

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

July 28, 2015 at 1:30 P.M.

1. [15-24061](#)-C-13 RANDY RICHARDSON AND CONTINUED MOTION FOR RELIEF
RSS-1 JACQUELYN **RAMIREZ-RICHARDSON** FROM AUTOMATIC STAY
W. Steven Shumway 6-5-15 [[14](#)]
OWB REO, LLC VS.

Tentative Ruling: 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). 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).

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 June 5, 2015. 14 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. At the hearing -----.

The Motion for Relief from the Automatic stay is denied.

OWB REO LLC seeks relief from the automatic stay with respect to the

real property commonly known as 7925 Rock Springs Road, Penryn, California. The moving party has provided the Declaration of Richard S. Sontag to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Movant is the legal owner of the property acquiring title by foreclosure sale pre-petition on March 18, 2015 and recording the deed within the time period imposed by state law. Movant seeks to proceed with the unlawful detainer action filed in state court on May 20, 2015. Debtor has filed multiple bankruptcy cases to prevent Movant from recovering possession of the property (Case Nos. 13-34358, 13-35194, 14-27936).

Trustee's Opposition

The Chapter 13 Trustee opposes the Motion on the basis that:

1. The Debtors' first Chapter 13 payment of \$6,320 is due June 25, 2015.
2. The Movant's declaration is hearsay because potentially every statement was made "on information and belief."
3. The Movant has not filed a separate Memorandum of Points and Authorities.
4. Debtors' prior bankruptcy cases were filed prior to the Movant obtaining title of the property.

Debtors' Opposition

Debtors previously filed a Chapter 13 case on August 3, 2014, Case No. 14-27936. Section 5.01 of the confirmed plan filed in the prior case states that any property of the estate shall not revert in Debtor upon confirmation of the plan.

Debtors prior was closed until April 21, 2015. Movant foreclosed on the subject property on March 18, 2015. Debtors filed this case on May 19, 2015 without knowledge of the foreclosure.

The foreclosure is void because it occurred prior to the closing of the case while the property was still part of the bankruptcy estate.

The unlawful detainer action violated the automatic stay because it occurred on May 20, 2015--one day after the filing of the petition.

Trustee's Supplemental Memorandum Re Termination of Automatic Stay

The automatic stay existed at the time Movant foreclosed upon the property. The bankruptcy case was not closed, and thus the property was still part of the estate by operation of law and subject to the automatic stay.

Discussion

Because the automatic stay existed at the time Movant foreclosed upon the property, the foreclosure sale is void and Movant does not hold title to the property. Thus, Movant has no colorable claim to title of the property as a basis to pursue an unlawful detainer action against the debtors.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court terminating the automatic stay to allow Movant to

pursue an unlawful detainer action against the debtors.

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 OWB REO LLC ("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 **not** vacated to allow OWB REO LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 7925 Rock Springs Road, Penryn, California.

2. [15-21868](#)-C-13 RAYMOND/LAILA LARSEN
MDE-1 Ashley Amerio

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-25-15 [[35](#)]

NATIONSTAR MORTGAGE, LLC VS.

Final Ruling: No appearance at the July 28, 2015 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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 25, 2015. 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 granted.

Nationstar Mortgage LLC seeks relief from the automatic stay with respect to the real property commonly known as 6153 Larry Way, North Highlands, California. The moving party has provided a declaration introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Chastity Wilson Declaration states that the Debtor has not made 3 post-petition payments in the amount of \$4,576.29 each. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$340,205.24 (including \$288,952.24 secured by movant's first trust deed), as stated in the Declaration, while the value of the property is determined to be \$211,020, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the 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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Nationstar Mortgage LLC, 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.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

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(a) are vacated to allow Nationstar Mortgage LLC, 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 6153 Larry Way, North Highlands, California.

No other or additional relief is granted.
