

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

September 22, 2015 at 1:30 P.M.

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1. 11-48305-C-13 JOHN/DARLENE DOERR MOTION FOR RELIEF FROM  
APN-2 Peter Macaluso AUTOMATIC STAY  
8-19-15 [274]  
WELLS FARGO BANK, N.A. VS.

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**Tentative Ruling:** 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). 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct 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 19, 2015. Twenty-eight 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). 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties 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 -----.**

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 815 Braddock Ct., Davis,

California for the limited purpose of recording the Second Deed of Trust in Yolo County, California executed by the debtor in favor of movant as part of a home equity loan transaction. The moving party has provided the Declaration of Jesse P. Newkirk to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

### **Debtors' Opposition**

The relief requested is not yet ripe as the second deed of trust is a condition subsequent to the completion of the plan.

### **Trustee's Statement of Nonopposition**

The Chapter 13 Trustee filed a statement of nonopposition on September 8, 2015.

### **Discussion**

Per stipulation, the parties agreed that movant's second deed of trust would survive the Debtors' Chapter 13 discharge as long term debt. (Dkt. 277). Accordingly, recording the second deed of trust is not reliant on completion of the plan.

The court shall issue a minute order terminating and vacating the automatic stay for the limited purpose to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, to record a Second Deed of Trust in Yolo County, California against the real property commonly known as 815 Braddock Ct., Davis, California.

No other or additional relief is granted by the court.

The court shall issue a minute 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 the creditor 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, to record the Second Deed of Trust in Yolo County, California against the real property commonly known as 815 Braddock Ct., Davis, California.

No other or additional relief is granted.

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