

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

April 14, 2015 at 1:30 P.M.

-
1. [14-29702](#)-C-13 ROOSEVELT/JOSIE NIXON MOTION FOR RELIEF FROM
NLG-1 Richard Jare AUTOMATIC STAY
3-11-15 [[59](#)]
CENTRAL MORTGAGE COMPANY VS.

Final Ruling: No appearance at the April 14, 2015 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 March 11, 2015. 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.

Central Mortgage Company seeks relief from the automatic stay with respect to the real property commonly known as:

5217 Namath Circle, Elk Grove, CA, 95757

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

The Danette Oakley Declaration states that the last payment by

debtor was received on November 26, 2014 (the Debtor filed for Chapter 13 relief on September 30, 2014). 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 \$475,001.21 (including \$365,000 secured by movant's first trust deed), while the value of the property is determined to be \$365,000 as stated in Schedules A and D filed by Debtor.

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 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 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 xxxx, 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 5217 Namath Circle, Elk Grove, CA, 95757.

No other or additional relief is granted.

Also #3

Final Ruling: No appearance at the April 14, 2015 hearing is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 final 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing on the Motion to Confirm the Plan to 1:30 p.m. on April 21, 2015.
--

MARCH 24, 2015 HEARING

At the hearing on March 24, 2015, the court concluded that an evidentiary hearing will be required to determine the factual issues in dispute. The hearing was continued to April 14, 2015 to allow the court to determine how it wants to schedule the evidentiary hearing.

The court has determined that a further continuance to April 21, 2015 at 1:30 p.m. is necessary to allow the court to determine how it will schedule the evidentiary hearing.

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 to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to April 21, 2015 at 1:30 p.m.

Final Ruling: No appearance at the April 14, 2015 hearing is required.

Final Ruling: The Motion to Dismiss 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.

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, and Office of the United States Trustee on January 27, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss 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.

<p>The court's decision is to continue the hearing on the Motion to Dismiss to 1:30 p.m. on April 21, 2015, to be scheduled in conjunction with the evidentiary hearing on the Motion to Confirm the Chapter 13 Plan.</p>
--

This matter was continued from the February 10, 2015 2:00 p.m. hearing. The court docket reflects no further filings beyond the original filings to the instant motion.

At the hearing on March 24, 2015, the court concluded that an evidentiary hearing will be required to determine the factual issues in dispute. The hearing was continued to April 14, 2015 to allow the court to determine how it wants to schedule the evidentiary hearing.

The court has determined that a further continuance is required so that the instant Motion to Dismiss may be heard in conjunction with the evidentiary hearing on the Motion to Confirm the Chapter 13 Plan. The matter shall be

continued to April 21, 2015 at 1:30.

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 to Dismiss Case by 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 Motion to Dismiss Case is continued to April 21, 2015 at 1:30 p.m.

4. [15-21084](#)-C-13 ARNULFO/MARRA SALAZAR
JCB-1 Michael Noble

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-24-15 [[13](#)]

KENNEDY MEADOWS MHC, 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, parties requesting special notice, and Office of the United States Trustee on February 24, 2015. 14 days' notice is required.

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 -----
-----.

The for Relief from the Automatic stay is granted.

Procedural Background

At the hearing on March 10, 2015, the court set a briefing schedule to allow the parties to file written responses to the Motion. The hearing was continued to April 14, 2015. All relevant filings are summarized below.

Summary of Motion

Kennedy Meadows MHC, LLC dba Fairway Estates ("Movant") operates and owns a mobilehome park, and seeks relief from the automatic stay with respect to a residential real property commonly known as 4123 Annapolis Lane a.k.a 5011 Hillside Boulevard, Space 165, North Highlands, California (the "Property") under 11 U.S.C. §§ 362(d)(1) and (2). The moving party has provided the Declaration of Amber Monte to introduce evidence to

authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

A review of the motion for relief, supporting documents, and civil minutes, filed in a prior state action show the following: Movant leased to Debtors the above-described Property October 29, 2010, and Debtors have placed upon the premises a 2003 Oakwood Mobile Home bearing the decal number LBF7116 (manufactured by HBOS Manufacturing, LP), which Debtors own. The lease agreement calls for monthly payments in the amount of \$666.39 due on the first of each month through September 30, 2015. The lease agreement calls for Debtors to pay for utilities actually used by Debtors at the Property. Debtors untimely made their utility payments for October 2014, and made no payments for rent or utilities since September 2014, despite remaining in possession of the Property. Movant asserts Debtor has no equity in the Property as a renter.

Movant served upon Debtor a three-day notice to pay rent or quit and sixty day notice of termination of possession on October 7, 2014. On February 2, 2015, Movant commenced an unlawful detainer action. (Sacramento County Superior Court Case No. UD15-00867). On February 4, 2015, Debtors were served with the Eviction Complaint. On February 12, 2015, Debtors filed the instant bankruptcy case.

