UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 23, 2016 at 1:30 p.m.

---

1. 15-28603-E-13 RICARDO SANCHEZ
TOC-2

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-6-16 [34]

STONERIDGE WESTBRIDGE SHOPPING CENTER, LLC VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion - Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to grant the Motion for Relief From the Automatic Stay, terminating the automatic stay.

Stoneridge Westbridge Shopping Center, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2240 Washington Boulevard, Suite 105, West Sacramento, California (the "Property"). The moving party has provided the Declaration of Randy Bacchus to introduce evidence as a basis for Movant's contention that Ricardo Sanchez ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it leased the Property to the Debtor as a tenant. However, the Movant asserts that the Debtor has failed to pay rent. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant seeks to commence an unlawful detainer action in California Superior Court.

David Cusick, the Chapter 13 Trustee, filed an amended response to the instant Motion on January 12, 2016. Dckt. 42. The Trustee states that the Debtor is delinquent $5,071.00 under the terms of the plan. To date, the Trustee states that the Debtor has failed to make a payment. Furthermore, the Trustee states that he is objecting to confirmation of the plan due to the Debtor failing to provide tax returns, failure to provide pay advices for the non-filing spouse, failure to provide for secured debts in the plan, inability of Debtor to make payment, failure to provide business documents, and failure to explain retirement loans.

On February 18, 2016, the court entered an order dismissing the case. Dckt. 59.

DISCUSSION

11 U.S.C. § 362(c)(1) and (2) provides:

In relevant part, 11 U.S.C. § 362(c) provides:

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section--
>
> > (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
> >
> > (2) the stay of any other act under subsection (a) of this section continues until the earliest of--
> >
> > > (A) the time the case is closed;
> > >
> > > (B) ***the time the case is dismissed***; or
> > >
> > > (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--
>
> (1) reinstates–
>
> (A) any proceeding or custodianship superseded under section 543 of this title;
>
> (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
>
> (C) any lien voided under section 506(d) of this title;
>
> (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
>
> (3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of February 18, 2016, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

Additionally, Movant has provided a copy of the lease agreement. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Stoneridge Westbridge Shopping Center, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and

control of the real property commonly known as 2240 Washington Boulevard, Suite 105, West Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

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. Further, no amount of attorneys' fees is requested and no evidence of the amount of attorneys' fees is provided.

The court could consider an award of attorneys' fees as part of a "post-judgment" motion (Fed. R. Bankr. P. 7008(b) and 9014), the cost and expense in attorney time and court resources would likely equal or exceed the cost of this Motion for Relief. Because the contractual or statutory basis for legal fees and evidence could have been provided as part of this Motion, it is unlikely that fees would be granted for litigation a second motion in connection with this Contested Matter. While the court could "guess" what a reasonable amount of attorneys' fees could be, the court has no way of knowing whether such amount is the actual attorneys' fees paid by Movant.

Movant is not awarded any attorneys' fees.

No other or additional relief is granted by 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 for Relief From the Automatic Stay filed by Stoneridge Westbridge Shopping Center, 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Stoneridge Westbridge Shopping Center, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2240 Washington Boulevard, Suite 105, West Sacramento, California.
>
> **IT IS ORDERED** the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were also terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 2240 Washington Boulevard, Suite 105, West Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the February 18, 2016 dismissal of this bankruptcy case filed by Ricardo Sanchez, the Debtor.
>
> **IT IS FURTHER ORDERED** that the Movant party having established that the value of the Property subject to its lien

not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Further, no contractual or statutory basis and no evidence in support of an award of attorneys' fees have been provided with the current Motion.

No other or additional relief is granted.

2. 12-28434-E-13 JOHN/KARIN WESCOM
KR-1

LBS FINANCIAL CREDIT UNION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-3-16 [73]

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

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 February 5, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Relief From the Automatic Stay is denied without prejudice.

John and Karin Wescom ("Debtor") commenced this bankruptcy case on April 30, 2012. LBS Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2005 Extreme RV Monterey series M-300, VIN ending in 8720 (the "Vehicle"). The moving party has provided the Declaration of John Kuecks to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

On February 3, 2016 Movant filed a motion for relief claiming Debtor owes a payoff balance of $2,417.97, although they do not state how much of that total is delinquent under the approved plan. Movant has not provided a approximate value of the Vehicle. Movant also maintains that Debtor exposed the Vehicle to seizure and a subsequent lien sale. Creditor obtained possession of the Vehicle through the lien sale. Creditor seeks relief because "Defendant is not adequately protected."

