

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 24, 2017 at 1:30 p.m.

1.	16-27562 -C-13	RANDY HEDLUND AND SHAWN	MOTION FOR RELIEF FROM
	AP-1	MURPHY	AUTOMATIC STAY
		Mohammad Mokarram	9-18-17 [23]
	U.S. BANK, N.A. VS.		

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.

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 September 18, 2017. 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 denied as moot.

U.S. Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 3412 Nouveau Way, Rancho Cordova, California. The moving party has provided a declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The declaration states that the Debtor has not made 4 post-petition payments, with a total of \$8,989.98 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$302,234.38 (including \$302,234.38 secured by movant's first trust deed), as stated in the declaration, while the value of the property is determined to be \$320,000.00, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a response indicating that it did not oppose the relief from stay motion, but also pointed out that under the terms of the confirmed plan the creditor is a Class 4 creditor.

Under the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.

As a result, the creditor may exercise its rights against the collateral without needing an order from the court vacating the stay with respect to the property.

The court shall issue a minute order denying the Motion for Relief from Stay as moot as the creditor is provided for in Class 4 of the confirmed plan and therefore may exercise its rights with respect to the property without needing an order vacating the stay.

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 Motion for Relief from the Automatic Stay is denied as moot.

2. [16-28366](#)-C-13 TIMOTHY SCHAD
[AMM](#)-1 Lucas Garcia

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-22-17 [[66](#)]

NATIONSTAR MORTGAGE, LLC VS.

Final Ruling: No appearance at the October 24, 2017 hearing is required.

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

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 September 22, 2017. Twenty-eight 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). 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). 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 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.

Nationstar Mortgage, LLC seeks relief from the automatic stay with respect to the real property commonly known as 1710 South Camelia Avenue, Farmersville, California. The moving party has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wilson Declaration states that the Creditor has not received 54 pre petition payments and 8 post-petition payments, with a total of \$4,854.56 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$64,803.84, as stated in the Wilson Declaration, while the value of the property unknown as it was not listed on the petition.

The Chapter 13 Trustee points out that no plan has been confirmed and the property is not scheduled on the petition.

The court may grant relief from stay for cause when a creditor has not received required payments, or a debtor is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court notes that the property was transferred to the debtor on

November 23, 2016, approximately 1 month prior to the filing of the petition. Movant requests relief from stay pursuant to §§ 362(d)(1), (d)(2), and (d)(4). As debtor has not indicated any interest in the property, and in light of the large default on the property, it appears that the transfer of the property into the name of the debtor was part of a scheme to delay, hinder or defraud creditors that involved transfer of part ownership of the real property without the consent of the secured creditor or court approval under § 362(d)(4).

The court shall issue a minute order terminating and vacating the automatic stay to allow Nationstar Mortgage, LLC, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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 Nationstar Mortgage LLC, 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 which 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 obtain possession of the real property commonly known as 1710 South Camelia Avenue, Farmersville, California.

IT IS FURTHER ORDERED that this order is eligible to be recorded pursuant to 11 U.S.C. § 362(d)(4) because the court determines that the filing of this petition was part of a scheme to delay, hinder or defraud creditors that involved transfer of part ownership of the real property without the consent of the secured creditor or court approval under § 362(d)(4).

No other or additional relief is granted.

3. [17-20998](#)-C-13 LEE JASPER
[DBL](#)-2 Bruce Dwiggins

CONTINUED OBJECTION TO CLAIM OF
WELLS FARGO BANK, N.A., CLAIM
NUMBER 1
6-22-17 [[27](#)]

Tentative Ruling: The Objection to Claim 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.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 and other parties in interest are entered.

The hearing on the Objection to Proof of Claim Number 1-1 of Wells Fargo Bank, N.A. will be set for evidentiary hearing.

Lee Charles Jasper, the Chapter 13 debtor ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$421,679.18. Objector asserts that Wells Fargo is charging double principal because in its proof of claim, Wells Fargo adds the total missed payment to Column G ("Prin int & esc. past due balance"). Debtor asserts that when missed payments are added to Column G, they include principal payments, however the principal amount in Column M does not adjust down the amount of the principal that is unpaid.

The Chapter 13 Trustee weighed in to indicate that the proof of claim does not include address, contact phone, or email of the person who completed the claim. The attachment is not legible as to the date column.

Wells Fargo opposes the Debtor's motion on the basis that (1) the debtor has not rebutted the prima facie validity of the proof of claim, and (2) Column G shows a running tally of all contractual payments that are past due. Each time a payment is missed, the principal, interest and escrow amount is added to the running total. Column M is only adjusted when a payment has been received. Column G does not list the amount of payments required in conjunction with Column M, they just show different things.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The court is unconvinced that the debtor's prayer for relief, namely a total disallowance of Wells Fargo's claim 1-1, is warranted. Even if the court were to accept each of the debtor's assertions as true, the claim could only be disallowed as to the portion that is unlawfully charged to the debtor. Here, Wells Fargo has adequately answered the concerns of the debtor. However, the court is mindful that the accounting is confusing by the creditor, and encourages the parties to work together to understand exactly what is owed, and how it can be paid.

The court continued the hearing to September 19, 2017 and requested that the creditor provide the debtor the payout amount by September 5, 2017.

On September 13, 2017, the creditor filed a status report indicating that the payout amount was provided to the debtor. The debtor subsequently paid the amount due and it has been received by the creditor. Creditor requests that the objection be withdrawn as there are no further issues.

At the September 19, 2017 hearing the parties were not in agreement that the dispute has been resolved, so the court will schedule an evidentiary hearing in this Contested Matter.

The parties appeared on October 3, 2017. At that hearing, the court continued the matter to October 24, 2017 to allow the parties to work together to find a resolution to the issues.

Absent evidence of resolution between the parties, the court will set the matter for evidentiary hearing.

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 Objection to Claim of Wells Fargo Bank, N.A., Creditor filed in this case by the Chapter 13 debtor 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 hearing on the objection to Proof of Claim Number 1-1 of Wells Fargo Bank, N.A. will be set for an evidentiary hearing.
