

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

September 17, 2019 at 1:30 p.m.

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1. [19-20548](#)-C-13 ZAKI/DIANA HADDAD MOTION FOR RELIEF FROM  
[DJH](#)-1 Richard A. Hall AUTOMATIC STAY  
8-14-19 [[50](#)]  
NABIH HADDAD VS.

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**Tentative Ruling:** 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.  
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Local Rule 9014-1(f)(1) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2019. 28 days' notice is required. That requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Relief from the Automatic Stay is continued to November 26, 2019 at 2:00 p.m.</b></p>
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Nabih Haddad ("Movant") seeks relief from the automatic stay with respect to Zaki Haddad and Diana Haddad's ("Debtor") real property commonly known as 3147 Kathy Way, Loomis, California ("Property"). Movant has provided the Declaration of Daniel Hanecak to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made eight post-petition payments, with a total of \$5,490.80 in post-petition payments past due. Declaration, Dckt. 70. Movant also provides evidence that there are 135 pre-petition payments in default, with a pre-petition arrearage of \$55,872.53. *Id.*

## CHAPTER 13 TRUSTEE'S OPPOSITION

David Cusick ("the Chapter 13 Trustee") filed a Response on August 28, 2019. Dckt. 61. The Chapter 13 Trustee flags for the court that Debtors are delinquent \$4,948.80. The Chapter 13 Trustee's Objection to Confirmation was sustained on March 26, 2019 (Dckt. 30) and Debtors do not have an Amended Plan pending. As a result, the Trustee filed a Motion to Dismiss that is set for continued hearing on September 25, 2019. Dckt. 60.

Additionally, there is an unresolved Objection to Creditor's Claim No. 8 that is set for further hearing on November 26, 2019. Dckt. 49.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 3, 2019. Dckt. 64. Debtor's dispute the total amount of the secured claim asserted by Movant. The dispute is at issue in the pending Objection to Claim No. 8, set for further hearing on November 26, 2019. Debtors argue that if they prevail in their Objection to Claim, then there is equity for the estate in the subject property. Debtors request that this hearing either be continued or dismissed without prejudice until the Objection to Claim is resolved.

## MOVANT'S REPLY

On September 10, 2012, Movant filed a Reply brief arguing that the Debtors are causing undue delay in providing Movant with payments and that even under the most favorable factual determination, there is no equity in Debtors' property. Movant argues, that if Debtors prevail in the Objection to Claim, the addition of attorneys fees and interest to the claim would exhaust the equity in the property. Further, Debtors do not have a plan pending that provides sufficient payments to Movant.

## DISCUSSION

The court notes that upon a review on of the docket on September 16, 2019, Debtors have not yet proposed an Amended Plan. There is a pending Motion to Dismiss set for September 25, 2019, is a continued hearing for the purpose of allowing Debtors additional time to propose a feasible plan. The court noted at the initial hearing on the Motion to Dismiss, that Debtors cannot simply wait until the Objection to Claim is resolved to propose a plan. Accordingly, the case will likely be dismissed if Debtors are not able to have a plan on filed making this Motion for Stay Relief moot.

Assuming, that Debtors are able to put forth a Plan that is confirmable because it provides adequate protection for the Creditor while the Objection to Claim is pending, then Movant will have sufficient protection.

The court also notes that Debtors argue that if they prevail on the Objection to Claim, that would result in there being equity for the estate with respect to this property. Movant disputes this assertion. **At the hearing Debtors address Movant's claim that even if Debtors prevail in the Objection to Claim, that the attorneys fees and interest will exhaust the equity in the property....**

~~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 Nabih Haddad("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 Motion for Relief from Stay is continued to November 26, 2019 at 2:00 p.m.

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2. [18-23557](#)-C-13 DANIEL BUTLER  
[KXL](#)-1 Joseph Angelo

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
7-5-19 [[78](#)]

WILMINGTON SAVINGS FUND  
SOCIETY, FSB VS.

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**Tentative Ruling:** 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.  
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Local Rule 9014-1(f)(1) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2019. 28 days' notice is required. That requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Wilmington Savings Fund Society, FSB, dba Christina Trust, not individually but as trustee for Premium Mortgage Acquisition Trust ("Movant") seeks relief from the automatic stay with respect to Daniel Butler's ("Debtor") real property commonly known as 3220 Groveland Way, Antelope, California ("Property"). Movant has provided the Declaration of Ilda Huzejrovic to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made six post-petition payments, with a total of \$7,612.78 in post-petition payments past due. Declaration, Dckt. 81. Movant also provides evidence that there are eleven pre-petition payments in default, with a pre-petition arrearage of \$16,159.77. *Id.*

Movant asserts that since the filing of the petition on June 6, 2018, Debtor has not submitted any loan modification applications. Dckt. 81.

#### **CHAPTER 13 TRUSTEE'S RESPONSE:**

David Cusick ("the Chapter 13 Trustee") filed an Response on July 24, 2019. Dckt. 86. The Trustee states that Debtor is current with the confirmed plan payments as of June 26, 2019. Debtor's confirmed Plan classifies Movant as a Class 1 secured claim providing adequate protection payments while Debtor

seeks a loan modification.

## DISCUSSION

Debtor's confirmed Chapter 13 Plan affords Debtor extraordinary relief in being able to make adequate protection payments while diligently prosecuting a loan modification. The adequate protection payments and negotiation provision of the Chapter 13 Plan are to afford a debtor the opportunity to try and obtain a modification, not hold the property hostage by the automatic stay. While the Plan suggests that Debtor had a loan modification was in process at the time of the filing of Plan (Section 7.03 "the Debtor has in process a HAMP Application"), Creditor disputes this premise. Debtor did not file a response to Creditor's Motion. Accordingly, Debtor's default is entered.

The court notes that the Confirmed Plan lists Sertus, Inc. as the entity the Debtor submitted the loan modification application. Sertus, Inc., the original creditor who filed the relevant proof of claim, filed a Notice of Intent to Transfer its claim to Creditor on March 1, 2019. The court notes that Movant provides a declaration that no loan modification was submitted to Movant, however, it is not clear whether Movant is also asserting that Debtor did not submit a loan modification to Sertus, Inc.

At the August 13, 2019 hearing, the court continued the matter to allow Debtor additional time to attempt to sell the property securing the claim.

### **At the hearing -----**

~~From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by the value of the Property that is determined to be \$323,757.00, as stated in Schedules B and D filed by Debtor.~~

~~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 *J E Livestock, Inc. v. Wells Fargo Bank, N.A.* (In re *J E 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 J E 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.~~

### ~~**Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement**~~

~~Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order~~

~~granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.~~

~~Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 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 Wilmington Savings Fund Society, FSB, dba Christina Trust, not individually but as trustee for Premium Mortgage Acquisition Trust ("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 Movant, 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 real property commonly known as 3220 Groveland Way, Antelope, California, ("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 Property.~~

~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.~~

~~No other or additional relief is granted.~~

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