

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

November 1, 2022 at 1:30 p.m.

1. [20-24239-E-13](#) **ROBIN/THOMAS HARLAND** **MOTION FOR RELIEF FROM**
[JCW-1](#) **Stephen Reynolds** **AUTOMATIC STAY**
 9-21-22 [[119](#)]

**DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.**

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.

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, and Chapter 13 Trustee on September 21, 2022. By the court's calculation, 40 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("Movant") seeks relief from the automatic stay with respect to Thomas Scott Harland as co-debtor and Successor-in-interest to deceased Debtor Robin Arlene Harland's, collectively, "Debtor", real property commonly known as 2263 Casa Dulce Way, Plumas Lake, California

("Property"). Movant has provided the Declaration of Rachel Marcella Cathcart Love 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 four post-petition payments, with a total of \$9,364.72 in post-petition payments past due. Declaration, Dckt. 122. Movant also provides evidence that there are twelve pre-petition payments in default, with a pre-petition arrearage of \$26,457.90. Movant's Information Sheet, Dckt. 123.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 18, 2022. Dckt. 125. Debtor asserts that they have been unable to make payments as required under his Plan. Debtor provides a copy of a current National Data Center report shows disbursements to Movant and is filed as an Exhibit in support of Debtor's Opposition. Debtor states that the report shows a \$2,341.18 disbursement on June 30, 2022, the same amount on June 30, 2022, and another on September 30, 2022. Exhibit One, Dckt. 126.

The court notes, however, upon review of Debtor's Confirmed Second Amended Plan, Dckt. 62, Debtor is required to pay Creditor a post-petition monthly payment of \$2,247.36 and a monthly arrearage dividend of \$532.14, totaling \$2,779.50. (The Trustee properly notes Debtor submitted a later plan that was confirmed, Dckt. 101, however, Debtor's Counsel never submitted an order confirming that Plan. The previous Plan, however, Dckt. 62, contained the same treatment of Creditor).

Debtor further states that Debtor will file a new Chapter 13 Plan with a proposed monthly payment of \$2,550.00, with the marketing and sale of Debtor's residence within 6 months of the Plan's effective date.

The Opposition states Movant's interest will be adequately protected, as the value of the home has increased from \$360,000 to \$549,200. Exhibit 2, Dckt. 126.

TRUSTEE'S REPLY

Trustee filed a Reply, to this Motion, on October 18, 2022. Dckt. 128. Trustee states that:

1. Debtor failed to submit an order approving Debtor's Motion to Modify, which was granted on March 18, 2022. Therefore, Trustee has been unable to comply with the terms and disburse payment under the Plan.
2. Debtor is delinquent \$16,821.00 under the Modified Plan.
3. Trustee has disbursed \$47,671.62 in ongoing mortgage payments and prepetition mortgage arrears in Class 1, and there is currently a principal amount due of \$7,008.96.
4. Trustee has disbursed \$1,200.59 in prepetition mortgage arrears, plus \$1,620.55 in interest.

5. Trustee's records reflect a current balance on hand of \$2,060.72, which is insufficient to fund another mortgage payment, without an additional Plan payment.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$330,726.51 (Movant's Information Sheet, Dckt. 123), while the value of the Property is determined to be \$360,000.00, as stated in Debtor's Schedules A/B and D. Dckt. 1, p. 12 and 19. The court notes, Debtor supplied a Zillow printout suggesting that the current value of the property is 549,000.00. Exhibit 2, Dckt. 126. Debtor did not provide a declaration indicating personal knowledge as to the increase in value.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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.

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.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("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 2263 Casa Dulce Way, Plumas Lake, 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.

Attorney's Fees and Costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

No other or additional relief is granted.

FINAL RULINGS

2. [18-22403](#)-E-13 NEWALOW/LINDA WEEKES MOTION FOR RELIEF FROM
[APN-1](#) Chad Johnson AUTOMATIC STAY
9-30-22 [\[98\]](#)
WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the November 1, 2022 hearing is required.

Wells Fargo Bank, N.A. d/b/a Wells Fargo Auto (“Creditor”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**