UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge Sacramento, California

September 12, 2017, at 1:30 p.m.

1. <u>15-29454</u>-E-13 MICHAEL/KAYLENE YANDEL MOTION FOR RELIEF FROM AP-1 Matthew De Caminada AUTOMATIC STAY 8-11-17 [72]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the September 12, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient 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 August 11, 2017. By the court's calculation, 32 days' notice was provided. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Michael Yandel and Kaylene Yandel's ("Debtor") real property commonly known as 2201 Hale Aloha Way, Ceres, California ("Property"). Movant has provided the Declaration of Rodney Coaxum-Richardson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Coaxum-Richardson Declaration states that there are twenty post-petition defaults in the payments on the obligation secured by the Property, with a total of \$21,747.35 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on August 25, 2017. Dckt. 79. The Chapter 13 Trustee asserts that the Property is not listed on Official Form 106A/B and that Creditor is not included on Official Form 106D or the confirmed plan.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, Movant's deed of trust in this property secures \$152,895.79, as stated in the Coaxum-Richardson Declaration and Schedule D. The Property is not listed on Debtor's petition or schedules.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE Livestock, Inc.), 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting In re Busch, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); In re Silverling, 179 B.R. 909 (Bankr. E.D. Cal. 1995), aff'd sub nom. Silverling v. United States (In re Silverling), No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See In re JE Livestock, Inc., 375 B.R. at 897 (quoting In re Busch, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a 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. W. Equities, Inc. v. Harlan (In re Harlan), 783 F.2d 839 (9th Cir. 1986); Ellis v. Parr (In re Ellis), 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); In re Ellis, 60 B.R. 432.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Tammie Walker and Thomas Walker executed the original note on November 24, 2009, and then transferred it to Tammie Walker and Debtor Kaylene Yandel as joint tenants and as a gift by grant deed on November 1, 2015.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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 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 Wells Fargo Bank, N.A. ("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 vacated to allow Wells Fargo Bank, N.A., 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 that 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 to obtain possession of the real property commonly known as 2201 Hale Aloha Way, Ceres, California.

IT IS FURTHER ORDERED that the request to terminate any co-debtor stay of Tammie Walker and Thomas Walker arising pursuant to 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.