

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

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

1. [14-29214](#)-C-13 CLEVELAND BELLARD CONTINUED MOTION FOR RELIEF
[RLC](#)-1 Mary Ellen Terranella FROM AUTOMATIC STAY
11-20-17 [[48](#)]

CHARLES HUFF TRUST 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 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 denied.

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.

Trustee's Supplemental Response

Trustee points out that debtor's declaration states that he has not been paying on-going tax payments pursuant to the terms of the confirmed plan. Trustee asserts that the plan does not provide that the debtor will not make on-going tax payments.

Discussion

The court continued the Motion for Relief from Stay in order to give the debtor the opportunity to modify the plan to provide for property tax arrears. The court notes that a Modified Chapter 13 plan has been filed and is set for hearing on February 13, 2018. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon personal knowledge (Fed. R. Evid. 601, 602). As a result, the Motion for Relief from Stay will be denied.

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 denied.

2. [16-28366](#)-C-13 TIMOTHY SCHAD
[ASW-1](#) Lucas Garcia

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-15-17 [[86](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY 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 December 15, 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 granted.

Deutsche Bank National Trust Company seeks relief from the automatic stay with respect to the real property commonly known as 10699 Round Valley Road, Grass Valley, California.

The Nanda Sookhal Declaration states that the Debtor has not made 10 post-petition payments, with a total of \$49,349.40 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 \$901,175.34 (including \$475,000.00 secured by movant's first trust deed), as stated in the Sookhal Declaration, while the value of the property is determined to be \$475,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds that debtor has a motion to confirm coming up for hearing on Jan 23, 2018. The plan includes Class 3 claims satisfied by surrender of the property.

Debtor's Response

Debtor responds that a new modified plan will be filed prior to the date of the hearing that will cure all the arrears on the property.

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 has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, the court notes that no amended plan has been filed.

The court shall issue a minute order terminating and vacating the automatic stay to allow Deutsche Bank National Trust Company, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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 Deutsche Bank National Trust Company, 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 10699 Round Valley Road, Grass Valley, California.

No other or additional relief is granted.

3. [17-25398](#)-C-13 DUANE OTT
[PPR-1](#) Marc Voisenat

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-18-17 [[50](#)]

CARRINGTON MORTGAGE
SERVICES, 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 December 18, 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 granted.

Carrington Mortgage Services, LLC seeks relief from the automatic stay with respect to the real property commonly known as 10357 Graciosa Way, Elk Grove, California.

The Cammorah Washington Declaration states that the Debtor has not made more than 2 post-petition payments, with a total of \$3,895.56 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 \$265,929.64 (including \$265,929.64 secured by movant's first trust deed), as stated in the Washington Declaration, while the value of the property is determined to be \$489,540.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee states that the debtor is behind on plan payments in the amount of \$5,611.12 and has paid \$5,611.12 into the plan to date.

Debtor's Response

Debtor responds that the December and January payments will be made through the purchase of cashier's checks.

Creditor's Reply

Creditor points out that debtor has offered no basis to deny the motion. Debtor has not made regular payments. The payments according to the plan do not match the payments required pursuant to the filed proof of claim.

Discussion

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 has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Carrington Mortgage Services, LLC, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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 Carrington Mortgage Services, LLC, 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 10357 Graciosa Way, Elk Grove, California.

No other or additional relief is granted.
