

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

May 24, 2016 at 1:30 P.M.

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1. [15-29641](#)-C-13 JOHN TORRES CONTINUED MOTION FOR RELIEF  
ASW-1 Richard Jare FROM AUTOMATIC STAY  
3-31-16 [[47](#)]  
BOSCO CREDIT, LLC VS

Also #2

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**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.**

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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.

### **Prior**

The court continued the hearing for further pleadings concerning the pre-petition perfection or notice on a BFP of the interests which are the subject the state court action.

### **Supplemental Declaration**

Debtor's attorney states that a Lis Pendens was recorded with the Placer County Recorder on April 15, 2015 providing notice of the subject action. See Ex. 1, Dkt. 86.

Debtor's attorney states that a Lis Pendens was recorded with the Placer County Recorder on April 23, 2015 providing notice of the subject action. See Ex. 2, Dkt. 86.

### **Discussion**

Debtor has proffered reliable evidence proving that a BFP of the interests which are subject of the state court action received notice. 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.

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**Tentative Ruling:** The Motion to Value 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).**  
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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, parties requesting special notice, and Office of the United States Trustee on April 19, 2016. Fourteen days' notice is required. That requirement was met.

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.

<b>The Motion to Value is granted.</b>
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 780 Wexford Circle Granite Bay, California. The Debtor seeks to value the property at a fair market value of \$1,200,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor asserts that the first deed of trust secures a loan with a balance of approximately \$969,000 (in addition to a \$309,000 prepayment

penalty). Bosco Credit LLC's second deed of trust secures a loan with an unknown balance as no claim has been filed. Because the first deed of trust is partially under-collateralized, Debtor claims that the respondent creditor's debt secured by a junior deed of trust is completely under-collateralized.

### **MAY 3, 2016 HEARING**

Creditor appeared at the hearing on May 3, 2016 and requested it be continued to allow it to complete its appraisal of the collateral. The court continued the motion.

### **DEBTOR'S SUPPLEMENTAL DECLARATION**

On May 14, 2016, Debtor John Torres filed a supplemental declaration to this motion. Debtor provides that the prepay penalty on the first deed of trust, previously stated as \$309,000, is actually an obligation of \$339,879.69.

Moreover, Debtor has been in communication with Ocwen. Initially, Debtor believe if he paid off the loan a month at a time, the \$339,879.69 of deferred principal balance was contingent and would be waived. Now, Ocwen states that they do have some loan modification which offered such terms, however this particular one does not, and they are will not waive the \$339,879.9 of deferred principal balance even if Debtor pays it off one months at a time.

The balance owing on the first deed of trust is \$969,194.32, as shown in a March 18, 2015 billing statement. Based on this billing statement, Debtor believes that as of December 15, 2015, the filing date of the petition, Debtor payoff balance owed to Ocwen on the first deed of trust is \$966,500, plus \$339,879.69 of deferred principal balance owed, for a grand total of \$1,306,379.69.

Debtor again avers that as of the filing of the petition, over four months ago, the value of the property could have been no more than \$1,200,000, although the value may have risen since.

### **DISCUSSION**

Although the docket reflects that Debtor has submitted to the court as update as to what Debtor believes the current total amount owed on the first deed of trust is, as well as affirming the believed value of the property upon the filing date of the petition, Creditor Bosco Credit LLC has not submitted a verified appraisal of the property value. Creditor, having submitted no evidence upon which the court may rely to dispute the valuation offered by the Debtor, the court will grant Debtor's motion.

The senior in priority first deed of trust secures a claim with a balance of approximately \$1,306,379.69. Creditor's second deed of trust secures a claim with a balance of approximately \$267,562.47, as reflected in Proof of Claim #4. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy

Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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 Valuation of Collateral filed by John Torres ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bosco Credit LLC secured by a second deed of trust recorded against the real property commonly known as 780 Wexford Circle Granite Bay, California, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$1,200,000 and is encumbered by a senior lien securing claims in the amount of \$1,306,379.69, which exceeds the value of the Property which is subject to Creditor's lien.

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