

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 19, 2022

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

April 19, 2022 at 1:00 p.m.

1. [19-90817](#)-B-13 GARY COOKSEY MOTION FOR RELIEF FROM
[CCR-1](#) Brian S. Haddix AUTOMATIC STAY
4-4-22 [[162](#)]

THE DEL RIO EAST HOMEOWNERS'
ASSOCIATION, INC. VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition, and may appear at the hearing to offer oral argument.

The court's decision is to conditionally grant annulment of the automatic stay retroactively to December 27, 2021, and continue the matter to April 26 at 1:00 p.m.

The Del Rio East Homeowners' Association, Inc. ("Movant") seeks relief from the automatic stay in order to allow *The Del Rio East Homeowners' Association, Inc. v. Gary Lee Cooksey dba Cooksey's Construction* ("State Court Litigation") to be concluded. The moving party has provided the Declaration of Scott Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration states that the Debtor participated in a defective roof replacement project. Subsequently, on December 27, 2021, Movant filed a lawsuit in Stanislaus County Superior Court, case no. CV-21-006842. Movant seeks relief from stay to prosecute this action to judgment against Debtor for the limited purpose of pursuing any available insurance proceeds.

Without notice or knowledge of Debtors' bankruptcy, Movant proceeded with the state court action. On August 17, 2020, the Debtors' confirmed their Chapter 13 plan. It did not mention or provide for Movant's claim or lien. In fact, Movant was entirely omitted from Debtors' schedules. Movant received first notice of this bankruptcy case on January 7, 2022.

Movant seeks annulment of the automatic stay as to the post-petition filing of the State Court Litigation, which is December 27, 2021. The State Court Litigation has another third party defendant listed in the action, and therefore it would be prejudicial to Movant to be required to dismiss the case and incur the unnecessary expense and delay of being required to refile the complaint and re-serve the parties. Movant asserts this is especially true in light of the fact that Movant was not listed or scheduled in Debtor's bankruptcy case, in which the plan has been confirmed and the claims bar date has passed. Movant asserts that any recovery would be limited solely to insurance proceeds. Movant has identified insurance coverage for the matters alleged in the State Court Litigation against the Debtor with Colony Insurance Company, and has attached Exhibit "C", which consists of copies of two documents entitled Certificate of Liability Insurance.

No parties have filed opposition to the motion to date.

April 19, 2022 at 1:00 p.m.

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state court ruling be allowed to continue after considerable time and resources have been already put forth in the matter.

The court shall issue an order modifying the automatic stay as it applies to the Debtor to allow the Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any such judgment shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 22, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 26, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 26, 2022, at 1:00 p.m.

2. [22-90052](#)-B-13 GREGORY/VALISA NASH
[AP-2](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-1-22 [[26](#)]

U.S. BANK TRUST NATIONAL
ASSOCIATION VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion and continue the matter to April 26, 2022 at 1:00 p.m.**

U.S. Bank Trust National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1336 Phlox Drive, Patterson, California, 95363 (the "Property"). Movant has provided the Declaration of Lizette Torres to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Torres Declaration states that Movant is in possession of the promissory note ("Note") that was executed by Debtors. Pursuant to the Deed of Trust referenced in the motion, all obligations of the Debtors under and with respect to the Note and Deed of Trust are secured by the Property.

Discussion

Movant seeks confirmation that the stay in this case is not in effect as to a real property located at 1336 Phlox Drive, Patterson, California, 95363. In the alternative, the Movant seeks prospective relief from stay to obtain possession of the property. The Movant is the owner of the property and seeks permission to enforce a prepetition state court judgment for possession and a writ of possession.

Section 362(c)(4)(A) provides that (i) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

On May 11, 2021, the Debtors filed a Chapter 13 case (case no. 21-90230). That case was dismissed on June 1, 2021 due to the Debtor's failure to file documents. Dkt. 16.

