

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 22, 2016 at 1:30 P.M.

1. [15-29647](#)-C-13 JASON/SHELLY BELOTTI MOTION FOR RELIEF FROM
RCO-1 Richard Steffan AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
2-22-16 [[48](#)]

LOANDEPOT.COM, 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 February 22, 2016. 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.

LoanDepot.com seeks relief from the automatic stay with respect to the real property commonly known as 3906 Southpark Place, Auburn,

California. The moving party has provided a Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has not yet missed a post-petition payment but has missed eight pre-petition payments. Movant contends that Debtor's Chapter 13 Plan reflects Debtor's intent to surrender the property. 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 \$231,006.48 (including \$231,006.48 secured by movant's first trust deed), as stated in the Declaration, while the value of the property is determined to be \$299,000.00, as stated in Schedules A and D filed by Debtor.

Debtors' Opposition

Debtors point out that there is equity in the property and that Debtors have filed a motion to approve a sale of the property set for hearing on March 22, 2016 at 2:00 p.m.

Discussion

Movant's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

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, 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).

In fact, Debtors point out that this property is subject to a motion to sell, set for hearing on March 22, 2016 at 2:00 p.m. The court is granting that motion. Debtors have sufficiently established that the collateral at issue is necessary to an effective reorganization.

The court shall issue a minute order denying the instant motion.

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 is denied, and the automatic stay provisions of 11 U.S.C. § 362(a) are **not** vacated.

TKR PROPERTIES, LLC VS.

Tentative Ruling: The Motion to Value 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. 14 days' notice is required. That requirement was met.

The Motion to Value 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 -----
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The Motion for Relief from the Automatic stay is

Creditor, Aldea Homes Inc. and TKR Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2004 Two Towers Way, Rocklin, California (the "Property"). The moving party has provided the Declarations of Ranae C. Murray, Ionita Aldea, and Edward Kring to introduce evidence.

Debtor filed this bankruptcy on January 19, 2016. On January 20, 2016, trustee under the deed of trust sold the Subject Property at foreclosure sale to Creditor, who recorded it in the official records of Placer County on January 25, 2016. Exhibit 1, Dckt. 26. Creditor paid the sum of \$420,000 to agent for trustee in certified funds, Exhibit 3, Dckt. 26. On January 25, 2016, Movant received notice of the bankruptcy. The foreclosure trustee also did not receive notice of the bankruptcy until January 25, 2016.

Movant presents evidence that Debtor Alexander Molitvenik is the trustor under a deed of trust securing payment of a promissory note in the amount of \$411,250, encumbering Subject Property. The amount owing under the foreclosing deed of trust as reflected in Notice of Trustee's Sale is \$676,768.07. The value of the property is estimated to be \$540,000 for negative equity of \$136,768.07.

Movant here moves the court to order that the automatic stay be annulled as such stay applied to the foreclosure sale conducted on January 20, 2016, relating to the Property, which was declared sold as to Movants.

Movant further seeks relief from stay to obtain possession of the subject property.

CHAPTER 13 TRUSTEE

On February 17, 2016, Chapter 13 Trustee filed a statement of non-opposition.

DEBTOR'S OPPOSITION

Debtor urges the court to deny the requested relief because Movant recorded the note in violation of the automatic stay, and Movant's efforts here to enforce a lien recorded in violation of the stay should not be permitted. Debtor informed Movant's agent before January 25 that he filed for bankruptcy protection on January 19, 2016. The recording in violation of the stay are thus void.

Additionally, annulment should not be available to Movant because the circumstances here do not present a unique or compelling circumstance, since the violator is seeking the court's equitable powers. Movant does not come before the court with clean hands. Here, Movant is silent on previous contacts that Debtor has had with Movant's Mr. Trombley, who was the party who Debtor notified as to the bankruptcy filing.

Debtor is willing and able to make adequate protection in the form of reasonable rental value, to be determined at evidentiary hearing. Debtors will be moving to file an adversary complaint for violation of the stay. Debtor requests an evidentiary hearing.

FEBRUARY 23, 2016 HEARING

At hearing on February 23, 2016, the originally set hearing date on this motion, the court continued the instant matter to provide time for further supplemental pleadings.

CREDITOR'S SUPPLEMENTAL BRIEF

On March 2, 2016, Creditor filed a supplemental brief in support of the original relief requested. Creditor reiterates the original facts submitted, and again states to the court the detrimental effect not annulling the stay to make the foreclosure sale effective will have on the Creditor, including obtaining a refund of the funds paid, a new notice of sale issued, recorded and posted, and another sale conducted. Creditor states that there is no equity in the property and no loss to the bankruptcy estate.

DISCUSSION

Movant seeks relief from the automatic stay with respect to the real property commonly known as 2004 Two Towers Way, Rocklin, California (the "Property"). Movant has provided the Declarations of Ranae C. Murray, Ionita Aldea, and Edward Kring to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$676,768.07, as stated in the Declarations. The value of the Property is determined to be \$488,359, as stated in Schedules A and D filed by Debtor.

Movant seeks retroactive relief of the automatic stay for its trustee's sale in this case pursuant to *In re National Environmental Waste Corp.*, 129 F.3d 1052 (9th Cir. 1997) and *In re Fjeldsted*, 293 B.R. 12 (B.A.P. 9th Cir. 2003). Movant alleges that Debtor engaged in inequitable conduct because Debtor and the co-owners of the Property did not give notice of the bankruptcy to the foreclosure trustee or Movants until after the foreclosure sale. In addition, Debtor and wife have filed previous bankruptcies since 2012 that have delayed completion of foreclosure proceedings that began in 2012 with the recording of a Notice of Default. The court docket reflects that Debtor Alexander Molitvenik has filed three bankruptcy cases: (1) 10-43445; (2) 13-32961; and (3) 15-26950. These cases were dismissed for, among other things, failure to provide necessary documents and failure to appear at 341 meetings. Debtor's spouse Tatyana Molitvenik filed a chapter 13 case in 2012, 12-39938. That case was dismissed for failure to provide necessary information (tax documents, pay advices) and failure to appear at 341 meeting.

The court will render its decision upon hearing the arguments of the parties on March 22, 2016.

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 Aldea Homes Inc. and TKR Properties, 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

3. [16-20794](#)-C-13 ANGELA BISHOP
APN-1 Mohammad Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-23-16 [[15](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the March 22, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

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 23, 2016. Twenty-eight 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). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, 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.

Creditor, Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services, seeks relief from the automatic stay with respect to the real property commonly known as a 2007 Toyota Camry, VIN ending 2657. The moving party has provided the Declaration of Cary Mayes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Mayes Declaration states that the Debtor has not made \$4,633.52 in pre-petition payments, and Creditor is currently in possession of the vehicle. From the evidence provided to the court, and only for purposes of this Motion for Relief the value of the property is determined to be \$8,500, as provided by Movant, as Debtor has not scheduled the subject 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).

Chapter 13 trustee has filed a motion of non-opposition.

The court shall issue an order terminating and vacating the automatic

stay to allow Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2007 Toyota Camry ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.
