

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 19, 2014 at 1:30 p.m.

1. [14-26368](#)-E-13 JAMES HAYES
JMA-6 Pro Se

FINAL HEARING RE: MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-11-14 [[18](#)]

COLFIN AH-CALIFORNIA 7, LLC
VS.

CONT. FROM 7-29-14

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 (pro se), Chapter 13 Trustee, and Office of the United States Trustee on July 11, 2014. By the court's calculation, 18 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). 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.

Colfin AH-California 7, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 320 Sparrow Street, Vacaville, California (the "Property"). The moving party has provided the Declaration of Carey Hester to introduce evidence as a basis for Movant's contention that James Hayes ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on January 22, 2014. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano and received a judgment for possession, with a Writ of Possession having been issued by that court on June 10, 2014. Exhibit 1, Dckt. 21. Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership.

OPPOSITION

Debtor filed an opposition on August 6, 2014, Debtor asserts various arguments, stating that he disputes the statements made in the motion. Debtors arguments to not appear to address the grounds at issue in this motion, namely regarding the automatic stay. Debtor appears to dispute the ownership.

As previously stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). In 2013 the Ninth Circuit Court of Appeals reaffirmed the limited scope of motions for relief in *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126 (9th Cir. 2013), stating,

"A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding. *Johnson v. Righetti*, 756 F.2d 738, 740-41 (9th Cir. 1985). Given the limited nature of the relief obtained through this proceeding and because final adjudication of the parties' rights and liabilities is yet to occur, a party seeking stay relief need only establish that it has a colorable claim to the property at issue. *In re Veal*, 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011)."

This bankruptcy court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief. That litigation is left to a court properly exercising jurisdiction over the dispute and resolving those matter in a lawsuit between the parties. Federal Rule of Bankruptcy Procedure 7001 requires an adversary proceeding if the bankruptcy court exercises federal court jurisdiction to determine the extent, validity, priority, or amount of an interest in or lien against property. Fed. R. Bankr. P. 7001(2).

DISCUSSION

This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (Case No. 14-20584) was dismissed on March 31, 2014, within one year of the filing of this case. See Notice of Entry of Order of Dismissal, Bankr. E.D. Cal. No. 2014-20584, Dckt. 30, April 9, 2014. Debtor filed his current Chapter 13 bankruptcy case on June 18, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay ended as to the Debtor thirty days after filing of the petition.

362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). But a single case, or even several cases filed over an extended period of time or which do not all affect the property, may fail to support the findings required for the entry of an in rem order. Id. at 362.05[19][a].

The grounds stated with particularity in the Motion for the § 362(d)(4) relief (Fed. R. Bankr. P. 9013) are:

- A. Debtor has engaged in a "'scheme to delay, hinder, and defraud creditors,' which has involved multiple bankruptcy filings affecting the property."
- B. A foreclosure on the Property was conducted on or about January 22, 2014.
- C. On January 23, 2014, Debtor filed a bankruptcy case.
- D. On April 9, 2014, the bankruptcy case was dismissed.
- E. Debtor was served with the statutory notice to quit possession of the property.
- F. On May 7, 2014 Movant filed an unlawful detainer complaint.
- G. Debtor's default was entered in the unlawful detainer action and a judgment was issued in favor of Movant.
- H. Debtor filed the present bankruptcy case on June 18, 2014, prior to Movant obtaining possession of the Property.
- I. Debtor commenced the present case on June 18, 2014.

Motion, Dckt. 18.

While frustrating the mere filing of two bankruptcy cases is not, in and of itself, a scheme to defraud, delay, or hinder creditors. Congress has dealt with the filing of a second bankruptcy case in 11 U.S.C. § 362(c)(3), which automatically terminates the automatic stay after 30 days in the second case (filed within one year of the prior case having been pending) unless such

stay is extended by the court. If a third case within one year is filed, Congress has provided that the automatic stay does not go into effect. 11 U.S.C. § 362(c)(4).

This court issued an order dated August 2, 2014 denying the Debtor's motion to extend the automatic stay in this case. Dckt. 52.

The court finds that grounds do not exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided evidence concerning one other bankruptcy case being filed with respect to the subject property, Case No. 14-20584. The court finds that the filing of the present petition does not work as part of a "scheme" to delay, hinder, or defraud Movant with respect to the Property.

The automatic stay not currently in effect and insufficient grounds for 11 U.S.C. § 362(d)(4) being plead, the motion is denied.

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 Colfin AH-California 7, LLC 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 is denied without prejudice, the automatic stay having terminated by operation of law pursuant to 11 U.S.C. § 362(c)(3)(A).

No further or other relief is granted.