

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

June 24, 2014 at 1:30 p.m.

1. [14-23562](#)-C-13 ROTONDA LLOPIS MOTION FOR RELIEF FROM
EAT-1 Pro Se AUTOMATIC STAY
 5-19-14 [[26](#)]

U.S. BANK, N.A. VS.

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 May 19, 2014. Twenty-eight days' notice is required. That requirement was met.

Final 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). 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 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 for Relief from the Automatic Stay is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

U.S. Bank, National Association seeks relief from the automatic stay with respect to the real property commonly known as 701 Raven Drive, Vacaville, California. The moving party has provided the Declaration of Edward Treder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Treder Declaration states that the Movant acquired title to the property at a pre-petition foreclosure sale held on January 31, 2011. He asserts that Debtor has no ownership interest in the property. On February 17, 2011, Movant served Debtor with an eviction notice. An unlawful detainer complaint was filed in the Superior Court of Solano County on June 3, 2011 and trial was set for September 27, 2011. Trial was stayed by a prior bankruptcy filings and delay tactics of Debtor.

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Chapter 13 Trustee

The Chapter 13 Trustee filed a notice of non-opposition to the Motion.

Discussion

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank, National Association, 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 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(a) are vacated to allow U.S. Bank, National Association, 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 which 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 obtain possession of the real property commonly known as 701 Raven Drive, Vacaville, California.