TRUSTEE'S OPPOSITION

On February 9, 2016, David Cusick, Chapter 13 Trustee, filed an opposition to the instant motion. Dckt. 82. The Trustee states the Debtor is delinquent $150.55 which is less then the monthly plan payment of $171.47. Since July 31, 2015, Debtor has paid Movant $1,221.21, with a remaining balance of $2,417.97.

DISCUSSION

The Movant appears to have a legitimate cause for relief based on the Debtor putting the collateral at risk, causing extra expenses to the Movant, and breaching the contract. While the Creditor has sufficiently established a general basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1), the Movant has not established that, since there is substantial equity in the Vehicle, why they are not adequately protected.

Debtor has been making plan payments, the amount owed is relatively small and there appears to be equity in the Vehicle. 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 $2,416.97, as stated in the John Kuecks Declaration, while the value of the Vehicle is determined to be $9,000.00, as stated in Schedules B and D filed by Debtor.

The Motion does not specify under which subsection of 11 U.S.C. § 362(d) it is attempting to seek relief. The Motion seems to group together both (d)(1) and (d)(2) relief. However, the only discernable ground is:

> Cause exists since the vehicle was depreciating in value. . . and Debtors exposed the vehicle to lien sale.

Dckt. 73. The court construes this as a request pursuant to 11 U.S.C. § 362(d)(1)

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Vehicle for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84

(Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

The Motion is denied without prejudice.

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 LBS Financial Credit Union ("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 denied without prejudice.

3. 15-27854-E-13 DELANOYE ROBERTSON
KB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-26-16 [45]

BAYVIEW LOAN SERVICING, LLC
VS.

THE HEARING HAS BEEN CONTINUED AS REQUESTED BY THE PARTIES THIS REQUEST WAS RECEIVED AFTER THE BELOW ANALYSIS FOR A TENTATIVE RULING WAS PREPARED

THE COURT CONTINUES THE HEARING AND POSTS THIS TENTATIVE, WHICH IT WILL RE-POST FOR THE CONTINUED HEARING TO AFFORD ALL PARTIES THE OPPORTUNITY TO CONSIDER THE ISSUES IDENTIFIED

Final Ruling: No appearance at the February 23, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Correct Notice Not Provided. The court has no Proof of Service on record. However, Movant filed the motion on January 26, 2016. By the court's calculation, 28 days' before the scheduled hearing. 28 days' notice is required. In spite of no record of Proof of Service, Debtor and Trustee have filed a response to the motion.

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.

The hearing on the Motion for Relief From the Automatic Stay is continued to 3:00 p.m. on March 1, 2016. No further pleadings are permitted in connection with this contested matter, except as may be permitted by the court after the March 1, 2016 hearing.

Bayview Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2228 N. Chaco Trail, St. George, Utah (the "Property"). Movant has provided the Declaration of Ju Li Roberson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Roberson Declaration states that Debtor failed to identify Movant's claim in Schedule A of his bankruptcy plan and they are owed a debt of $2,204,122.05 secured by the Property. Movant seeks to foreclose on the Property to collect.

Unfortunately, the Movant failed to file a Proof of Service along with the Motion. While this would typically be grounds to deny the Motion, both the Chapter 13 Trustee and the Debtor have filed responses to the instant Motion. As such, the parties have waived the defect. Therefore, the failure of the Movant to provide a Proof of Service is waived for purposes of the instant Motion.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on February 9, 2016. Dckt. 50. The Trustee states that the Debtor's plan is not confirmed. The Debtor has paid a total of $850.01 to date and is current under the proposed plan. The Trustee states that the Movant is not provided for in the plan per Section 6.05. Dckt. 36. The Debtor provides for $1,400.00 per month rent or home ownership expenses on Schedule J and maintains that the Movant's claim is $0.00 in Schedule D. Further, the Debtor has over $800,000.00 in equity in the Property. The Trustee asserts that the Debtor appears to maintain that the Movant cannot pursue nonjudicial foreclosure based on the statute of limitation. However, due to the fact that the plan does not provide any adequate protection payments and the Debtor has not commenced an adversary proceeding to determine the rights in the Property, the Trustee has no basis to oppose the instant Motion.

DEBTOR'S OPPOSITION

Opposition has been filed by Delanoye Robertson ("Debtor") on February 10, 2016. Dckt. 53. The Debtor asserts that Movant does not have a legitimate claim because the Movant has not properly been assigned the deed of trust. The Debtor argues that MERS could not assign the note. The Debtor further asserts that Bank of America NA could not have assigned the Note to Movant because the Note has either been destroyed intentionally or lost.

