

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

April 30, 2019 at 1:30 p.m.

1.	<u>19-21506-C-13</u>	JOHN PARMENTER	MOTION FOR RELIEF FROM
	<u>GHW-1</u>	Pro Se	AUTOMATIC STAY
			4-8-19 <u>22</u>
	FEDERAL NATIONAL MORTGAGE		
	ASSOCIATION 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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter ~~xx~~ 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 offer 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. At the hearing, -----

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<p>The Motion for Relief from the Automatic Stay is granted.</p>

Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8027 Rosswood Drive, Citrus Heights, California ("Property"). The moving party has provided the Declaration of Glenn H. Welchler to introduce evidence as a basis for Movant's contention that John Parmenter ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on March 12, 2019. Based on the

evidence presented, Debtor would be at best a tenant at sufferance. Movant has not yet commenced an unlawful detainer action.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Federal National Mortgage Association, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8027 Rosswood Drive, Citrus Heights, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 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 Federal National Mortgage Association ("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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Federal National Mortgage Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8027 Rosswood Drive, Citrus Heights, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

VW CREDIT, INC. VS.

Final Ruling: No appearance at the April 30, 2019 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 Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 201x. By the court’s calculation, 32 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). 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 and other parties in interest 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

VW Credit, Inc. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Volkswagen Jetta Sedan, VIN ending in 7445 (“Vehicle”). The moving party has provided the Declaration of Stephanie Thomas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mike Maxey and Tracy Maxey (“Debtor”).

The Stephanie Thomas Declaration provides testimony that Debtor has not made six post-petition payments, with a total of \$1,502.10 in post-petition payments past due.

The Stephanie Thomas Declaration also seeks to introduce evidence establishing the Vehicle’s value. Though the Valuation Report is attached as an Exhibit, it is not properly authenticated.

Though the court will *sua sponte* take notice that the Valuation Report can be within the “market reports and similar commercial publications” exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Stephanie Thomas to be that she obtained the NADA Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$16,934.28, as stated in the Stephanie Thomas Declaration, while the value of the Vehicle is determined to be \$12,575.00.

CHAPTER 13 TRUSTEE RESPONSE:

The Chapter 13 Trustee filed an Opposition on April 16, 2019. Dckt. 55. The Chapter 13 Trustee noted that the Debtors most recently denied Plan proposed to pay this Creditor outside of the Plan. The Debtors do not have a Plan currently pending.

DISCUSSION

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 VW Credit, Inc. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Volkswagen Jetta

Sedan ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

THE BANK OF NEW YORK MELLON
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, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2019. By the court's calculation, 35 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.

Bank of New York Mellon FKA the Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 ("Movant") seeks relief from the automatic stay with respect to Paul Revere Eagle's ("Debtor") real property commonly known as 4377 Country Run Way, Anelope, California ("Property"). Movant has provided the Declaration of Lusin Ekimyan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Lusin Ekimyan Declaration states that there are 27 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$20,747.61 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE:

On April 16, 2019, the Chapter 13 Trustee filed a response. Dckt. 108. The response noted that Debtor is current under the confirmed plan. Debtors confirmed Plan classifies Movant as a Class 1 creditor and is making adequate protection payments of \$150.00 against the principal and interest. Movant filed Claim No. 3-2 for \$147,335.31 with an arrearage of \$77,643.00 as of the date of the petition. The confirmed Plan includes a provision that the Debtor has (14) from the denial of a loan modification to file a modified plan. The Movant's motion includes a denial of Debtor's eligibility to modify the loan dated March 8, 2019. Dckt. 96, Exhibit 4, Page 27.

DEBTOR'S OPPOSITION:

Debtor responded on April 17, 2019 that there is an ongoing application for a loan modification. Debtor's response references attached exhibits, however, they do not appear to have been filed with the court. The Debtor claims that the exhibits include a letter from Movant dated April 10, 2019 stating it is in receipt of a loan modification request submitted by Debtor on April 7, 2019. Debtor requests that the court allow additional time for the Movant to consider the proposed loan modification.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$314,133.77 (including \$167,740.77 secured by Movant's second deed of trust), as stated in the Lusin Ekimyan Declaration and Schedule D. The value of the Property is determined to be \$270,000.00, as stated in Schedules A and D.

The Chapter 13 Plan incorrectly includes Creditor's claim as a Class 1 Claim. Dckt. 5. The Plan does not provide for making the current monthly payment and a payment sufficient to cure the arrearage during the life of the Plan. Rather, the only treatment for Creditor's claim is to make monthly adequate protection payments pending diligent prosecution of a loan modification request, and preserving Creditor's right to seek relief from the automatic stay. *See* Plan, Section 6, Additional Provisions. Dckt. 5. Creditor has exercised its rights to seek relief from the automatic stay.

This case was filed on June 15, 2016. Debtor's plan filed on June 15, 2016 which is 1,014 days prior to the hearing on this Motion. In the Opposition, Debtor's counsel argues that Debtor has "applied" for a loan modification on April 7, 2019, which is approximately 1,048 days after filing the Plan. The court notes that evidence of this was not actually submitted with the Debtor's Opposition. Debtor provides no testimony of the diligent prosecution of a loan modification application during the 1,000 days since filing this case.

Here, Debtor has had 1,000 days to diligently prosecute a loan modification. It appears that Debtor has not so prosecuted a loan modification, but has waited two and one-half years to submit a loan application. The submission of the loan modification application coincides with Creditor, after almost 1,000 days, filing the present Motion.

Cause exists pursuant to 11 U.S.C. § 362(d)(1) to modify the automatic stay. Debtor has not prosecuted this bankruptcy case and the Chapter 13 Plan therein. Debtor has not diligently sought modification of the loan, but merely has treated the temporary \$150.00 adequate protection payment as if the Chapter 13 Plan impermissibly modified creditor's claim and the loan from the contractual payment.

The court shall issue an order terminating and vacating the automatic stay 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant

requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 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 Bank of New York Mellon FKA the Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (“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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Bank of New York Mellon FKA the Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 , 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 4377 Country Run Way, Antelope, 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.

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