

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge
Sacramento, California

December 11, 2018 at 1:30 p.m.

1.	<u>18-21308-C-13</u>	SASHA LYON	MOTION FOR RELIEF FROM
	<u>EAT-1</u>	Peter Macaluso	AUTOMATIC STAY
			11-12-18 [<u>67</u>]
	WELLS FARGO BANK, N.A. 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2018. 28 days' notice is required. That requirement was met.

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 default. *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 denied without prejudice.</p>
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Sasha Lyon's ("Debtor") real property commonly known as 5659 Los Pueblos Way, Sacramento, California ("Property"). Movant has provided the Declaration of Charice Gladden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Charice Gladden Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$9,825.27 in post-petition payments past due. The Declaration also provides evidence that there are sixty-six pre-petition payments in default, with a pre-petition arrearage of \$142,498.98.

CHAPTER 13 TRUSTEE'S RESPONSE:

The Chapter 13 Trustee filed a Response on November 26, 2018. Dckt. 74. The Trustee states that the Movant is included in the confirmed Plan as a Class 1 creditor with respect to the Property. The confirmed Plan provides for monthly adequate protection payments of \$2,140.00 to the Creditor. The Order Confirming the Plan contains signatures for both the Chapter 13 Trustee and counsel for Wells Fargo Bank, the Movant. Dckt. 73.

DEBTOR'S OPPOSITION:

Debtor Opposes the Motion for Relief because the Debtor is providing adequate protection payments through the confirmed Plan while engaged in a law suit with the Movant in a State Court action filed in July 2017. Debtors states that the alleged arrears owed to Movant are deferred until resolution of the State Court action.

Debtor's counsel claims that Debtor is current on all required Plan payments and that Movant has received all adequate protection payments through the Plan.

DISCUSSION

11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

At the hearing -----.

RULING:

The court determined on August 21, 2018 that, in light of an ongoing litigation between the Debtor and the Movant, Debtor's plan did not need to pay the full value of the Creditor's stated secured claim; however, the court determined that Debtor needs to provide adequate protection payments. Dckt. 65. Debtor's confirmed plan provides for the adequate protection payments, as determined by the court. Dckt. 73. Additionally, both the Debtor and the Trustee indicate that Debtor is not delinquent in making the payments as required under the Plan. Dckts. 74; 76. Absent evidence that Debtor has not made all required payments or that there has been a resolution of the on going litigation warranting full payment of Movant's claim, there is no basis to grant Movant relief from the automatic stay at this time.

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 Wells Fargo Bank, N.A. ("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 Movant's Motion for Relief From Automatic Stay is denied without prejudice.

WELLS FARGO BANK, N.A. VS.
DEBTOR DISMISSED: 11/15/2018

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 (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2018. 28 days' notice is required. That requirement was met.

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 is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case. The Motion for relief pursuant to 11 U.S.C. 362(d)(4) is denied.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to John Mehl's ("Debtor") real property commonly known as 3104 Crest Haven Drive, Sacramento, California ("Property"). Movant has provided the Declaration of LaKeidra Barber to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on November 15, 2018, for failure to timely file documents. Dckt. 29.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 15, 2018, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* In this case Movant offered evidence that Debtor has filed three prior bankruptcies:

A. Case No. 10-53158

Filed: December 20, 2010

Chapter 7

Discharge Entered: April 4, 2011

B. Case No. 13-35728

Filed: December 16, 2013

Chapter 13

Dismissal Date: December 27, 2013

Reason for Dismissal: Debtor filed a skeletal petition and case was dismissed for failure to file required documents.

C. Case No. 17-20699

Filed: February 2, 2017

Chapter 13

Dismissal Date: June 14, 2017

Reason for Dismissal: Debtor was delinquent on one proposed Plan payment and did not file all required documents. The court notes that Debtor did file and serve a Motion to Confirm Plan.

D. Current Case

Filed: October 17, 2018

Chapter 13

Dismissal Date: November 15, 2018

Reason for Dismissal: Debtor filed a skeletal petition and case was dismissed for failure to file required documents.

Movant does not offer evidence of improper transfers or other attempts to delay or hinder the creditor.

The court finds that Movant has not provided sufficient evidence to establish grounds for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided the court with evidence that Debtor filed four bankruptcy cases over the period of eight years without offering transfers or other forms of prestidigitation. The filings, spaced out over eight years may be more akin to an uninformed or futile tactic rather than a "scheme." Additionally, the first case filed in 2010 was a Chapter 7 case that was successfully prosecuted to a Chapter 7 discharge for Debtor.

