

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

April 28, 2015 at 1:30 P.M.

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1. [15-21848](#)-C-13 JOHN LABARBERA, AND MOTION TO CONFIRM TERMINATION
DVW-1 JACLYN LABARBERA OR ABSENCE OF STAY AND/OR
Bruce Dwiggins MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-14-15 [[21](#)]
- U.S. BANK, N.A. AS LEGAL
TITLE TRUSTEE FOR TRUMAN
2013 SC4 TITLE TRUST VS.

Tentative Ruling: The Motion for Relief from Automatic stay 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, and Office of the United States Trustee on April 04, 2015. By the court's calculation, 14 days' notice was provided. 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 -----

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The for Relief from the Automatic stay is granted.

U.S. Bank, N.A. ("Creditor") seeks relief from the automatic stay with respect to the real property commonly known as 19850 Holstein Lane, Redding, California. The moving party has provided the Declaration of Cristina Moraga-Peraza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Debtor contends, in Schedule A, that the subject property is worth \$332,945 and the debt is \$477,336.44. The Creditor contends that the debt exceeds \$406,000.

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). There are two pending Chapter 13 cases, 13-31095 and the present case. A plan was confirmed in the former. As there are two cases pending, it appears that the property is not necessary to a an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank, N.A. , 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.

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 U.S. Bank, N.A. , 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 19850 Holstein Lane, Redding, California.

No other or additional relief is granted.