Finally, the moving party asserts that they have perfected a statutory "warehouse lien" against Debtors' mobile home pursuant to CCP § 798.56a(e), and seek the court's permission to enforce this warehouse lien. The court makes no judgment as to the legitimacy of Movant's rights or entitlements under state law. However, Movant may exercise its rights to obtain possession of the Property pursuant to applicable nonbankruptcy law, including applicable state law, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Summary of Debtor's Opposition

Debtors filed this Chapter 13 case to stop the moving party's unlawful detainer, cured the default, and allow Debtors time to sell the property. The property in question is a mobile home with a value of \$18,000. Debtors are current on post-petition rent and their plan payments.

Summary of Trustee's Response

The Debtors are delinquent \$800 under the proposed plan. Debtors have paid \$0 to date. The proposed plan provides for the creditor in Class 1 with \$3,010 arrears with a \$51 monthly dividend and a monthly contract installment amount of \$558. Section 3 of the proposed plan provides for pre-petition arrears of \$3,228 with a monthly dividend of \$54.

Summary of Creditor's Reply

Debtors seek to use the automatic stay as an injunction to prevent Kennedy Meadows's lawful state court efforts to obtain possession of the Premises. Debtors admit this in their Opposition. (Opposition at 1:13-17.) Kennedy Meadows is entitled to relief from stay because the Debtors were served a Notice to Pay Rent or Quit prepetition, which notice expired prepetition, and a state Court Eviction Complaint has already been filed. A 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 the 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). Here, Debtors could not cure the defaults under the lease for the Premises *as of the Petition date*. Debtors were already named as defendants in an Eviction Complaint *as of the Petition Date*. Kennedy Meadows has therefore established cause within the meaning of 11 U.S.C. § 362(d)(1) for relief from stay.

Debtors were served a Three (3) Day Notice to Pay Rent or Quit, Three (3) Day Notice to Perform Covenant or Quit, and Sixty (60) Day Notice of Termination of Tenancy which Notices expired prior to the Petition's filing. (Monte Decl ¶ 8-13.)

Here, Debtors' opportunity to sell the Mobilehome *expired* Prepetition, and Debtors are attempting to abuse the automatic stay to do that which Debtors lack the legal right to do - sell the Mobilehome in place. Debtors' filing of this Petition is therefore a "bad faith" filing as to Kennedy Meadows, as Debtors seek to profit on the sale of the Mobilehome and "bundle" the perfected liens of Kennedy Meadows, and other secured creditors of the Mobilehome, into Debtors' Chapter 13 Plan.

Debtors claim to have equity in the Premises, but this is a legal and factual impossibility. The Premises are a mobilehome space - a plot of land with connections capable of "hosting" or "connecting to" Debtors' Mobilehome. (Monte Decl at ¶¶ 5-8.) It is the *Premises* as to which Kennedy Meadows seeks relief from stay to finalize its unlawful detainer proceedings - not the Mobilehome sitting on the Premises.

Debtors have valued the Mobilehome at \$50,000.00. (Salazar Decl at ¶ 4.) Debtors concede the secured liens on the Mobilehome, which would include the mortgage owed to a third party and Kennedy Meadows's Warehouse Lien for back rent and utilities, at approximately \$32,000.00, leaving approximately \$18,000.00 of "equity" in the Mobilehome. However, Debtors' valuation takes for granted that the Mobilehome can stay in its current location, and also does not account for the costs of sale. Put another way, the valuation does not account for the cost of dismantling the Mobilehome and moving it, and does not account for the commission due any Realtor or Broker in selling the Mobilehome. The alleged valuation therefore also fails to take into account what portion of the value is derived *from the Mobilehome's current location*. As previously shown, Debtors have lost the right to sell the Mobilehome in place. The Mobilehome itself - not accounting for its location or commissions on sale, according to the National Automotive Dealers Association (NADA) is worth approximately \$11,250.79.

Legal Analysis

The court maintains the right to grant relief from stay for cause under 11 U.S.C. § 362(d)(1) 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, and appears to have used bankruptcy as a means to delay payment or

foreclosure. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor 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). The court infers from Debtors' lack of response that the Property is not necessary to an effective reorganization. If the Debtor does not appear at the hearing, the court will infer that the property is not necessary to an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow Kennedy Meadows MHC, LLC dba Fairway Estates, and its agents, representatives and successors, to exercise its rights to obtain possession of the Property pursuant to applicable nonbankruptcy law, including applicable state law, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Kennedy Meadows MHC, LLC dba Fairway Estates ("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 applicable nonbankruptcy law, including applicable state law, to obtain possession of the property commonly known as 4123 Annapolis Lane a.k.a 5011 Hillside Boulevard, Space 165, North Highlands, California.

No other or additional relief is granted.
