

Eastern District of California

Sacramento, California

April 24, 2018, at 1:30 p.m.
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SUMMARY OF COMPLAINT

Odete Cabral (“Plaintiff-Debtor”) alleges that on February 2, 2017, she submitted a loan modification application to Nationstar Mortgage, LLC (“Defendant”). It is further alleged that Defendant set a nonjudicial foreclosure sale for February 25, 2017, and did not postpone the sale in light of the pending loan modification application. Plaintiff-Debtor filed her Chapter 13 bankruptcy case on February 25, 2017, prior to the scheduled nonjudicial foreclosure sale.

It is alleged that on March 14, 2017, Nationstar generated a “Trial Period Plan” with payments of \$1,757.12 to be paid in the months of April, May, and June 2017. Plaintiff-Debtor alleges that Defendant offered the trial loan modification “without seeking Bankruptcy Court Approval.” (It is not clear what “bankruptcy court approval” is necessary for such communications from a creditor.)

Plaintiff-Debtor states that Defendant denied a permanent loan modification, though the three trial period payments were accepted by Defendant. The First Amended Complaint asserts the following causes of action.

~~First Cause of Action.~~ Breach of Contract, asserting Defendant “has a fiduciary duty to timely prosecute the loan modification application and to adhere to the California Homeowners Bill of Rights.” Further, it is asserted that Defendant has failed to timely process the loan modification and “unjustly denied the permanent loan modification.” Plaintiff-Debtor seeks specific performance of the obligation to enter into the loan modification and damages relating to Defendant’s failure to so do.

Second Cause of Action. Breach of Covenant of Good Faith and Fair Dealing, alleging that the deed of trust circumscribes Defendant’s duties in modifying Plaintiff-Debtor’s loan. It is asserted that Defendant’s conduct in offering, requiring performance of (without obtaining court approval), and denying the permanent loan modification breached this duty.

~~Third Cause of Action.~~ Unfair Competition, Cal. B&P § 1700, asserting that Defendant has: (1) manipulated the loan modification process, failed to properly process the loan modification, and arranged kickbacks, commissions, and other compensation for itself and affiliates as part of the loan modification process, which is inconsistent with its contractual and statutory duties.

Pursuant Order of the Court on Defendant’s Motion to Dismiss, the First and Third Causes of Action have been dismissed. Order, Dckt. 54.

SUMMARY OF ANSWER

Nationstar Mortgage, LLC filed its Answer (Dckt. 55) that admits and denies specific allegations in the Complaint. The Answer also includes eight affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157 and that this is a core proceeding pursuant to 28

U.S.C. § 157(b)(2)(K) & (L), and further that to the extent that any matter is non-core, Plaintiff-Debtor consents to the bankruptcy judge issuing all orders and the final judgment on the First Amended Complaint. First Amended Complaint ¶¶ 6, 7, 8, Dckt. 33.

In its Answer, Defendant states that it does not need to respond to the allegations of jurisdiction, to the extent that there is an allegation that the First Amended Complaint states that the matters are core, such is denied, but Defendant consents to the bankruptcy judge issuing all orders and final judgment for all matters in the First Amended Complaint. Answer ¶¶ 6, 7, 8, Dckt. 55.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

A. Plaintiff-Debtor alleges in the First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) & (L), and further that to the extent that any matter is non-core, Plaintiff-Debtor consents to the bankruptcy judge issuing all orders and the final judgment on the First Amended Complaint. First Amended Complaint ¶¶ 6, 7, 8, Dckt. 33.

In its Answer, Defendant states that it does not need to respond to the allegations of jurisdiction, to the extent that there is an allegation that the First Amended Complaint states that the matters are core, such is denied, but Defendant consents to the bankruptcy judge issuing all orders and final judgment for all matters in the First Amended Complaint. Answer ¶¶ 6, 7, 8, Dckt. 55.

To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

B. Initial Disclosures shall be made on or before **April 30, 2018**.

C. Expert Witnesses shall be disclosed on or before -----, **2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018**.

D. Discovery closes, including the hearing of all discovery motions, on **July 20, 2018**.

E. Dispositive Motions shall be heard before **September 21, 2018**.

F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on October 12, 2018**.

2. [17-90872](#)-E-7 **ALBERT MCMILLAN AND SU** **CONTINUED MOTION TO AVOID LIEN**
RK-1 **KIERNAN-MCMILLAN** **OF ONE MAIN, INC.**
 Richard Kwun **2-19-18 [16]**

Final Ruling: No appearance at the April 24, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on February 19, 2018. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 to Redeem is granted, with the redemption payment to be made in full on or before 12:00 p.m. on May 25, 2018.

Albert McMillan and Sue McMillan ("Debtor") seek to redeem a 2013 Toyota Camry SE ("Vehicle") from the claim of One Main Inc. ("Creditor") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Vehicle, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Vehicle, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

APRIL 12, 2018 HEARING

At the hearing, Debtor's counsel reported that there is no insurance, and it appears that the repair shops erroneously filled out the repair estimate form. Dckt. 25. The court continued the hearing to 1:30 p.m. on April 24, 2018, to allow time for supplemental pleadings. Dckt. 26.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on April 16, 2018. Dckt. 27. Debtor states that they entered into a retail sales installment contract for the Vehicle and that upon filing this case, they claimed an exemption of \$1,000.00 pursuant to California Code of Civil Procedure 703.140(b)(2).

Debtor states that the Vehicle was taken to an auto body shop and to a dedicated Toyota car mechanic, where Debtor obtained free estimates of the body and mechanical repairs needed for the Vehicle to be sold. Debtor states that obtaining those estimates was not part of any insurance claim.

Debtor testifies that they are not receiving \$7,525.82 or any other benefit from insurance in conjunction with the Vehicle.

DISCUSSION

With the Supplemental Declaration, Debtor has clarified that no insurance funds are being received, alleviating the court's concern that Debtor may be inappropriately pocketing funds through this redemption while another party pays for the repairs.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court shall issue an order in 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 Redeem filed by Albert McMillan and Sue McMillan ("Debtor") 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 granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2013 Camry SE ("Vehicle") by paying One Main Inc., the creditor holding the claim secured by the Vehicle, the total amount of \$4,275.51, in full at the time of redemption, which must be paid on or before 12:00 p.m. on May 25, 2018.