On September 27, 2021, the Debtors filed another Chapter 13 case (case no. 21-90465). That case was dismissed on October 19, 2021 due to the Debtor's failure to file documents. Dkt. 13.

The debtor filed the instant Chapter 13 case on February 15, 2022.

The court has reviewed the dockets of the prior two cases and has confirmed that those cases were pending within the previous year of the filing of the instant case and that the court dismissed those previous cases.

Accordingly, the motion will be granted. The automatic stay did not go into effect upon the filing of the instant case on February 15, 2022. See 11 U.S.C. § 362(c)(4)(A)(ii) & (j).

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 22, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 26, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 26, 2022, at 1:00 p.m.

3. [21-90158](#)-B-13 JILL MURPHY
[LBF](#)-5 Lauren Franzella

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
2-25-22 [[37](#)]

Final Ruling

The Debtor and Secured Creditor Guild Mortgage Company LLC ("Secured Creditor") having filed a stipulation, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

Secured Creditor filed a Notice of Postpetition Mortgage Fees, Expenses and Charges in the total amount of \$905.40. Among the Postpetition Fees, Expenses, and Charges included attorney's fees for "Plan Review" dated May 6, 2021 in the amount of \$350.00, and Bankruptcy/Proof of Claim Filing fees for a proof of claim filing in the amount of \$300.00, and for a 410A form and proof of claim filing in the amount of \$250.00, both dated May 24, 2021. Debtor filed the instant Objection to Notice of Postpetition Mortgage Fees, Expenses, and Charges, asserting that the fees are unreasonable, and requested that Secured Creditor reduce these fees.

The parties agreed to the terms set forth in the Stipulation Regarding Notice of Postpetition Mortgage Fees, Expenses, and Charges, filed on March 30, 2022 at dkt. 76, and are bound by the terms of their stipulation which shall be the order of this court. The parties stipulated that Secured Creditor will reduce postpetition fees, expenses and charges to the total amount of \$452.70. Upon signature and Order of the Stipulation, Secured Creditor will amend and file the Post Petition Fee, Expenses and Charges Notice with the court.

The objection is ORDERED OVERRULED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

4. [21-90089](#)-B-13 LEONARD MOJICA
[AP-2](#) Richard Kwun

MOTION FOR APPROVAL OF PAYMENT
DEFERRAL AGREEMENT
3-22-22 [[49](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the payment deferral agreement.

Wells Fargo Bank, N.A. ("Creditor") seeks court approval to provide consent for Debtor and Creditor to enter into and finalize a Payment Deferral Agreement. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a payment deferral agreement that will provide for the deferral of eighteen payments plus other unpaid amounts of \$3,778.69 to be deferred, for a total of \$17,253.31 in deferred payments. The deferred payments are due upon the maturity of the loan or earlier, upon the sale or transfer of the Subject Property, refinance of the loan, or payoff of the interest-bearing unpaid principal balance on the loan. Creditor will record such agreement with the appropriate county recorder's office. Creditor will retain the right of final approval of the terms of Debtor's Payment Deferral Agreement and Creditor retains the right to reinstate its claim in the event the Payment Deferral Agreement is not finalized. Debtor has filed a Declaration in Support of Joinder of Wells Fargo Bank, N.A.'s Motion for Court Approval of Payment Deferral Agreement.

The motion is supported by the Declaration of Leonard Mojica. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it provides for the deferral of eighteen payments and other unpaid amounts.

This payment deferral agreement is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [19-90897](#)-B-13 KATHLEEN ROWE-GLENDON MOTION TO MODIFY PLAN
[PLG](#)-5 Steven A. Alpert 3-8-22 [[83](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [21-90158](#)-B-13 JILL MURPHY CONTINUED MOTION TO INCUR DEBT
 [LBF](#)-6 Lauren Franzella 3-28-22 [[63](#)]

Final Ruling

This matter was continued from April 12, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, April 15, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 84, granting the motion, shall become the court's final decision. The continued hearing on April 19, 2022, at 1:00 p.m. is vacated.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.