

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 28, 2021 at 10:00 a.m.

1.	<u>20-90633-E-7</u> TERESA TAYLOR <u>ASW-1</u> Pro Se LAKEVIEW LOAN SERVICING LLC VS.	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 11-10-20 [26]
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Final Ruling: No appearance at the January 28, 2021, hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Trustee's Attorney, Tax Lienholder, and Office of the United States Trustee on November 10, 2020. By the court's calculation, 37 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). The defaults of the non-responding parties and other parties in interest are entered.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument is not necessary.

**The hearing on the Motion for Relief from the Automatic Stay is continued to
March 25, 2021, at 10:00 a.m.**

Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay with respect to the debtor Teresa G. Taylor's ("Debtor") real property commonly known as 1505 Jackellen Lane, Modesto, California ("Property"). Movant has provided the Declaration of Melissa Riley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$954.46 in post-petition payments past due. Declaration, Dckt. 29. Movant also provides evidence that there are eight (8) pre-petition payments in default, with a pre-petition arrearage of \$7,635.68. *Id.*

CHAPTER 7 TRUSTEE'S OPPOSITION

Gary R. Farrar ("the Chapter 7 Trustee") filed an Opposition on November 30, 2020. Dckt. 37. The Chapter 7 Trustee opposes the motion on the basis that there is equity for the estate and Trustee wishes to sell the Property for an amount that exceeds Movant's lien as well as that of the Internal Revenue Service.

Trustee argues that after being authorized by the court, he has employed a realtor to market and sell the Property once Trustee is able to communicate with the present occupier of the residence in order to inspect and photograph the Property to determine the listing price. *Id.*, at 2-3. Moreover, according to Trustee, Movant did not communicate with Trustee inquiring as to Trustee's intentions with the Property. *Id.*, at 3:19-21.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$112,553.35 (Declaration, Dckt. 29), while the value of the Property is determined to be \$303,782.00, as stated in Schedules A/B and D filed by Debtor.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Trustee asserts that the value of the Property, \$303,782.00, exceeds the amount of the liens: Movant's lien for \$117,962.99 and the Internal Revenue Service's lien for \$104,787.00 (\$33,619.52 of which Trustee contends is avoidable), which leaves an equity cushion of \$81,031.98. Opposition, Dckt. 37, at 4:10-13. Further adding that after accounting for costs of sale of 8% or \$24,302.56, there is a total equity cushion of \$56,729.42. *Id.*, at 4:14-15.

Here, Trustee has been diligently working on investigating the Property. The case was filed on September 17, 2020 and since then Trustee has reviewed the relevant documents related to the Property, obtained information of the current occupier, moved the court to employ a realtor by October 14, 2020, and has been working on setting up an inspection of the Property in order to market and sell the Property.

Obtaining Possession of the Property

At the hearing, the Trustee reported that the Property is in the possession of a third-party who was a roommate of the Debtor's ex-husband. Though the Trustee has attempted to communicate with the third-party, the third-party has not responded. The Trustee is working with the executor of the ex-husband's estate (the ex-husband's son) to communicate with the third-party and enforce the estate's rights.

The court discussed with counsel for the Trustee and counsel for Movant that the bankruptcy court has exclusive federal court jurisdiction over this property of the bankruptcy estate (unless the court elects to abstain, which it has not) and that as a matter of federal statutory law the third-party is obligated to turn over this property of the bankruptcy estate to the trustee.

The court continued the hearing to allow counsel for the Trustee and counsel for Movant to confer, and combine their legal expertise, to develop the best way for the Trustee to obtain possession of the Property so that he can then market and sell this property of the bankruptcy estate.

Discharge of Debtor

On January 21, 2021 Debtor was granted a discharge. Dckt. 50. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2).

STIPULATED MOTION TO CONTINUE HEARING

On January 27, 2021, the parties filed a Joint Ex Parte Motion and Stipulation to Continue Hearing. Dkt. 52.

In light of the request of the parties, and good cause appearing, the hearing on the Motion for Relief from the Automatic Stay is continued to March 25, 2021, at 10:00 a.m.

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 for Relief from the Automatic Stay filed by Lakeview Loan Servicing LLC ("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 hearing on the Motion for Relief from the Automatic Stay is continued to March 25, 2021, at 10:00 a.m.