *Id.*

The Debtor cites to *In re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006) for the formula to evaluate whether a second bankruptcy was filed in bad faith. Amended Motion, Dckt. 42. The court in *In re Sarafoglou* considers the following factors: (1) whether the case was filed to "obtain legitimate bankruptcy law protection; (2) whether the debtor "is eligible for such protection and relief"; (3) whether the debtor "is pursuing such protection and relief honestly"; and (4) whether the debtor "has sufficient resources to render the pursuit meaningfully." *In re Sarafoglou*, 345 B.R. 19, 24 (Bankr. D. Mass. 2006)

The Debtor states the new filing was filed in good faith, that it has not acquired any new debt since the previous cases were dismissed, and it has proposed a 100% repayment Plan. Declaration, Dckt. 45.

Now having retained counsel, Debtor believes they will be able to propose a solid Chapter 13 Plan that will allow the Debtor to pay the creditors to the best of their ability. *Id.* The Debtor asks the court to grant the Motion to allow the Debtor to be protected under the bankruptcy laws, reorganize their debts, keep their home, and pay their creditors. *Id.* The court also notes that Debtor has filed its Chapter 13 Plan, Form 122C-1, Schedules A/B, C, D, E/F, G, H, I, and J, Statement of Financial Affairs, and a Summary of Assets and Liabilities, correcting that defect in the case.

Trustee's Opposition to Debtor's Amended Motion To Impose the Stay

On October 17, 2023 Trustee filed an Opposition to Debtor's Amended Motion. Dckt. 54. In its Opposition, Trustee states:

1. Trustee notes Debtor is current under plan payments as of September 25, 2023.
2. Trustee directs the court's attention to Debtor's two previous bankruptcy cases, both filed and dismissed within a year of this case.
3. Debtor still has not filed its most recent tax return information.

Dckt. 54.

Trustee's objections are well-taken; however, Debtor has taken substantial steps toward confirmation of a viable Plan, and Debtor is current on plan payments.

October 20, 2023 Opposition Filed By First Franklin

Computershare Asset Management, LLC on behalf of First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, as Trustee ("First Franklin"), filed an Opposition to the Amended Motion. Dckt. 58. On August 22, 2023, the Property was sold at a foreclosure sale to First Franklin.

First Franklin purchased the Property at the nonjudicial foreclosure sale not as the foreclosing creditor, but as the junior lienholder on the Property. Opposition, ¶ 2; Dckt. 58.

It is argued that there was no automatic stay in effect when the sale was conducted on August 22, 2023. The 11 U.S.C. § 362(c)(4) "Automatic" Stay was only later entered on September 1, 2023, which cannot act retroactively.

An unauthenticated copy of the Foreclosure Trustee's Deed has been provided by First Franklin. Exhibit 1; Dckt. 59. This Trustee's Deed has a recording date of September 15, 2023. The Trustee's Deed is dated September 7, 2023, and on page 3 of the Exhibit states that the Foreclosure Trustee's sale was conducted on August 22, 2023.

First Franklin's Supporting Declaration

On October 30, 2023, First Franklin submitted the Declaration of Bounlet Louvan in support of its October 20, 2023 Opposition. Declaration, Dckt. 67. In her Declaration, Ms. Louvan testifies as to the details of First Franklin's foreclosure of the property commonly known as 109 Moylan Ct., Folsom, California, 95630 ("Property"). Ms. Louvan testifies the foreclosure sale indeed occurred on August 22, 2023, before the automatic stay was imposed. *Id.* at p. 3. Ms. Louvan authenticates supporting exhibits also submitted on October 30, 2023, showing the details of the foreclosure. Exhibits, Dckt. 67.

CONTINUED HEARINGS AND SUPPLEMENTAL PLEADINGS

The hearing on this Motion has been continued multiple times and the Parties have filed supplemental pleadings. A review of the Civil Minutes from the prior hearings (October 24, 2023, November 7, 2023, and December 5, 2023) can provide one with an overview of such supplemental pleadings.

DISCUSSION

A review of the Debtor's proposed Chapter 13 Plan (Dckt. 38) discloses that the Debtor will fund the plan with a \$30,000 payment in month one and then \$3,000 a month for the next fifty-nine months of the Plan. The Trustee's counsel reported at the hearing that the \$30,000 has been received and is being held by the Trustee.

On November 21, 2023, Debtor filed a First Amended Chapter 13 Plan. Dckt. 81, in the First Amended Chapter 13 Plan, the basic terms are (as summarized by the court and identified by paragraph number in the First Amended Plan):

A. Funding of the Plan

1. \$33,000 paid through November 2023,
2. \$3,000 paid in December 2023, and
3. \$6,900 a month commencing in January 2024 and continuing for a 56 months (the balance of the 60 month Plan term).

