

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: January 19, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 19, 2021 at 1:00 p.m.

1. [19-22519](#)-B-13 CURTIS/BIANCA PERNICE MOTION TO SELL
[JCK](#)-5 Kathleen H. Crist 12-21-20 [[82](#)]

Final Ruling

The motion 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)(B) 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 court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors Curtis Pernice and Bianca Pernice ("Debtors") propose to sell the property described as 1635 East main Avenue, Morgan Hill, California ("Property").

Proposed purchasers Quyen Hanh Mac and Phu Thanh Huyn have agreed to purchase the Property for \$660,000. Given that the approximate balance to payoff the plan at 100% is approximately \$ 98,959, there will be sufficient funds to payoff the plan. Debtors also state that they will include the standard provisions in the order allowing the Chapter 13 Trustee to coordinate the closing of escrow.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

The motion is granted.

Debtors' attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.

January 19, 2021 at 1:00 p.m.

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2. [16-27824](#)-B-13 JOSE/ARELLY TALAVERA MOTION TO COMPROMISE
MM-1 Michael S. Martin CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOSE CRUZ
TALAVERA AND ARELLY ELYZABETH
TALAVERA
12-22-20 [[32](#)]

CONTINUED TO 2/09/21 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE CHAPTER 13
TRUSTEE'S OBJECTION TO EXEMPTIONS, RDG-1.

Final Ruling

No appearance at the January 19, 2021, hearing is required. The court will enter a
minute order.

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

Introduction

The court has before it a motion by debtor Margaret Jackson ("Debtor") to impose the automatic stay of 11 U.S.C. § 362(a) as to all creditors in this case. This is the Debtor's fourth bankruptcy case filed after three prior cases were dismissed within a one-year period before the December 22, 2020, petition date ("Petition Date") of this case. It is also the Debtor's eighth bankruptcy case filed since 2017. Breckinridge Property Fund 2016, LLC ("Breckinridge") filed an opposition.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case and in all of the Debtor's prior bankruptcy cases. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. *See* General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. *See* Local Bankr. R. 9014-1(h), 1001-1(f).

For the reasons explained below, the motion will be denied and the automatic stay will not be imposed. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

Background

As indicated in *italics* below, the Debtor filed three cases within a one year period prior to the Petition Date and all three cases were dismissed based on the Debtor's failure to timely file documents. This is also the eighth bankruptcy case the Debtor has filed since 2017. The dismissal of all cases follows as similar pattern.

The Debtor's prior bankruptcy cases and their dismissals are as follows:

- a. *Case No. 20-25418, chapter 7, filed on December 2, 2020, and dismissed on December 14, 2020, for failure to timely file documents.¹*
- b. *Case No. 20-24631, chapter 7, filed on October 2, 2020, and dismissed on October 21, 2020, for failure to timely file documents.*
- c. *Case No. 20-21686, chapter 7, filed on March 20, 2020, and dismissed on April 20, 2020, for failure to timely filed documents.*
- d. *Case No. 18-26100, chapter 13, filed on September 27, 2018, and dismissed on*

¹Indicative of what appears to be an attempt to prevent association of the case with the prior dismissed cases, the Debtor did not file the required statement of her social security number with the petition.

October 15, 2018, for failure to timely file documents.

e. Case No. 18-25488, chapter 13, filed on August 30, 2018, and dismissed on September 17, 2018, for failure to timely file documents.

f. Case No. 18-23768, chapter 13, filed on June 15, 2018, and dismissed on July 3, 2018, for failure to timely file documents.

g. Case No. 17-27266, chapter 13, filed on November 1, 2017, and dismissed on November 20, 2017, for failure to timely file documents.

The current motion apparently concerns real property located at 2526 Stanfield Drive, Stockton, California (the "Property").

U.S. Bank foreclosed on the Property on October 1, 2018, and a trustee's deed was recorded on October 12, 2018. On February 26, 2019, U.S. Bank transferred title to the Property to Breckenridge pursuant to a grant deed recorded on March 13, 2019. Breckenridge is a third party purchaser of the Property. It is not, and has never been, the Debtor's lender, landlord, or had any other relationship with the Debtor beyond purchasing Property which was formerly owned by the Debtor.

On May 17, 2019, Breckenridge filed a state court unlawful detainer action to recover possession of the Property. The state court entered an order and judgment awarding Breckenridge possession on December 29, 2020.