The Debtor further contends that there is no lost note affidavit nor is there any evidence of transfer between MERS and Bank of America, N.A.

It is significant that Debtor offers no evidence in opposition to the Motion. Debtor offers no testimony in opposition to the Motion. Rather, Debtor's counsel merely argues that the Debtor does not think that Movant is the creditor.

MOVANT'S REPLY

The Movant filed a reply on February 17, 2016. Dckt. 61. The Movant argues that the stay should be lifted to allow the Utah judicial foreclosure action. Asserting abstention doctrines, the Movant asserts that there is good cause to allow the Movant to pursue its foreclosure action in Utah.

Next, the Movant asserts that Debtor's argument as to the ability of MERS to assign the note is not a valid argument. The Movant states that the Ninth Circuit and Utah courts have rejected the premise that MERS cannot assign the note. The Movant asserts that the deed of trust named United as lender and MERS as nominee for the lender and its successors and assigns. On November 6, 2008, MERS assigned the rights and beneficial interest under the deed of trust to Bank of America, N.A. as evidenced by the assignment of deed of trust recorded on March 4, 2009. Bank of America, N.A. assigned its rights and beneficial interest under the deed of trust to Movant on May 23, 2014, which was recorded on June 6, 2014.

Lastly, the Movant asserts that it is able to enforce the note. The Movant states that it has provided a lost note affidavit executed by Bank of America, N.A., which the Movant asserts renders the note legally enforceable. The Movant contends that based on the validity of the note and the legitimacy of the assignment, the Movant is able to enforce the rights under the note.

DISCUSSION

In order to grant a motion for relief the Movant need only show a colorable claim. They have done just that by providing a copy of an Assignment of Deed of Trust form Bank of America. Whether, Bank of America actually had legal right to assign the note is not a question to be answered through this motion.

Here, the Movant has provided authenticated evidence that the note has been assigned to the Movant and that the Movant has some colorable claim to enforce the rights under the note. The Debtor's argument concerning the statute of limitations and the validity of the note goes to the underlying issue of the claim, which can be properly adjudicated in the foreclosure action. The Debtor admits that there is an obligation secured by the Property. However, the Debtor seems to argue that the assignment has rendered the lost note affidavit ineffective.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

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.

No other or additional relief is granted by the court.

FUTURE OF THE CASE

Looking at the case in its entirety, the court can well envision further proceedings. If Debtor can propose a feasible plan, he may want to obtain determination of whether Movant is the creditor to be paid or there is some other person. As discussed by this court in In re De la Salle, debtor have confirmed plans in which the automatic stay takes the place of an injunction and the plan payments (generally the currently monthly payment and the necessary cure amount) relating to the secured claim are held by the Chapter 13 Trustee or in a blocked account. The monies are either used to pay the creditor on the claim or, if it is determined to have been an improper enjoining of the action of the person asserting the right to the property, as fund to pay the equivalent of Federal Rule of Civil Procedure Rule 65(c) damages [treating the fund as a self-funded bond by the debtor]. *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle*

v. U.S. Bank, N.A. (In re De la Salle), 461 B.R. 593 (B.A.P. 9th Cir. 2011).

While Debtor may dispute that it is Movant who is entitled to be paid, there is a creditor with a claim that is secured by the property. As the Ninth Circuit Court of Appeal noted, deeds of trusts and notes are not destroyed by transfer. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, (9th Cir. 2011).

While the Debtor posits a hypothetical as to why Movant may not be a creditor, the proposed plan chooses to merely ignore the secured debt. Read most charitably, the Chapter 13 Plan (Dckt. 36) provides that Debtor shall make nominal $250 a month payments for sixty months, while the homeowners association debt is paid and some *di minimis* general unsecured claims are paid.

On Amended Schedule I Debtor states gross wage income of $5,700 and net rental income of $994.00 a month. Dckt. 35, at 15-16. After deductions, Debtor has $5,024.01 in Monthly Income. No income is shown for Debtor's spouse.

On Amended Schedule J, Debtor lists monthly expenses of ($4,774.01). Dckt 35 at 17-18. This generates Net Monthly Income of $250.00 with which to fund a plan.