Though Debtor's unproductive, *pro se*, proceedings dismissed for failing to file the basic documents (Schedules, Statement of Financial Affairs, Schedules) may be frustrating, Congress has extended relief to creditors facing such nonproductive efforts through 11 U.S.C. § 362(c)(4). Debtor, with the dismissal of this case is half the way to "granting" relief from the stay in any third bankruptcy case filed in the next year.

RULING:

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on November 15, 2018 and that prospective relief pursuant to 11 U.S.C. § 362(d)(4) is not warranted.

The court shall issue a minute 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 Wells Fargo Bank, N.A. ("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 Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on November 14, 2018 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to John Mehl ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 3104 Crest Haven Drive, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 15, 2018 dismissal of this bankruptcy case.

IT IS FURTHER ORDERED that relief pursuant to 11U.S.C. § 362(d)(4) is denied.

LEGACY MORTGAGE AND REAL
ESTATE, INC. 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) 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 24, 2018. 14 days' notice is required. That requirement was met.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 granted.

Legacy Mortgage and Real Estate, Mohsen Mashhadialireza, ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2206 Stockman Circle, Folsom, California ("Property"). The moving party has provided the Declaration of George M. Eckert to introduce evidence as a basis for Movant's contention that Daniel Hobbs ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on August 23, 2018. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an action in California Superior Court, County of Sacramento to recover possession of the Property in which trial was set for November 19, 2018; however, the trial has not gone forward due to the bankruptcy proceeding. Movant has provided a copy of the complaint filed in the state court. Dckt. 14, Exhibit A.

Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dckt. 14, Exhibit A, Exhibit 1 to Complaint. Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief

from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

TRUSTEE’S RESPONSE:

The Trustee does not oppose the relief sought by Movant.

RULING:

The court shall issue an order terminating and vacating the automatic stay to allow Legacy Mortgage and Real Estate, Mohsen Mashhadialireza, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2206 Stockman Circle, Folsom, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Legacy Mortgage and Real Estate, Mohsen Mashhadialireza (“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 Legacy Mortgage and Real Estate, Mohsen Mashhadialireza and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2206 Stockman Circle, Folsom, California.

No other or additional relief is granted.

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the December 11, 2018 hearing is required.

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, Chapter 13 Trustee, creditors, parties requesting special notice, and United States Trustee on November 7, 2018. 28 days’ notice is required. That requirement was met.

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 is continued to January 15, 2019
at 1:30 p.m.**

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Betty Walker’s (“Debtor”) real property commonly known as 2660 Marshfield Road, Vallejo, California (“Property”). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Joselle Bracy Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,208.25 in post-petition payments past due. The Declaration also provides evidence that there are ten pre-petition payments in default, with a pre-petition arrearage of \$5,145.27.

CHAPTER 13 RESPONSE:

The Chapter 13 Trustee responds that does not yet have a confirmed Plan. The Debtor is paid ahead \$3,514.92 under the terms of the proposed plan filed on November 10, 2018. Dckt. 67. The Debtor has paid a total of \$25,414.92 into the plan. The Trustee has not made distribution to the Movant because under the terms of the original plan Movant’s debt was omitted. The Debtor has a pending amended plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 27, 2018. Dckt. 73. Debtor asserts that the pending amended Plan set for confirmation hearing on January 15, 2018 provides for Movant's second note and deed of trust on the Property as a Class 1 claim, with ongoing monthly mortgage payments, in the amount of \$441.65, to be paid through the Trustee commencing in January 2019. The amended plan provides for the \$5,145.27 pre-petition mortgage arrears and the post-petition mortgage arrears in the amount of \$3,092.00 to be paid with the proceeds of the sale of debtor's property located at 747 Tuolumne Street, Vallejo, California. Debtor has already obtained court approval to employ realtor Gerri Kalk and the property is listed and being actively marketed. Debtor anticipates that a sale will occur within a year and will facilitate a 100% payment for all allowed claims.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$514,926.84 (including \$425,056.00 secured by Movant's first deed of trust and \$89,870.84 secured by Movant's second deed of trust), as stated in the Joselle Bracy Declaration and Schedule D. The value of the Property is determined to be \$600,000.00, as stated in Schedules A and D.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

RULING:

Here, the Debtor has proposes a Plan to fully pay Movant and anticipates doing with through the sale of another real property asset that is actively being marketed. The proposed Plan is set for hearing on January 15, 2018, as such the court determines it is prudent to defer ruling on the Movant's requested relief until the court has considered whether the proposed Plan should be confirmed.

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 Wells Fargo Bank, N.A. ("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 Wells Fargo Bank, N.A. Motion for Relief From Automatic Stay is continued to January 15, 2019 at 1:30 p.m.

No other or additional relief is granted.
