

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

November 20, 2018 at 1:30 p.m. - Add On

1.	18-27181 -C-13	MARCUS COTTON	MOTION FOR RELIEF FROM
	FRB-1	Pro Se	AUTOMATIC STAY - O.S.T.
			11-15-18 [9]

5AIF SYCAMORE 2, LLC 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor pro se, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2018 as required by court Order. Dckt. 18. The court set the hearing for November 20, 2018. Dckt. 18.

The Motion For Relief From Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

The Motion for Relief from the Automatic Stay is XXXXX.

5AIF Sycamore 2, LLC ("Movant") seeks relief from the automatic stay with respect to Marcus Cotton's ("Debtor") real property commonly known as 2730 Bell Street, Sacramento, California ("Property"). Movant has provided the Declaration of Patricia McLoon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant states that the borrower on the subject obligation is an entity, Muscle Builder, Inc., that is wholly owned by Debtor. The Patricia McLoon Declaration states that the loan entered into by Borrower matured on March 12, 2018 and Movant recorded a notice of default with Sacramento County. Dckt. 16, Exhibit 9. On June 25, 2018, the Movant recorded a Notice of Trustee's Sale. Dckt. 16, Exhibit 10. On July 26, 2018, the Movant, the Borrower, the Debtor, and another individual who was an additional guarantor on

the loan entered into two forbearance agreements. Dckt. 16, Exhibits 11 and 12.

Movant claims that Debtor has taken deliberate steps to frustrate Movant's ability to foreclose including:

1. Causing unauthorized pre-petition transfers including. A transfer from Borrow (entity wholly owned by Debtor) to Debtor and a transfer from Debtor to Debtor's mother. Dckt. 16, Exhibits 6 and 7, grant deeds.
2. Filing a state court complaint seeking injunctive relief to prevent foreclose. Dckt. 16, Exhibit 13. Movant claims this complaint was dismissed because it sought frivolous relief. and
3. Initiating bankruptcy proceedings with incomplete filings:

A. Case No. 18-26436: filed on October 11, 2018 without completed Schedules. On, October 31, 2018, obtained an extension to file Schedules. Case No. 18-26436; Dckt. 13. On November 9, 2018, the case was dismissed for failure to file required Schedules. Case No. 18-26436; Dckt. 26.

B. Present case, filed on November 15, 2018 with incomplete schedules.

Additionally, Movant alleges that while Debtor claims to be Pro Se in the current proceeding, counsel that represented Debtor in the previously dismissed proceeding was in contact with Movant regarding this filing at late as November 15, 2018. Dckt. 19.

DEBTOR'S OPPOSITION:

Debtor did not file an opposition prior to the hearing. At the hearing -----.

DISCUSSION

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.~~

~~**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 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 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 5AIF Sycamore 2, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~_____ **IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:~~

~~_____ “If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”~~

~~IT IS FURTHER ORDERED~~ that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

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