

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 3, 2016 at 1:30 P.M.

1. [16-21838](#)-C-13 JAGJEET MAAN MOTION FOR RELIEF FROM
SMR-1 Pro Se AUTOMATIC STAY
4-5-16 [[11](#)]

LION SHARE INVESTMENTS, LLC
VS.
DEBTOR DISMISSED: 04/11/2016

Final Ruling: No appearance at the April 5, 2016 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on April 11, 2016. 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 denied as moot.

Lion Share Investments, LLC seeks relief from the automatic stay with respect to the real property commonly known as 9857 Norvara Way, Elk Grove, California.

The debtor was dismissed on April 11, 2016. Thus, the automatic stay is not longer in place, and the motion for stay relief is denied as moot.

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 Motion for Relief From Automatic Stay is denied as moot.

2. [15-29641](#)-C-13 JOHN TORRES
ASW-1 Richard Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-31-16 [[47](#)]

BOSCO CREDIT, LLC VS.

Tentative Ruling: 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).

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.

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 31, 2016. Twenty-eight days' notice is required. That requirement was met.

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). 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.

Bosco Credit LLC seeks relief from the automatic stay with respect to the real property commonly known as 9780 Wexford Lane, Granite Bay, California. The Property consists of two parcels, one lot located in Placer County and containing the Debtor's residence, and a second, adjacent vacant lot located in Sacramento County. The Deed of Trust was intended to secure both parcels; however, the legal description contained in the Deed of Trust describes only the Placer County parcel. As a result, the Deed of Trust, and the assignment of the Deed of Trust to Movant, was recorded only in Placer County, and not also in Sacramento County.

The Declaration states that the debt secured by this property is determined to be \$222,500. On April 7, 2015, Movant filed a Verified Complaint for Quiet Title, Reformation, Declaratory Relief, and Specific Performance ("Complaint") in the California Superior Court, Placer County,

Case no. SCV0036089. The Defendants are Debtor, his wife and co-debtor Barbara Torres, Deutsche Bank National Trust Company, the holder of the senior deed of trust on the Property, and Patelco Credit Union. The second cause of action for Reformation of Deed of Trust and Assignment requests that the legal description attached to the Deed of Trust be reformed to embody both parcels and to be recorded in both counties.

Movant seeks relief from the automatic stay for cause under 11 U.S.C. §362(d)(1) on the grounds that the state court action can be concluded more expeditiously in the state court. The state court has already issued a tentative ruling granting Movant's motion for summary adjudication to reform the deed of trust, and only the automatic stay prevents the state court from entering an order and final judgment. In addition, the state court action involves non-debtor parties and a single adjudication in the state court is the most efficient use of judicial resources.

The court shall issue a minute order terminating and vacating the automatic stay to allow Bosco Credit LLC to proceed in the California Superior Court, Placer County with Case no. SCV0036089 to quiet title of the real property commonly known as 9780 Wexford Lane, Granite Bay, California.

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(d)(1) are vacated to allow Bosco Credit LLC, to proceed in the California Superior Court, Placer County with Case no. SCV0036089 to quiet title of the real property commonly known as 9780 Wexford Lane, Granite Bay, California.

No other or additional relief is granted.

3. [15-28562](#)-C-13 ELMER/ALMA CRESPIN
PGM-2 Peter Macaluso

CONTINUED MOTION TO VALUE
COLLATERAL OF LONG BEACH
MORTGAGE
12-29-15 [[28](#)]

Tentative Ruling: The Motion to Value 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).

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.

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, respondent creditor, and Office of the United States Trustee on December 29, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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). The defaults of the non-respondent 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.

The Motion to Value is

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1855 Griffin Drive, Vallejo, California. The Debtors seek to value the property at a fair market value of \$200,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$221,896.68. The second deed of trust, which Debtors assert in their motion is held by Long Beach Mortgage serviced by Madison Management Servicing, LLC, secures a loan with a balance of approximately \$70,045.33. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

Brio Ventures, LLC, Creditor, responds to Debtors' motion asserting rights, title, and interest in the second deed of trust, the subject of the instant motion. Creditor states that the second deed of trust was transferred from Long Beach Mortgage Company to Mortgage Electronic Registration Systems, Inc., by way of assignment of deed of trust. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Mortgage Electronic Registration Systems, Inc. to Trinity Financial Services, LLC. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Trinity Financial, LLC to Brio Ventures, LLC by assignment of deed of trust.

Creditor objects that Long Beach Mortgage, who no longer holds the second position mortgage, was the named entity in the motion. Creditor states that as such, the motion should be denied. Next, Creditor requests that as the actual holder of the deed of trust in question, a 45 day continuance to allow Creditor to conduct a full appraisal of the property.

DEBTORS' RESPONSE

Debtor responds, stating that in filing their opposition, Brio Ventures, LLC, has opted to waive any contention of insufficient service, and state no opposition to continuing this matter to allow Creditor an opportunity to obtain an appraisal.

PREVIOUS HEARINGS

At the hearing on January 26, 2016, the court continued the matter to allow time for an appraisal.

The docket reflects that Creditor has submitted an appraisal and Creditor disputes the Debtor's valuation.

The Debtor requested a short continuance to obtain an appraisal. Additionally, the court continues the matter to an Evidentiary Hearing Scheduling Conference to allow the Parties additional time, now informed by Creditor's appraisal, to further discuss possible settlements.

At hearing on March 22, 2016, the court continued the matter and specially set it for evidentiary hearing, with discovery to conclude by April 21, 2016.

DEBTOR'S EVIDENTIARY HEARING STATEMENT

Debtors state that they have obtained and completed an appraisal on the subject real property commonly known as 1855 Griffith Drive, Vallejo, California. The appraisal amount is not proffered in the statement. Debtors' counsel asserts that a settlement may still be reached.

CREDITOR'S EVIDENTIARY HEARING STATEMENT

Creditors submit and resassert their opposition to the instant motion to value property, and to treat their claim as unsecured. Creditors maintain that an appraisal of the property as of the petition date, November 3, 2015, indicates the value of the property is \$245,000. The senior lien encumbering the property is \$221,896.68 according to Debtors. Debtors have yet to file an appraisal.

Creditor notes that although Debtors' counsel indicates a settlement

may be reached, Debtors' counsel has not returned Creditor's email.

Creditor submits the appraisal and testimony of Keith M. Nord, certified real estate appraiser, California License No. AR028366, independent real estate appraisal.

EVIDENTIARY HEARING

At 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 Value Collateral filed by 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 the Motion to Value Collateral is .

. . .