The motion is apparently brought for two reasons: (1) to facilitate loan modification discussions by the Debtor; and (2) to avoid foreclosure on the Property. According to Breckenridge, however, it is not (and has not) engaged in loan modification discussions with the Debtor. And as noted above, the Property was foreclosed on long ago.

Discussion

This being the Debtor's fourth bankruptcy case filed after three prior cases were dismissed within the one-year period prior to the Petition Date, no automatic stay of any kind came into effect upon the filing of this case. See 11 U.S.C. § 362(c) (4) (A) (i).

The Debtor also presents no evidence - much less clear and convincing evidence - which overcomes the presumption that the present case was not filed in good faith. See 11 U.S.C. § 362(c) (4) (D). Indeed, the reasons for which the motion is sought, *i.e.*, the automatic stay should be imposed to facilitate loan modification discussions and prevent foreclosure, are non-existent.

Not only has the Debtor failed to overcome the presumption that the present case was not filed in good faith but, considering the totality of the circumstances, *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999), including the Debtor's pre-filing conduct, *In re Huerta*, 137 B.R. 356, 367-68 (Bankr. C.D. Cal. 1992), the court is persuaded that the case was in fact not filed in good faith. The Debtor's repeat filing of nonproductive bankruptcy cases within a very short period of time, all of which were immediately dismissed after being filed with no effort or intent to prosecute, is an abuse of the bankruptcy process, filing bankruptcy cases for an improper purpose, and therefore bad faith. See *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 485 (9th Cir. 1989) (citing *Downey Savings & Loan Ass'n v. Metz, (In re Metz)*, 820 F.2d 1495, 1497 (9th Cir. 1987)).

Conclusion

For the foregoing reasons, the Debtor's motion to impose the automatic stay as to all creditors will be denied. The automatic stay of § 362(a) will not be imposed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

4. [18-24864](#)-B-13 ERIC BARBARY AND MARIAN MOTION FOR RELIEF FROM
[RAS](#)-1 CORK-BARBARY AUTOMATIC STAY
Peter G. Macaluso 12-21-20 [[110](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from automatic stay.

Deutsche Bank National Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 5371 Rockwood Circle, Stockton, California (the "Property"). Movant has provided the Declaration of Marilyn Solivan to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Solivan Declaration states that there are 19 post-petition payments in default totaling \$23,662.76.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$340,205.99 as stated in the Solivan Declaration. The value of the Property is determined to be \$343,000.00 as stated in Schedules A/B and D filed by debtors Eric Barbary and Marian Cork-Barbary ("Debtors").

Discussion

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).

Additionally, 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, it appears that there is 0.815% equity in the Property, which is less than a 20% equity cushion that would provide sufficient adequate protection to the creditor. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Moreover, the Debtors have failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

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.

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [19-26177](#)-B-13 RAYMOND/MICHELLE JONES MOTION TO MODIFY PLAN
[MSN](#)-1 Mark S. Nelson 12-11-20 [[29](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [20-24683](#)-B-13 CARLOS PITTS
[CRP](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY ALVERNAZ PARTNERS LLC
12-2-20 [[41](#)]

CASE DISMISSED 1/08/21

Final Ruling

The case having been dismissed on January 8, 2021, the objection to confirmation is dismissed as moot.

The objection is ORDERED DISMISSED AS MOOT for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion 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)(B) 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 court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor John Fordon ("Debtor") proposes to sell the property described as 26210 Sugar Pine Drive, Pioneer, California ("Property").

The sale of the Property is not free and clear of liens and is a sale for Debtor's one-third interest in 7.53 acres of land. The liquidation value of the one-third interest was scheduled at \$33,000. Dkt. 28. Debtor proposes to pay the Chapter 13 Trustee the entire net proceeds received from the sale, which will be approximately \$30,000.

A response was filed by the Trustee requesting that the Debtor's Estimated Closing Statement be filed with the court, that Debtor clarify the amount of sale proceeds to be turned over to the Trustee, and that standard language be included in any order granting the motion to sell.

The Debtor filed the Estimated Closing Statement with the court on January 8, 2021, dkt. 67, and a response stating that all net proceeds that the Debtor receives from the sale shall be paid to the Chapter 13 Trustee. The Debtor also consents to the inclusion of the requested standard language.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate.

The motion is granted.

Debtor's attorney shall submit an order consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.