

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 11, 2023 at 1:30 p.m.

1. 19-21013-E-13 APN-1	MELISSA LOVATO Thomas Amberg	MOTION FOR RELIEF FROM AUTOMATIC STAY 3-1-23 [67]
SPECIALIZED LOAN SERVICING LLC VS.		

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient 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 March 1, 2023. By the court’s calculation, 41 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.

The Motion for Relief from the Automatic Stay is granted, the court confirming that the automatic stay has been modified by the confirmation of Debtor’s Chapter 13 Plan, Dckt. 15.

Specialized Loan Servicing LLC (“Movant”) seeks relief from the automatic stay with respect to Melissa Lovato’s (“Debtor”) real property commonly known as 2955 Stable Drive, West Sacramento,

California (“Property”). Movant has provided the Declaration of Steven B. Ross 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 four post-petition payments, with a total of \$7,785.37 in post-petition payments past due. Declaration, Dckt. 69.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 28, 2023. Dckt. 75. Debtor states the Motion is moot, as Debtor is treating Creditor as a Class 4 claim, which allows Creditor to exercise their rights against the collateral. Additionally, Debtor states they have been working diligently with their loan servicer to catch-up payments after falling behind.

DISCUSSION

Creditor is treated as a Class 4 claim in the Plan. Plan, Dckt. 4. Pursuant to the Plan, the automatic stay is modified to allow the holder of a Class 4 secured claim exercise its rights against its collateral and any nondebtor in the event of a default. *Id.* at 4, § 3.11(a).

The court shall issue an order confirming the stay as modified 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.

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 Specialized 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 as of the confirmation of the Plan filed February 20, 2019, confirmed April 18, 2019, the automatic stay provisions of 11 U.S.C. § 362(a) were modified in the event of a default to allow Movant, 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 that is recorded against the real property commonly known as 2955 Stable Drive, West Sacramento, California (“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 to obtain possession of the Property.

No other or additional relief is granted.

2. [22-21314-E-13](#)
[KSR-1](#)

NADIA ZHIRY
Peter Macaluso

**CONTINUED STATUS CONFERENCE RE:
MOTION TO EXCUSE TURNOVER
AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
5-31-22 [12]**

Debtor's Atty: Peter Macaluso

Notes:

Continued from 2/14/23. The Pre-Trial Conference is set for 7/26/23 in the adversary proceeding. Counsel for the Receiver reported that things are proceeding, but work still needs to be done. The Parties agreed to a further continuance of the status conference.



APRIL 11, 2023 CONTINUED HEARING STATUS CONFERENCE

Gerard F. Keena III, the Receiver Movant, filed an updated Status Report on April 4, 2023. Dckt. 157. The Movant states Debtor has failed to meet the deadlines set to afford Debtor the opportunity to address the deficiencies to the real property.

The deadlines missed are stated to be:

1. Obtain Final Building Permit.....February 24, 2023
and

2. Certificate of Occupancy.....March 31, 2023

for the 1039 Claire Avenue Property. Status Report, p. 2:9-11; Dckt. 157.

At the Hearing Status Conference, **XXXXXXX**