

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 9, 2022 at 10:00 AM

1. [22-20859-E-7](#) LISA NUNEZ-SANDOVAL/ MOTION FOR RELIEF FROM
[JCW-1](#) AARON SANDOVAL Gary Fraley AUTOMATIC STAY
5-11-22 [\[14\]](#)
LAKEVIEW LOAN SERVICING, 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.

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, Debtor's Attorney, and Chapter 7 Trustee, on May 11, 2022. By the court's calculation, 29 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 7 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, -----.

The Motion for Relief from the Automatic Stay is XXXXXXX.

Lakeview Loan Servicing, LLC, by and through its servicing agent M&T Bank ("Movant"), seeks relief from the automatic stay to allow *Lakeview Loan Servicing, LLC v. Wilber et al.*, in the Superior Court, County of El Dorado, Case No. 22CV0375 (the "State Court Litigation") to be

concluded. Movant has provided the Declaration of Todd Simonson, Esq. to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Lisa Marie Nunez-Sandoval and Aaron Dean Sandoval (“Debtor”).

Movant argues that they are not seeking recovery or other monetary relief from Debtor. Instead, they are seeking only to rectify an incorrect legal description, to cancel a Deed of Trust, and to request a judicial determination of their rights and duties. Movant argues that these causes of action arise under non-bankruptcy law and that their resolution outside the Bankruptcy Court does not prejudice Debtor or the bankruptcy estate. Motion for Relief from Automatic Stay, Dckt. 14.

The State Court Action relates to a note and deed of trust signed by Debtor. In the Motion, Movant states that it is “merely” seeking to correct an incorrect legal description (presumably in the deed of trust of the property securing the note), cancel a deed of trust previously satisfied, and then have a determination of unspecified rights and duties between unidentified persons.

The grounds stated with particularity in the Motion (Fed. R. Bank. P. 9013) does not provide a sufficient basis for the relief requested.

The Declaration, provided by Movant’s counsel, authenticates the State Court Complaint filed as Exhibit 5. Dec., ¶ 4; Dckt. 17. No other exhibits appear to be authenticated.

Review of State Court Complaint

The State Court Complaint for the State Court Action for which the requested relief is sought is summarized by the court as follows (with direct quotations in “quotation marks” and emphasis added by the court):

2. The real property to which the relief relates is commonly known as 2061 Riesling Way, Placerville, California.
4. Movant asserts a security interest in the Property as the current beneficiary in a Deed of Trust.
- 6, 7. Debtor are trustors in the Deed of Trust.
8. American Contractors Indemnity Company has an interest in the Property pursuant to an abstract of judgment.
12. In 1993 Mr. and Mrs. La Rose executed a deed of trust that was recorded against the Property.
13. In August 2013, Robin Casey (formerly La Rose) transferred the Property to debtor Aaron Sandoval.
14. In 2016, debtor Aaron Sandoval transferred title to himself and co-debtor Lisa Nunez-Sandoval.
15. In 2016 Debtor obtained a loan and a Deed of Trust (“2016 Deed of Trust”) was recorded against the Property to secure the 2016 loan.

16. The 2016 Deed of Trust contained an “incomplete legal description” of the Property. The incomplete part of the description is stated to be:

“All that portion of the South ½ of the Southeast 1/4 of Section 35, Township 10 North, Range 11 East, M.D.B.&M., more particularly described as follows:”

17, 18. Movant is now the beneficiary under the 2016 Deed of Trust.

19. Movant asserts that the obligation owing on the 1993 Deed of Trust has been fully satisfied, but that no reconveyance of the 1993 Deed of Trust has been recorded.

20. It is asserted that the 2016 Deed of Trust was intended to be the senior lien on the Property.

23. The State Court Action is to correct the legal description of the real property that is to be the property to be encumbered by the 2016 Deed of Trust and to “cancel” the 1993 Deed of Trust.

Reformation of Deed of Trust

31. The 2016 Deed of Trust was recorded with an “incomplete legal description.”

33. The “incomplete legal description” occurred through “mutual mistake.”

The court provides the above summary not as an amendment to the Motion or to provide assistance to Movant in complying with the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure as required by the United States Supreme Court. Rather, so that the court is adequately informed as to what is occurring in and through this Contested Matter, as well as to provide an example of some of the necessary grounds to be stated with particularity in a motion.

CHAPTER 7 TRUSTEE’S NON-OPPOSITION

J. Michael Hopper (“the Chapter 7 Trustee”) made his May 17, 2022 Docket Entry Statement of Non-Opposition.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is

predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Review of Schedules

On Amended Schedule A/B Debtor lists the Property as having a value of \$440,000. Dckt. 13 at 3. On Amended Schedule C, Debtor claims an exemption in the Property in the amount of \$529,164.00. *Id.* at 9.

On Schedule C, Debtor lists Movant has having a secured claim in the amount of (\$286,271.41). Dckt. 1 at 21. El Dorado County is listed as having a secured claim of (\$2,569.50) for real property taxes. *Id.* at 20. No creditor with a secured claim based on an abstract of judgment is listed on Schedule D.

In looking at Schedule F, Debtor lists American Contractors Indemnity Company as having a Contingent, Disputed, claim for (\$40,274.08) based on a judgment, but that the judgment is “Contingent.” Dckt. 1 at 24. Debtor further states that this Contingent Judgment dates back to 2015. *Id.*

Though stating that American Contractors Indemnity Company has a judgment, in the Statement of Financial Affairs (Question 9), Debtor states that there is a law suit pending in Los Angeles Superior Court with that creditor which has a 2013 year case number, 13K18037. *Id.* at 43. No appellate proceeding relating to that judgment is disclosed.

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

Trustee’s Non-Opposition

While normally sufficient, the Docket Entry Statement of Non-Opposition leaves some open questions with the court. Here, Movant admits that the legal description in the 2016 Deed of Trust is incomplete. The Trustee does not state that he has reviewed the “incomplete statement” and, with the assistance of any necessary professional, has determined that the defect in the legal description does not raise any possible rights for the Bankruptcy Estate.

As with the court’s review of the Motion, the court could surmise what could be a proper response, but such is not the role of the court in connection with the Trustee performing his duties running to the Bankruptcy Estate.

Ruling on Motion for Relief

As drafted, the Motion fails to provide the court with sufficient grounds stated with particularity for which the relief may be granted. As drafted, the Motion “admits” that the legal description in the 2016 Deed of Trust is “incomplete” (and possibly defective), but what to do a reformation in state court litigation with Debtor.

The court has, for now more than twelve years during which Movant's counsel has been appearing in this court and generally complying with the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, made clear that it is the motion in which the grounds must be stated with particularity. It is not for a party to dump a pile of documents with the court and effectively instruct the court to dig through the pile of documents to assemble a proper motion for a party.

Another item the court notes is that by granting relief from the stay as requested by Movant, prosecuting the State Court Action could result in Movant obtaining a worthless judgment. Debtor is not currently the owner of the Property, the Bankruptcy Estate is. Upon obtaining relief from the stay Movant would have to amend the State Court Complaint to add the Chapter 7 Trustee and pull him into the litigation. Until the Property is abandoned by the Trustee, whether by operation of law when the case closes or earlier based on a motion to abandon, the Trustee is the real party in interest concerning the effect of the 2016 Deed of Trust on the Property.

At the hearing, **XXXXXXX**

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.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment for any recovery or other monetary relief from Debtor, J. Michael Hopper ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

~~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 Lakeview Loan Servicing, LLC by and through its servicing agent M&T Bank ("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 for Relief From the Stay is **XXXXXXX**

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.