B. Claims

1. Class 1 Secured Claim

a. Creditor - Select Portfolio Servicing

- (1) Amount of Claim - (\$371,472); Schedule D; Dckt. 37.
- (2) Collateral 109 - Moylan Court
- (3) Payments
 - (a) \$1,870 post petition monthly payment

(b) \$980 a month on (\$54,833.59) arrearage

No proof of claim has been filed by Select Portfolio Servicing. On Schedule D (Dckt. 37 at 11) Select Portfolio Servicing is listed as having a secured claim of (\$371,472), which is secured by the 109 Moyland Court Property, which is stated to have a value of \$609,000.

2. Class 2 Secured Claim

a. Creditor - US Bank National Association (identified as “First Franklin” in this Ruling)

(1) Amount of Claim - (\$150,379.06); Plan, ¶ 3.08.

On October 31, 2023, First Franklin filed Proof of Claim 6-1, which asserts a secured claim in the amount of (\$150,379.06), for which the collateral is listed as 109 Moylan Ct. It appears that the “Select Portfolio Servicing” claim listed by Debtor is that of the foreclosing creditor for the nonjudicial foreclosure sale that was conducted on August 22, 2023.

(2) Collateral - 109 Moylan Court

(3) Payments

(a) \$25,000 lump sum payment prior to January 2024, and \$3,115.00 a month commencing with the January 2024 payment. The interest rate for this Class 2(A) Claim is stated to be 6.00% . Plan, ¶ 3.08.

3. Class 7 General Unsecured Claims.

a. 100% dividend for claims in the state amount of (\$7,839.15).

In the Additional Provisions of the Plan (Plan, § 7), Debtor states that all tax returns have been filed and an objection to the (\$21,143.54) Proof of Claim, 3-1, is being filed.

Time Line of Events

First Franklin outlines the time line for the nonjudicial foreclosure by which it asserts title to the Property as follows:

- Trustee’s Notice of Sale was recorded on September 13, 2022.
- Debtor’s prior Case #1, 22-22894, Filed on November 8, 2022.
 - Trustee’s Sale was set for.....November 8, 2022
 - Trustee’s Sale postponed to.....December 13, 2022

- Debtor's prior Case #1, 22-22894, Dismissed on November 21, 2022.
 - Trustee's Sale postponed to.....February 14, 2023
- Debtor's prior Case #2, 23-21587, filed on May 16, 2023
 - Trustee's Sale postponed to.....May 16, 2023
 - Trustee's Sale postponed to.....June 20, 2023
- Debtor's prior Case #2, 23-21587, dismissed on June 14, 2023.
- Debtor's current Case #3, 23-22845, filed on August 22, 2023.
 - Trustee's Sale postponed to.....August 22, 2023
- Trustee's Sale conducted on August 22, 2023.
 - First Franklin was the winning bid.
- Court Order Imposing Stay Entered.....August 28, 2023 (Dckt. 12)
 - Amended Order Entered.....September 1, 2023 (Dckt. 15)
- Trustee's Deed signed September 7, 2023
- On September 11, 2023, this bankruptcy case was dismissed due to Debtor's failure to file documents.
 - Court vacated the dismissal order onSeptember 13, 2023
- Trustee's Deed recorded..... September 15, 2023

The judge in this case recently participated in a judicial panel with the Hon. Rene Lastreto, in which Judge Lastreto commented on a recent decision he issued relating to substantial changes in the California nonjudicial foreclosure laws and when a nonjudicial sale is final. *See In re Hager*, 651 B.R. 873 (Bankr. E.D. Cal. 2023). These changes are substantial to and alter what had been a straightforward, clear, and efficient nonjudicial foreclosure process. California Civil Code § 2924h and § 2924m create a series of time periods after which a sale at a nonjudicial foreclosure sale is deemed to be final. If the purchaser is not a prospective owner-occupant, the sale is not deemed final until fifteen days after the foreclosure trustee's sale.

Here, the sale occurred on August 22, 2023, the stay was imposed on August 28, 2023 (six days after the sale), and the fifteenth day after the nonjudicial foreclosure sale expired on September 6, 2023 (nine days after the stay was imposed). California Civil Code § 2924m(f) states, "(f) Title to the property shall remain with the mortgagor or trustor until the property sale is deemed final as provided in this section."

Need for Determination of California Law and the Rights and Interests of the Parties

As the court addresses below, what may have been perceived to be a “simple plain language statutory analysis,” the California Legislature has made some sweeping changes to the nonjudicial foreclosure statutes in the past several years (amending the same statutory provisions multiple times).

