

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 25, 2014 at 9:31 A.M.

1. [14-29059](#)-B-13 CYNTHIA KEETH
AMC-2

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-24-14 [[18](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Tentative Ruling: The motion is dismissed as moot in part and denied in part to the extent set forth herein. The movant's requests for relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) are dismissed as moot because the bankruptcy case was automatically dismissed as of 12:01 a.m. on October 27, 2014, by operation of 11 U.S.C. § 521(I), which automatic dismissal was confirmed by order entered November 13, 2014 (Dkt. 31). The movant already has relief from the automatic stay. The movant's request for a finding that the filing of this bankruptcy case was part of a scheme to delay, hinder and defraud creditors is denied. The movant's request for "in rem" relief with respect to the real property located at 3225 Gallop Court, Sacramento, California (APN 203-0880-089-0000) is denied. Except as so ordered, the motion is denied.

The movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied because a finding under 11 U.S.C. § 362(d)(4) is made as part of a ruling granting relief from the automatic stay. Section 362(d) begins with the language "On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section," and it then continues with four numbered subparagraphs, the last of which deals with relief from a stay of an act against real property if the court makes certain findings. However, those findings are only made as a basis for granting relief from the stay imposed by 11 U.S.C. § 362(a). Here no such stay exists from which relief may be granted.

To the extent that the movant asks the court to exercise its equitable powers under 11 U.S.C. § 105(a) to grant in rem relief, that request is also denied. In the exercise of its § 105(a) authority, a bankruptcy court has broad discretion to shape equitable remedies which further Congressional intent. "We have long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code." Law v. Siegel, 134 S.Ct. 1188, 1194-95 (2014) (citing Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, (1988)). See also Pacific Shores Dev., LLC v. At Home Corp. (In re At Home Corp.), 392 F.3d 1064, 1070 (9th Cir. 2004) ("[A] bankruptcy court must locate its equitable authority in the Bankruptcy Code.").

"[S]tatutory silence alone does not invest a bankruptcy court with equitable powers. Those powers are limited and do not amount to a 'roving commission to do equity.'" Id. (citation omitted). The reference to a "roving commission to do equity" is derived from In re Yadidi, 274 B.R. 843, 848 (9th Cir. B.A.P. 2002) ("§ 105 is not a roving commission to do equity or to do anything inconsistent with the Bankruptcy Code"). The court concludes that purporting to use § 105(a) to grant in rem relief from the automatic stay would conflict with the plain language of § 362(a) ("Except as provided in subsection (b)...a petition filed under section 301, 302, or 303...operates as a stay...."). The conflict between such purported use of § 105(a) and § 362 is highlighted by the multiple filing provisions of section 362(c)(3), (c)(4) and (d)(4), which were added to the Bankruptcy Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Had Congress intended that bankruptcy courts could order in rem relief from the automatic stay of the kinds requested by the movant based on multiple filings, it surely would have specified that authority in BAPCPA.

The court will issue a minute order.

2. [14-30461](#)-B-13 MARIA FLORES
ADR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-28-14 [[9](#)]

ALVERNAZ PARTNERS, LLC VS.

Tentative Ruling: This motion is unopposed. In this instance, because the debtor is pro se, the court issues the following tentative ruling.

The motion is granted in part, and the automatic stay is modified as against the debtor and the estate pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movant to proceed with an unlawful detainer action against the debtor so that it may exercise its rights under applicable non-bankruptcy law in obtaining possession of the real property located at 3633 French Avenue, Sacramento, California 95821 (the "Property"). The 14-day period specified in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that the debtor has failed to make any payments, pre-petition or post-petition, under an oral month-to-month lease agreement since July 2014. The movant further alleges without dispute that the debtor was served with a 60-day notice to pay rent or quit in May 2014, which expired on July 9, 2014 with the debtor having failed to cure the default. Service of the 60-day notice and expiration of the time to cure terminated the lease. Cal. Civ. Code § 1951.2; 7 Miller & Starr, California Real Estate § 19:201 (3d Ed. 2004). As such, neither the debtor nor the estate has any interest in the Property other than a bare possessory interest. Furthermore, there is no equity in the Property, and it is not necessary for an effective reorganization. These facts constitute cause for relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

The court will issue a minute order.