

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 5, 2019 at 1:30 p.m.

1.	<u>19-22049</u> -C-13	WENDY MORGAN	CONTINUED MOTION FOR RELIEF
	<u>DBJ</u> -1	Catherine King	FROM AUTOMATIC STAY AND/OR
			MOTION FOR ADEQUATE PROTECTION
			6-11-19 [<u>20</u>]

CARLA VERRY, LYLE VERRY VS.

No 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 Counsel, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 11, 2019. By the court's calculation, 35 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.

The Motion for Relief from the Automatic Stay xxxx.

Lyle Verry and Carla Verry ("Movants") seek relief from the automatic stay with respect to Wendy Kristine Morgan's ("Debtor") real property commonly known as 0000 Dunstone, Palermo, California 95968 ("Property"). Movants have provided the Declaration of Lyle Verry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movants argue Debtor has not made 2 post-petition payments, with a total of \$1,590.96 in post-petition payments past due. Declaration, Dckt.

23. Movants also provide evidence that there are 9 pre-petition payments in default, with a pre-petition arrearage of \$7,159.32. *Id.* Debtor's Promissory note called for monthly payments of \$795.78, including 5% interest per annum. Debtor is in default of her obligations under the Note for failure to make the payments due on August 1, 2018 and payments due thereafter. There is now due a sum of \$81,212.36 plus additional interest and attorney fees. Debtor received default notices from Movant, but failed to act. Movant has now started a non-judicial foreclosure as a result of non-payment.

Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5th wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition. Movant also takes issue with the fact that Debtor lists the property as her "homestead" in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on July 1, 2019. Dckt. 28. The Chapter 13 Trustee states that Debtor is delinquent \$1,230.00 under the proposed plan. Debtor has paid a total of \$1,230.00 to date. The Chapter 13 Trustee received payments from Debtor on June 3, 2019 and June 4, 2019. The Chapter 13 Trustee has a balance on hand of \$351.28 net of Trustee fees. Movant is included as creditor in Class 1 of the proposed plan with Post-Petition Monthly Payment of \$800.00. Dckt. 11. The Chapter 13 Trustee has generated a disbursement of \$800.00 to Movant on June 28, 2019. The Chapter 13 Trustee requests that the Court consider these matters.

DEBTOR'S RESPONSE

Debtor filed an Opposition on July 2, 2019. Dckt. 32. Debtor concedes that she entered into a Promissory note with Movant on May 1, 2018 secured by the subject Property. Debtor also concedes that she was delinquent in her payments as noted in the Motion. Debtor argues that Movant is adequately protected because Movant is provided for as a Class 1 claim, paying post-petition ongoing payments along with \$296.67 per month to be applied to the arrears. Debtor concedes that if she fails to perform her payments on the Promissory Note that Movant can foreclose on the property. Debtor notes that the deadline to file claims was June 11, 2019 and Movant failed to file a claim by then. Debtor shall file a claim then enabling the Chapter 13 Trustee to make payments on the mortgage arrears.

In response to "Lack of Equity," Debtor believes that the property value in the area is increasing after the devastating Camp Fires in November 2018. Debtor plans to remove the Vehicles and install some permanent structures on the Property once the Note is paid.

DEBTOR'S SUPPLEMENTAL REPLY:

On August 5, 2019, Debtor filed a declaration stating that she has taken measures to clear the property of debris and vehicle parts. Dckt. 38. Debtor's declaration refers to photographs documenting the efforts, however, no such photographs were filed in connection with the declaration.

CREDITOR'S SUPPLEMENTAL OPPOSITION:

On August 8, 2019, Creditor filed a declaration of Lyle Verry in response. Dckt. 40. Creditor disputes Debtor's contention that meaningful clean up efforts have been completed. In support, Creditor provides photographs taken on August 2, 2019 as proof that little improvement has taken place.

AUGUST 13, 2019 HEARING:

At the August 13, 2019 hearing the parties agreed to further continue the hearing to allow Debtor additional time to demonstrate whether sufficient efforts to preserve the property were being taken.

CREDITOR'S SECOND SUPPLEMENTAL DECLARATION:

On September 24, 2019, Creditor filed an additional declaration of Lyle Verry stating that Debtor has not taken sufficient steps to cleanup the subject property. Dckt. 44.

OCTOBER 1, 2019 HEARING

At the October 1, 2019 hearing counsel for Movant appeared and agreed to a continuance given Debtor's progress. Civil Minutes, Dckt. 47.

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 \$81,212.36 (Declaration, Dckt. 23), while the value of the Property is determined to be \$110,000, as stated in Schedules A/B filed by the Debtor.

Debtor lists the total value of the Property at \$110,000.00 and lists the obligation to Movant at \$79,541.85. Movant argues that Debtor owes \$81,212.36 in addition to costs and advances because of interest. According to Movant, Debtor has committed waste on the Property. The Property is an unimproved lot that is used primarily for pastureland with no structures or other miscellaneous junk on the property at the date of sale. Since the sale in April 2019, Movant argues that Debtor has made waste of the property by putting several abandoned vehicles, an un-saleable 5th wheel and miscellaneous trash and junk on the property. Movant attached Exhibits with photographic evidence attesting to the waste. Movant contends that this waste has dramatically decreased the value of the property to approximately \$50,000 to \$60,000 in its present condition.

Movant also takes issue with the fact that Debtor lists the property as her "homestead" in Schedule C, yet there are no livable structures on the property and the debtor is not residing there other than to camp occasionally. Debtor's filed Response rebuts this assumption and states that the Camp Fire in November 2018 caused her to leave the property, but she plans on returning and making the 5th wheel her permanent residence. Dckt. 32.

At the hearing ----

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 Lyle Verry and Carla Verry ("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 hearing on the Motion for Relief from the Automatic Stay is **XXXX**.