In simple terms, the Legislature has expressed an intent to promote purchasers at foreclosure sales to be people who intend to occupy the properties rather than large corporate real estate holding companies. While simple in concept, the courtroom is where the legislative rubber meets the adjudication road.

California Law and the Plain Language Thereof At Issue Between the Parties

Though much supplemental briefing has taken place, the underlying facts of the present dispute are simple; however, the law may not be. In this situation, the facts boil down to the following:

- a. On August 22, 2023, Debtor commenced this Bankruptcy Case. No automatic stay went into effect as provided in 11 U.S.C. § 362(c)(4) due to Debtor having had pending and dismissed two prior bankruptcy cases in the one year preceding this Case now before the court.
- b. A nonjudicial foreclosure sale was conducted on August 22, 2023, at which First Franklin was the successful third-party bidder (it not being the foreclosing creditor).
- c. On August 28, 2023, the court entered its Order Imposing the 11 U.S.C. § 362(a) Stay on an Interim Basis and Setting Initial Hearing (Order; Dckt. 12), which Order was amended by the Amended Order Imposing the Stay on an Interim Basis and Setting Initial Hearing (amended to correct a clerical error in stating the Initial Hearing time).
- d. On September 15, 2023, the Trustee’s Deed to First Franklin was recorded.

California has radically amended its nonjudicial foreclosure law as it relates to 1-4 unit dwellings, creating the opportunity for owner/occupier/tenant/community organizations to submit post-foreclosure bids to purchase. These provisions have been through a series of amendments the past several years.

California Civil Code § 2924h(c) states, in pertinent part, the general rule as to when a nonjudicial foreclosure is deemed final and the period in which the recording of the trustee’s deed perfects title back to the final sale date as follows:

(c) In the event the trustee accepts a check drawn by a credit union or a savings and loan association pursuant to this subdivision or a cash equivalent designated in the notice of sale, the trustee may withhold the issuance of the trustee’s deed to the successful bidder submitting the check drawn by a state or federal credit union or savings and loan association or the cash equivalent until funds become available to the payee or endorsee as a matter of right.

For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 21 calendar days after the sale, or the next business day following the 21st day if the county recorder in which the property is located is closed on the 21st day. If an eligible bidder submits a written notice of intent to bid pursuant to paragraph (3) of subdivision (c) of Section 2924m, the trustee's sale shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 60 calendar days after the sale or the next business day following the 60th day if the county recorder in which the property is located is closed on the 60th day. However, the sale is subject to an automatic rescission for a failure of consideration in the event the funds are not "available for withdrawal" as defined in Section 12413.1 of the Insurance Code. The trustee shall send a notice of rescission for a failure of consideration to the last and highest bidder submitting the check or alternative instrument, if the address of the last and highest bidder is known to the trustee.

If a sale results in an automatic right of rescission for failure of consideration pursuant to this subdivision, the interest of any lienholder shall be reinstated in the same priority as if the previous sale had not occurred.

Cal Civ Code § 2924h(c) (emphasis added). This provision begins with the statement that the sale is deemed final upon the acceptance of the final bid, and that title can then be perfected within a 21 day period. A longer period is provided if written notices of intent to bid are submitted as provided in California Civil Code § 2924(m)(c)(3).

California Civil Code § 2924h(c) further provides that with respect to the provisions of § 2924h, they control "except as specifically provided in [11 U.S.C. § 2924m].

Moving to California Civil Code § 2924m(c)(2), it provides that for a trustee's sale of a 1-4 unit residential property through a nonjudicial foreclosure is not deemed final until,

(2) Fifteen days after the trustee's sale unless at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid.

Cal. Civ. § 2924m(b)(2). This period is then extended if a post-foreclosure sale eligible tenant buyer or eligible bidder submits a timely bid or notice of intent to bid. Cal. Civ. § 2924m(b)(3), (4).

California Code of Civil Procedure 2924m(f) and (h) then include specific provisions which address the status of the title to the property pending the running of the applicable period for which it is statutorily deemed to be final, stating:

(f) Title to the property shall remain with the mortgagor or trustor until the property sale is deemed final as provided in this section.

...

(h) This section shall prevail over any conflicting provision of Section 2924h.

What these provisions tell all is that while the sale has occurred on August 22, 2023, it would not be “final” until September 6, 2023. California Civil Code § 2924h(f) expressly states that title remains in the trustor (here the Debtor) until final; however, that title is subject to the provisions of California Civil Code § 2924m, which includes the statutory finality of the sale fifteen days after the nonjudicial foreclosure sale having been conducted.