On February 17, 2016, the actual creditor, U.S. Bank, N.A., Trustee, filed Proof of Claim No. 2, asserting a claim in the amount of $2,204,122.05. For this claim, U.S. Bank, N.A., Trustee, asserts that the real property collateral in Utah has a value of $840,000.00. Debtor values the property at $911,800.00 on Amended Schedule A. Dckt. 35 at 7. Giving the Debtor the benefit of the doubt, with a value of $840,000.00, a monthly adequate protection payment could be computed several ways.

First, using an interest rate of 5%, the monthly interest for the loss of the use of $840,000.00 would be $3,500.00 a month. While this does not take into account other possible damages if wrongly enjoined, it is a baseline amount.

In a manner more consistent with Chapter 13, if the Plan provided for amortizing the claim over 30 years and due in 24 months, then the monthly payment into the blocked account would be $4,510.00 a month.

During this time Debtor and creditor could actively pursue a claims objection in this court, promptly adjudicating any disputes concerning ownership of the note, who the creditor is in this case, and the amount of the obligation to be paid.

Taken at face value, if the Debtor is able to only muster $250.00 a month to fund a plan, then it appears that using the automatic stay in lieu of an injunction from a non-bankruptcy court would not be consistent with the Bankruptcy Code. At that point, the Debtor is not lost, but can seek a preliminary injunction from that court. As is obviously, the Bankruptcy Code is not a "free injunction" process intended to turn state court and federal court (Fed. R. Civ. P. 65) injunctions irrelevant, unless there is a *bona fide* bankruptcy purpose to be served.

If the Debtor can undertake a plan which serves a bankruptcy purpose (rather than a nominal plan to use the automatic stay to circumvent the normal injunction requirements), then relief could be sought pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. Movant

may well join in this if there is a bona fide plan advanced and the ability to promptly litigate the disputes concerning the note and who the creditor is through the bankruptcy claims process.

The *bona fide* bankruptcy purpose addresses the abstention issues raised by Movant. Here, if the Debtor were prosecuting a plan which provided relief for creditors (all creditors) as permitted by the Bankruptcy Code, then there is a reason for the exercise of the broad grant of federal court jurisdiction pursuant to 28 U.S.C. § 1334. Having a state court make piecemeal decisions concerning bankruptcy claims and determining interest in property of the estate (for which federal courts are granted exclusive jurisdiction, 28 U.S.C. § 1334(e)) is not consistent with the uniform bankruptcy laws of the United States (U.S. Const. Art. 1, Sec. 8, Cl. 4) and the grant of federal court jurisdiction under 28 U.S.C. § 1334.

Parties Before the Court - Relief Granted

Proof of Claim No. 2 clearly identifies U.S. Bank, N.A., Trustee, as the creditor. Notices and payments are to be sent to Bayview **Loan Servicing**, LLC. This is commonly done for a business that provides the services of a "**loan servicer**." The "**loan servicer**" is an agent for the actual creditor, but not the creditor.

Here, Bayview **Loan Servicing**, LLC has mislabeled itself as "the creditor" rather than the "agent/loan servicer for Creditor U.S. Bank, N.A., Trustee." While the **loan servicer** may properly seek relief from the automatic stay for itself, its principal, and its principal's other agents, it cannot incorrectly tell the court that it is the creditor. This violates the fundamental principles underlying the exercise of federal judicial power - an actual case or controversy between the real parties in interest. U.S. Const. Art. III, Sec. 2.

Bayview Loan Servicing, LLC has request relief from the automatic stay only for itself. No relief has been requested for any principals of Bayview Loan Servicing, LLC or other agents of such principal. The specific relief requested is:

> "21. Bayview requests the stay be lifted solely for purposes of pursuing a judgment allowing **it to foreclose** on the property. Bayview does not ask that the stay be lifted with respect to its claim for a deficiency judgment and it will not take any action to advance that claim in the foreclosure action unless and until this case is dismissed without a discharge
> ...
> 24. Bayview requests that this Court terminate the automatic stay as to Bayview's secured claim on the property currently imposed by 11 U.S.C. §§ 362(d)(1) and (2), and that the Court waive the requirements of Fed. R. B. P. 4001(a)(3) so Bayview may immediately proceed with alternative service of the foreclosure complaint."

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership,

contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The relief from stay requested is to allow Bayview Loan Servicing, LLC, and its agents, representatives and successors,, to conduct a judicial 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 stay is not to be modified to allow the determination of any deficiency judgment or the enforcement of any judgment for a deficiency on the obligation which is the subject of the judicial foreclosure.