

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 5, 2014 at 9:31 A.M.

1. [14-24771](#)-B-13 MONICA DAUBS
PJR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-1-14 [[19](#)]

TRI COUNTIES BANK VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part. The automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose on the real property located at 1284 Diamond Bar Court, Redding, California (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that it is the holder of a promissory note secured solely by a first-priority deed of trust on the Property, which promissory note was fully matured, due and owing by its terms as of the date of the filing of the petition on May 6, 2014. The Property is the debtor's residence. The movant is incorrect that it is impossible for the debtor to rehabilitate the debt under the terms of the plan by virtue of the fact that it is fully matured, as 11 U.S.C. § 1322(c)(2) allows payment of such debts in a chapter 13 plan modified in a manner that complies with 11 U.S.C. § 1325(a)(5). However, the debtor's plan does not propose to pay the movant's secured claim based on the first deed of trust in a manner consistent with the requirements of § 1325(a)(5), as it does not propose value distributed under the plan on account of the claim in an amount not less than the amount of the claim; the debtor merely proposes interest-only payments over the term of the plan. See 11 U.S.C. § 1325(a)(5)(B)(ii). As evidenced by the objection to confirmation of the plan filed by the movant on July 17, 2014, the movant does not consent to this treatment. The debtor has also listed the movant's claim as a non-purchase money claim in class 2A of the plan; as a result, the plan proposes that the movant receive no payment until confirmation. Considering the foregoing, the movant is not adequately protected. This constitutes cause for relief from the automatic stay.

The movant also alleges without dispute that it is the lender on a line of credit agreement with the debtor, which agreement is secured by a second priority deed of trust on the Property. The movant alleges without dispute that the debtor is nine months in pre-petition default under the terms of the credit agreement. The debtor has also proposed that the movant's claim based on the credit agreement be treated as a class 2A claim to receive interest-only payments under the plan, but, as

with the loan secured by the first deed of trust, the treatment proposed by the plan does not comply with § 1325(a)(5)(B)(ii). Because the plan also proposes no disbursement on the secured claim based on the credit agreement until confirmation of the plan, the movant is not adequately protected. This constitutes cause for relief from the automatic stay.

The debtor's opposition is not persuasive; it merely restates the treatment proposed in the plan, which, for the reasons set forth above, is not confirmable.

The court will issue a minute order.