The open question is what is the effect of California Civil Code § 2924m(c)(2) providing that the sale is not “final” until the expiration of the fifteen (15) day period, or such longer period as provided in the statute if a bid or notice of bid is made by a prospective owner-occupant or eligible tenant buyer as provided in California Civil Code § 2924m(a)(1) and (2). Excluded from “prospective owner-occupant” and “eligible tenant buyer” are “the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor.” Cal. Civ. 2924m(a)(1)(C)(i), (ii); (a)(2)(C).

While California Civil Code § 2924m(f) provides that title remains in the mortgagor or trustor until the “sale is deemed final as provided in this section,” is that title subject to the provisions of California Code of Civil Procedure § 2924m(c)(2) that make the sale final upon the expiration of fifteen (15) days.

Are these statutory rights for the nonjudicial foreclosure sale of property fixed rights, subject only to the conditions subsequent that may occur – none of which conditions are under the control or rights of the mortgagor or trustor (which is the Debtor in this case)?

From the court’s initial review of the Legislative History, while the term “final” is used in the AB 1837 (the Bill which made the Civ. Code § 2924m and other amendments), it is little discussed in the Legislative Committees.

Post-Petition Interests In the Property

At the heart of the dispute is what is the effect of a foreclosure sale conducted before the bankruptcy case is filed and what occurs when, statutorily, that sale is not “final” until after the expiration of a time period. As has been well known, prior California law provided that so long as the trustee’s deed was timely filed (former Cal. Civ. § 2924h), the perfection of such title by recording the trustee’s deed was permitted pursuant to 11 U.S.C. § 362(b)(3).

§ 362(b)(3) provides that the stay does not apply to any act to perfect, maintain, or continue the perfection of an interest in property which are subject to the provisions of 11 U.S.C. § 546(b), which states:

§ 546. Limitations on avoiding powers

(b)

(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title [are subject to any generally applicable law that—

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

Thus, a question arises as to whether a California Civil Code § 2924(c)(2) purchaser of property has rights to finalize the sale and record the trustee's deed an interest "in property to be effective against an entity that acquires rights in such property before the date of perfection; . . ." It could well appear from the language of California Civil Code § 2924m that except for the "prospective owner-occupant" and "eligible tenant buyer," the California Civil Code § 2924(c)(2) buyer comes ahead of all others.

Determination of Rights and Interests in Property

As the respective counsel are aware, absent the consent of the parties, an adjudication of rights and interests in property must be done through an adversary proceeding. Fed. R. Bankr. P. 7001(2). Additionally, it appears that a necessary party is missing from this dispute – the creditor who had the nonjudicial foreclosure sale conducted at which First Franklin was the successful purchaser.

Before the court is "only" a motion to impose the automatic stay while Debtor diligently prosecutes this Chapter 13 Case. Such diligent prosecution will be to have concluded such proceedings as are necessary to determine who are creditors in this case, the effect of the nonjudicial foreclosure sale, and the rights and interests in the Property in dispute.

Adequate Protection in a Bankruptcy Case

It appears that in the present Case the Debtor will be seeking to use the automatic stay in lieu of the normal preliminary injunction that would be necessary to stay a disputed property owner from exercising such disputed rights. In the Great Recession fallout, the court saw a number of debtors who sought to assert that a note or deed of trust was unenforceable and that nothing should be paid to a purported creditor or an asserted purchaser at a nonjudicial foreclosure sale should not be allowed to take control of property.

Here, it is disputed that First Franklin is the owner of the Property. Rather, Debtor asserts that the Debtor/Bankruptcy Estate own it and First Franklin is "merely" an oversecured creditor. Additionally, there is some other creditor (only identified by the name of a loan servicer) who holds an even larger oversecured claim in the Bankruptcy Case.

In the past, when the bankruptcy stay is being used in place of a preliminary injunction while a debtor diligently adjudicates disputes over ownership and obligations, the court has required the debtor to self fund an injunction bond and/or make adequate protection payments.

Here, Debtor's First Amended Plan has been funded with \$33,000.00 through December 2023 (which the Chapter 13 Trustee should be holding) and will be funded with \$6,900 a month for 56 months. For the Select Portfolio Servicing Class 1 Secured Claim, Debtor is allocating \$2,850.07 a month in payments. For the First Franklin Class 2(A) Secured Claim, Debtor allocates another \$3,115.00 a month.

