UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

January 21, 2014 at 9:31 A.M.

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1. 12-21556-B-13 BARBARA KERMEEN
PD-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
12-12-13 [46]

GREEN TREE SERVICING, LLC
VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. §§ 362 (d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 33779 Feldspar Street NW, Princeton, Minnesota (APN 13.027.2700)(the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. Relief from the co-debtor stay is granted as to co-debtor Byron Leonard Kermeen. The court awards no fees or costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

A plan was confirmed in this case on May 22, 2012 (Dkt. 35). The plan does not specify any treatment for the movant's claim. The movant alleges without dispute that the debtor has not made twenty-two payments on the loan secured by the Property to the movant since the commencement of the case. This constitutes a lack of adequate protection and cause for relief from the automatic stay. Relief from the co-debtor stay is appropriate because the plan does not propose to pay the movant's claim. 11 U.S.C. § 1307(c)(2).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

2. 13-33383-B-13 CHRISTIAN STEELE
MBB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-13 [35]

BANK OF AMERICA, N.A. VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit the

movant to obtain possession of the real property located at 2900 Polaris Road, Tahoe City, California (APN 093010019)(the "Property") in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Cause for the modification exists because the movant acquired title to the Property prior to the date of the filing of the petition, which title is evidenced by the Trustee's Deed Upon Sale dated June 16, 2010 and recorded in the Official Records of the Placer County Recorder's Office on June 24, 2010 (the "Deed Upon Sale")(Dkt. 38 at 2), which Grant Deed conveys title in the Property to the movant. The movant also has a judgment for possession of the Property (the "Judgment") and a writ of possession for the Property from the Placer County Superior Court, arising from a proceeding for unlawful detainer (Dkt. 38 at 47, 49).

The debtor argues that the court should deny the motion because the movant's foreclosure of the debtor's right to redemption in the Property was unlawful, for various reasons, including alleged breach of an agreement regarding a short sale of the Property, and failure to comply with nonjudicial foreclosure requirements.

However, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of such claims. As stated by the Ninth Circuit Bankruptcy Appellate Panel in In re Luz Intern., Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998):

> Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. See In re Johnson, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.") (citation omitted); In re Ellis, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985) ("In any case, stay litigation is not the proper vehicle for determination of the nature and extent of those rights."); Grella, 42 F.3d at 33 ("[W]e find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect, and ... a court hearing a motion for relief from stay should seek only to determine whether the party seeking relief has a colorable claim to property of the estate."); see also, 3 Collier on Bankruptcy ¶ 362.08 [6], 362-106 (15th ed. rev.1997).

The court finds that the movant has shown that it has a colorable claim to the Property, based on the Deed Upon Sale and the Judgment. If the debtor believes that either the Deed Upon Sale or the Judgment is invalid or void, the proper forum for litigating that issue is the court from which the Judgment issued.

The court does not grant the movant's request for an order binding the debtor for 180 days providing that any bankruptcy case filed by the debtor does not affect the movant, nor does the court grant the movant's request for an order preventing the automatic stay in any past, present or future case affecting the Property from affecting the movant. The Bankruptcy Code does not specifically provide for the relief requested by

the movant, and any such grant would have to be made pursuant to an exercise of the court's equitable powers under 11 U.S.C. § 105(a). In the exercise of its § 105(a) authority, a bankruptcy court has broad discretion to shape equitable remedies which further Congressional intent. Pacific Shores Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064, 1070 (9th Cir. 2004) ("[A] bankruptcy court must locate its equitable authority in the Bankruptcy Code."). "[S]tatutory silence alone does not invest a bankruptcy court with equitable powers. Those powers are limited and do not amount to a 'roving commission to do equity.'" Id. (citation omitted). The reference to a "roving commission to do equity" is derived from In re Yadidi, 274 B.R. 843, 848 (9th Cir. B.A.P. 2002)("§ 105 is not a roving commission to do equity or to do anything inconsistent with the Bankruptcy Code"). The court concludes that purporting to use § 105(a) to grant the extraordinary relief requested would conflict with the plain language of § 362(a) ("Except as provided in subsection (b)...a petition filed under section 301, 302, or 303...operates as a stay...."). The conflict between such purported use of § 105(a) and § 362 is highlighted by the multiple filing provisions of section 362(c)(3), (c)(4) and (d)(4), which were added to the Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Had Congress intended that bankruptcy courts could order such relief from the automatic stay based on multiple filings, it surely would have specified that authority in BAPCPA.

To the extent that the extraordinary relief requested can be construed as a request pursuant to 11 U.S.C. § 362(d)(4) for a finding that the bankruptcy case was part of a scheme to delay, hinder and defraud creditors, the request is denied. The sole basis presented by the movant for such relief is that multiple bankruptcy cases filed between October, 2010, and July, 2012, have affected the Property. The court has previously informed the movant and its counsel in its ruling issued on July 24, 2012, in case no. 11-44457-B-7, In re Steele, that it does not consider multiple filings alone to constitute evidence of a scheme to delay, hinder and defraud. See Downey Savings and Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). The movant has cited no authority to the contrary. LBR 9014-1(d)(5).

The court will issue a minute order.