

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: August 15, 2023

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 15, 2023 at 1:00 p.m.

1. [22-22606](#)-B-13 RESTY PADOJINO MOTION TO MODIFY PLAN
[PLG](#)-1 Rabin Pournazarian 7-6-23 [[28](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

August 15, 2023 at 1:00 p.m.

2. [22-21417](#)-B-13 ERIC HARDY
[BSH](#)-1 Mark Shmorgon

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-7-23 [[24](#)]

STOCKTON MORTGAGE, INC. VS.

Final Ruling

The motion has been set for hearing on at least 28-days notice. Local Bankr. R. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). A response was filed by the Chapter 13 Trustee. Debtor Eric Hardy ("Debtor") was properly served and did not file a response or an opposition. Accordingly, the Debtor's default, and the defaults of all other parties in interest who did not oppose or respond to the motion, are entered. See Fed. R. Civ. P. 55; Fed. R. Bankr. P. 7055.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny as moot the motion for relief from stay.

Stockton Mortgage, Inc. ("Creditor") seeks relief from the automatic stay with respect to real property commonly known as 6362 Atwater Jordan Road, Atwater, California (the "Property"). Creditor asserts that the plan filed on June 3, 2022, and confirmed on August 17, 2022, does not adequately provide for its claim. Creditor states that the confirmed plan lists only pre-petition accrued interest in Class 2 and not the total principal on its first deed of trust. Creditor has provided the Declaration of Gary Hanna to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Hanna Declaration states that the principal owed is \$249,470 and is set to mature April 1, 2026, which is during the life of the plan. Debtor's 60-month plan does not provide for payment of the principal or for adequate assurance. The value of the Property is determined to be \$90,000.00 as listed in Schedules A/B and D filed by Debtor and as stated in Creditor's papers.

A response was filed by the Chapter 13 Trustee stating that on December 30, 2022, Debtor timely filed on behalf of Creditor secured Claim 5-1 in the amount of \$20,286.70. No other claims have been filed by the Creditor or on behalf of the Creditor. Debtor's plan provides for Creditor as a Class 2 claim in the amount of \$20,286.70 to be paid at 5% interest and a monthly dividend of \$382.84. The Trustee has disbursed a total of \$3,445.56 to the claim, \$2,589.42 of which was principal and \$856.14 of which was interest.

Discussion

Creditor holds a first deed of trust secured by the Debtor's residence. Creditor asserts \$23,281.20 in pre-petition arrearages, \$29,640.00 in post-petition arrearages, and that its claim matures during the life of Debtor's plan that does not provide for payment of the principal in either Class 1 or 2.¹ However, Creditor did not file a proof of claim or submit any evidence to support the basis for the claimed pre-petition and post-petition arrears.

Separately, the court takes judicial notice that the plan filed June 3, 2022, and confirmed on August 17, 2022, was not served on Creditor and that the Creditor could not have objected to confirmation. Creditor was not added to the docket until December

¹Creditor filed a copy of the *Note Secured by Deed of Trust*. See Dkt. 26, Ex. A. The note is self-authenticating. See Fed. R. Evid. 902(9); *In re Gold*, 2017 WL 2125813, *3 (Bankr. E.D. Cal. May 15, 2017) (collecting cases).

30, 2022, the same date that Debtor filed Claim 5-1 on behalf of the Creditor, and which was four months after the plan was confirmed.

However, the Debtor's problem here is § 362(e)(1) which states, in relevant part, that the automatic stay expires by operation of law 30 days after a motion for relief from stay is filed unless: (1) a preliminary hearing is held within 30 days of the filing of the motion; (2) the court orders the stay continued in effect pending the conclusion of a final hearing; (3) there is a reasonable likelihood that the party opposing relief from the stay will prevail at the conclusion of the final hearing; and (4) the final hearing occurs not later than 30 days after the conclusion of the preliminary hearing, unless the 30-day period is extended for a specific time which the court finds is required by compelling circumstances. 11 U.S.C. § 362(e)(1).

At a very minimum, the first and second conditions of § 362(e)(1) are not satisfied. Creditor filed its motion for relief from the automatic stay on July 7, 2023. See Dkt. 24. A hearing on the motion was set on and noticed for August 15, 2023. See Dkt. 25. The period between these two dates is 39 days. There was no preliminary hearing in the interim and, thus, the court did not order the automatic stay to remain in effect for more than 30 days after the motion was filed and pending a final hearing. The 30-day period thus expired - and the automatic stay terminated by operation of law for Creditor with regards to the Property - on August 6, 2023; however, because that day was a Sunday the operative termination date is the following day, Monday, August 7, 2023.²

The court cannot terminate an already terminated automatic stay and, in fact, doing so is an abuse of discretion. See e.g., *Khabushani v. Anderson (In re Khabushani)*, 2021 WL 2562113 at *2 (9th Cir. BAP June 22, 2021). Creditor's motion is therefore moot and will be denied as such. The automatic stay is no longer in effect as to Creditor and Creditor's rights and remedies under applicable non-bankruptcy law as they pertain to the Property.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

²Nothing prevented the Debtor from asking the court for an order shortening the time within which to hear Creditor's motion, and from doing so on an *ex parte* basis, to prevent the automatic stay from terminating by operation of law as a result of a hearing set 39 days after the motion was filed. See Fed. R. Bankr. P. 9006(c)(1). But, as noted, the Debtor did not even oppose the motion. Indeed, a debtor must, through "aggressive litigation management," obtain a timely hearing if it wants to ensure the continued protection of the automatic stay. . . . [I]t is the debtor's burden to call the issue to the court's attention if it desires that the stay be continued. *River Hills Associates Ltd. v. River Hills Apartments Fund (In re River Hills Apartments Fund)*, 813 F.2d 702, 707 (5th Cir. 1987).

3. [23-20161](#)-B-13 MACARIO LOPEZ CONTINUED OBJECTION TO
[RDG](#)-1 Michael T. Reid CONFIRMATION OF PLAN BY RUSSELL
D. GREER
CASE DISMISSED: 7/14/23 5-22-23 [[35](#)]

Final Ruling

The case having been dismissed on July 14, 2023, the objection to confirmation of plan is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [12-28694](#)-B-13 MIKE DOWNIE AND CHERI
[22-2096](#) TILLET-DOWNIE PGM-2

DOWNIE ET AL V. PNC BANK ET AL

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, PLAINTIFFS
ATTORNEY(S)
7-4-23 [[54](#)]

Final Ruling

Plaintiff Mike Downie and Cheri Tillet-Downie ("Plaintiffs") seeks attorneys' fees and costs, sanctions, and punitive damages against defendants PNC Bank, Dreambuilder Investment, LLC (collectively "Defendants").

The court entered an order finding Defendants' second deed of trust on the Plaintiffs' residence located at 323 Zola Ave, Roseville, California 95678, valued at \$0.00, as void and of no legal effect whatsoever following Plaintiffs' September 5, 2017, Chapter 13 discharge in the parent bankruptcy case. The court also stated in its order that Plaintiffs may file and serve a separate motion for attorney's fees and costs no later than fourteen (14) days after a judgment voiding the second deed of trust on the residence is entered. The motion shall state the grounds for - and cite legal authority in support of - the request. The motion shall also be served on Defendants and set for hearing under Local Bankr. R. 9014-1(f)(1).

Although the motion was timely filed on July 4, 2023, an amended proof of serve was filed July 21, 2023, thus providing interested parties with only 25-days' notice rather than the minimum 28-days' notice under Local Bankr. R. 9014-1(f)(1) per the court's order. Therefore, the motion for compensation is denied without prejudice.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling.

The court will issue an order.