Thus, it would appear that adequate protection could be set up where the portion for the Class 1 Claim will be held, subject to award by the court to First Franklin, for damages caused by the injunction and then the \$3,115.00 a month could be paid on the First Franklin Claim. Even if First Franklin is correct

and it has purchased the property and it's claim set forth in Proof of Claim 6-1 is a foreclosed out junior, the Plan still provides for payment of its (\$150,379.06) unsecured claim in full. Over 60 months, that would average approximately \$2,510 a month.

Therefore, in light of the open question of law as to the effect of California Civil Code § 2924m as amended to delay the foreclosure sale being "final," the post-sale contingencies prior to it being final consisting of persons other than the Debtor being able to put forward bids on the Property, and the apparent ability of Debtor to fund adequate protection payments, the Motion is granted and the automatic stay is imposed pending further order of 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 to Impose the Automatic Stay filed by Georgene Hicks and Ricardo Esparza, Jr. ("Debtor") having been presented to the court, Opposition having been filed by the Chapter 13 Trustee and Computershare Asset Management, LLC on behalf of First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-FFC, U.S. Bank National Association, as Trustee ("First Franklin"), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Impose the Automatic 362(a) Stay is granted and the Stay pursuant to 11 U.S.C. § 362(a) as imposed by the interim order of the court is made final and continues in full force and effect for all persons and property until terminated or modified by further order or operation of law. This imposition of the Stay is without prejudice to any party in interest seeking modification or termination of said Stay.

FINAL RULINGS

2. [22-22100-E-13](#)
[JCW-1](#)

CHRISTINA MARQUEZ
Mo Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-15-23 [\[21\]](#)

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the January 9, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient 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 15, 2023. By the court's calculation, 55 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 and other parties in interest 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 to Confirm Modification of the Stay is granted.

Creditor, Wells Fargo Bank, N.A. ("Movant"), moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant seeks confirmation from the court that no automatic stay is in effect on real property commonly known as 355 Amesbury Drive, Dixon, California 95620 ("Property"), is not in effect pursuant to debtor Christina Marquez's ("Debtor") Plan.

The grounds stated with particularity in the Motion are:

- A. Debtor confirmed a Chapter 13 Plan on October 5, 2013. Order Confirming, Dckt. 13.
- B. Movant's claim is provided for payment as a Class 4 Claim. Plan, Dckt. 3.

C. The terms for treatment of the Class 4 Claim include the following:

Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. **Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.**

Id. at ¶ 3.10-3.11 (emphasis added).

Based on the above, Movant requests relief from the court as follows: “1. For an Order stating that no automatic stay applies to Movant and the Property; 2. For an Order modifying the automatic stay to protect the interest of Wells Fargo Bank, N.A., as the Court deems proper . . .” Motion, Dckt. 21 at 2:19-22.

Neither the Chapter 13 Trustee, David Cusick, or the Debtor has filed any response in this matter.

DISCUSSION

Movant pleads that Class 4 of the Plan confirmed on October 5, 2022, states that “[u]pon Confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.” *See* Dckt. 3 ¶ 3.10-3.11.

Movant’s contention is that the above plan provision results in the following: “there is no automatic stay in effect as to the Property. . . .” Motion, Dckt. 21 at 2:14-17. However, technically, under the plain language of the Class 4 treatment, the automatic stay has only been modified, not terminated, by operation of that provision. Paragraph 3.11 of the Confirmed Chapter 13 Plan in this case provides:

3.11. Bankruptcy stays.

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; **(2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract;** and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law and to exercise its rights against any nondebtor.

Plan, ¶ 3.11(a) (emphasis added).

The modification is for the limited purpose, “to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.” The automatic stay exists, but it is modified. (The court does not endeavor to determine if there are other provisions of the Plan that might affect the automatic stay, leaving such to Movant in later motion(s) if necessary).

There is no allegation of there being a default. However, the modification of the automatic stay is not dependent upon a default. The stay is modified by confirmation of the Plan, and the modification is for the limited purpose of the holder of a Class 4 Claim asserting its rights against its collateral.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic stay when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic “discretion is the better part of valor” principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dckt. 3, in this bankruptcy case, and all bankruptcy stays are modified to allow Movant, and its agents and successors, as the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.

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 to Confirm Absence of the Automatic Stay filed by Wells Fargo Bank, N.A. (“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 is granted and the court confirms that the automatic stay provisions of 11 U.S.C. § 362(a) have been modified by Paragraph 3.11 of Debtor’s Confirmed Chapter 13 Plan (Dckt. 3) to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, that is recorded against the real property commonly known as 355 Amesbury Drive, Dixon, California 95620, (“Property”) to secure an obligation to: (1) 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 to obtain possession of the Property, and (2) exercise its rights against any nondebtor for such obligation.