

# Eastern District of California

Sacramento, California

approval from the court of a stipulation entered into with Debtor stating that Debtor does not claim an interest in the Property and does not include it in this case.

## **CHAPTER 13 TRUSTEE'S NON-OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on May 15, 2018. Dckt. 80. The Chapter 13 Trustee argues that the Property is not included in the confirmed Plan, is not listed on the Schedules, and is property of a different Jose Luis Acosta according to Debtor's Declaration.

## **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 because the parties have agreed not only that Debtor does not have interest in the Property, but also because they assert that co-debtor Jose Acosta is not the same person listed on the grant deed for the Property. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Movant and Debtor have presented the court with a stipulation stating that the Property is not part of this bankruptcy estate, that Debtor claims no interest in the Property, and that the automatic stay should be terminated. Dckt. 77. The parties request approval of that stipulation pursuant to Federal Rule of Bankruptcy Procedure 4001(d)(1), and the court grants that approval.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court. The

Motion presents sufficient facts that the parties agree that this Property should not be part of this bankruptcy case.

Movant has 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 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 Approval of Agreement Relating to Relief from the Automatic Stay filed by U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc. as attorney in fact and servicer ("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 U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc. as attorney in fact and servicer, 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 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 real property commonly known as 45722 Palm Lane, Lancaster, California.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

WELLS FARGO BANK, N.A. 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.

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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, and Office of the United States Trustee on April 9, 2018. By the court's calculation, 36 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.**

Wells Fargo Bank, N.A., ("Movant") seeks relief from the automatic stay with respect to Curtis Heigher's ("Debtor") real property commonly known as 8061 Elnora Court, Sacramento, California ("Property"). Movant has provided the Declaration of Charice Gladden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gladden Declaration states that there are eleven post-petition defaults in the payments on the obligation secured by the Property, with a total of \$25,809.61 in post-petition payments past due.

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on April 27, 2018. Dckt. 188. The Chapter 13 Trustee states that he has no basis to oppose the Motion, and he notes that Debtor does not appear to have made the final payment for December 2016.

## **STIPULATION AND ORDER CONTINUING**

On May 2, 2018, the parties submitted a Stipulation to Continued the hearing to 1:30 p.m. on June 5, 2018. Dckt. 190. The court entered an order setting the matter for hearing at 1:30 p.m. on June 5, 2018, on May 3, 2018. Dckt. 193.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 21, 2018. Dckt. 198. Debtor admits to being delinquent on payments and asserts that the total delinquency is disputed and is being negotiated with Movant, but Debtor does not have any basis to oppose the Motion. Nevertheless, Debtor requests that the court not waive the fourteen-day stay of enforcement.

## **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 \$301,229.60 secured by Movant's first deed of trust, as stated in the Gladden Declaration and Schedule D. The value of the Property is determined to be \$192,300.00, as stated in Schedules A and D.

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 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.

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 Wells Fargo Bank, N.A., (“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 Wells Fargo 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 that 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 to obtain possession of the real property commonly known as 8061 Elnora Court, Sacramento, California.

No other or additional relief is granted.

3. [18-20578](#)-E-13 CONNIE MALLAVIA  
DWE-1 Stephan Brown

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-8-18 [\[21\]](#)

NATIONSTAR MORTGAGE, LLC 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.

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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, and Chapter 13 Trustee on May 8, 2018. By the court's calculation, 28 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 denied without prejudice.**

Nationstar Mortgage LLC d/b/a Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to Connie Mallavia's ("Debtor") real property commonly known as 1680 El Camino Verde Drive, Lincoln, California ("Property"). Movant has provided the Declaration of Mary Gracia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Gracia Declaration states that there are two post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,431.24 in post-petition payments past due.

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on May 18, 2018. Dckt. 31. The Chapter 13 Trustee asserts that Debtor is \$853.40 delinquent under the prior plan with no plan pending currently.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 22, 2018. Dckt. 34. Debtor admits that the current delinquency is \$853.40 and evokes an intention to cure it by the hearing date. Debtor also notes that an amended plan has been filed and set for hearing on July 17, 2018.

Debtor argues that the Motion should be denied because there is a significant equity cushion (\$345,576.00 valuation against \$280,105.09 claim). *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984) (holding that a 20% equity cushion provides adequate protection). Also, Debtor argues that her plan payments are sufficient to pay the claim, but she notes that her difficulty making payments so far has been a result of her pay period ending on the last day of the month when plan payments are due on the twenty-fifth day of each month.

## 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 \$280,105.09 secured by Movant's first deed of trust, as stated in the Gracia Declaration and Schedule D. The value of the Property is determined to be \$345,576.00, as stated in Schedules A and D.

The Amended Plan (Dckt. 39) provides for this claim. The Motion seeking confirmation (Dckt. 36) appears to state grounds with particularity upon which the relief is based. Debtor's Declaration in Support (Dckt. 38) provides, for the most part, personal knowledge testimony in support of confirmation and not parroted legal conclusions. However, Debtor and counsel may well want to supplement the Declaration on at least two points: (1) ¶ 3.f. to provide testimony as to what the plan actually provides for secured claims and not merely recite the options statutorily allowed; (2) ¶ 3.a. the basis (if any) for Debtor's legal opinion about complying with applicable law (if no basis, no supplemental materials required); and (3) ¶ 3.c. the facts and basis for the court to determine that the case was filed and the plan prosecuted in good faith, not merely Debtor's legal conclusion. Those should be easily remedied.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

The Motion is denied without prejudice.

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 Nationstar Mortgage LLC d/b/a Mr. Cooper (“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 Motion is denied without prejudice.