

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 24, 2015 at 1:30 P.M.

1. [15-27417](#)-C-13 MAE FLORES MOTION FOR RELIEF FROM
APN-1 Pro Se AUTOMATIC STAY
10-26-15 [[22](#)]
HPROF, LLC VS.

Final Ruling: No appearance at the November 24, 2015 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 26, 2015. 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.

HPROF, LLC seeks relief from the automatic stay with respect to the real property commonly known as 120 Mainsail Court, Vallejo, California. The moving party has provided the Declaration of David Bell 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 Movant is the legal owner of the property acquiring title by foreclosure sale pre-petition on October 23, 2013 and recording the deed within the time period imposed by state law. Movant seeks to proceed with the unlawful detainer action filed in state

court on November 15, 2013. On September 16, 2015, a Writ of Possession was entered against Debtor. Debtor has filed multiple bankruptcy cases to prevent Movant from recovering possession of the property (Case Nos. 13-35376, 15-20530, 15-23131).

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano and received a judgment for possession, with a Writ of Possession having been issued by that court on September 16, 2015. Exhibit C, Dckt. 25.

Movant has provided a properly authenticated/ certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the Judgment/Writ of Possession. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow OWB HPROF, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

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.

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 HPROF, LLC ("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 HPROF, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 120 Mainsail Court, Vallejo, California.

No other or additional relief is granted.

2. [15-25450](#)-C-13 JAMES PEEPLES
RMS-1 Charnel James

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-27-15 [[40](#)]

LARRY WILLIAMSON VS.

Final Ruling: No appearance at the November 24, 2015 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, parties requesting special notice, and Office of the United States Trustee on October 27, 2015. 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). 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.

Creditor Larry R. Williamson seeks relief from the automatic stay with respect to the real property commonly known as 12468 La Porte Road, Clipper Mills, California. The moving party has provided the Declaration of Larry R. Williamson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williamson Declaration and Supplemental Declaration states that the Debtor is delinquent in pre-petition arrearages, including foreclosure fees and costs, amounting to \$234,867.49, and that there are a number of encumbrances on the property. First, there are defaulted property taxes for fiscal year 2013-2014 in the amount of \$8,875.89, delinquent property taxes for the first installment for fiscal year 2014-2015 for \$3,900.53, and an additional substantive expense the amount unknown for a Notice of Violation for Nonsubmittal of Corrective Action Report from the Central Valley Regional Water Quality Control Board dated October 8, 2015 (as of October 8, 2015, Debtor was 358 days delinquent in submitting a report and if not Corrective Action Plan is submitted by November 15, 2015, an administrative civil liability complaint may issue with potential liability maximum amounting to \$358,000). Moreover, there is a matured second deed of trust in favor of Gary Wall and Jannell Bartolo Spicer in the amount of \$215,000.

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

\$462,643.91 (including \$234,867.49 secured by movant's first trust deed), as stated in the Williamson Declaration, while the value of the property is determined to be \$925,000, as stated in Schedules A and D filed by Debtor. The court notes that Creditor has advanced a value of the property to be significantly lower at \$315,000 pursuant to an appraisal obtained. Exhibit D, Dckt. 43.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee responds to the instant motion, stating that Debtor has paid a total of \$0 to date, and the meeting of creditors is set for December 10, 2015. The creditor is provided for in Debtor's plan filed October 29, 2015 in Class 1, however the plan calls for no specific monthly payments, but calls for a conservator to be appointed where no separate motion to appoint a conservator has been filed. The arrears amount is reported as \$25,00 with a monthly dividend of \$417.17. The Monthly Contract Installment is reported as \$1,900.

DISCUSSION

The court maintains the right to grant relief from stay for cause when the 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. *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).]

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, and the lack of opposition presented by the Debtor, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Moreover, Trustee, although having filed a response, has not stated an opposition to the motion.

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.

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 Creditor Larry R. Williamson ("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 immediately vacated to allow Creditor Larry R. Williamson, 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 12468 La Porte Road, Clipper Mills, California.

No other or additional relief is granted.
