

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

December 17, 2019 at 1:30 p.m.

1.	19-20038 -C-13	ALLISON DAVISON	MOTION FOR RELIEF FROM
	STH -1	Michael Hays	AUTOMATIC STAY
			11-11-19 [58]
	SPECIALIZED LOAN SERVICING		
	LLC 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, and Office of the United States Trustee on November 11, 2019. By the court's calculation, 36 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 is granted, the court confirming the automatic stay provisions were already modified.

The Motion is denied as moot to the extent it seeks relief from stay.

Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Allison Davison's ("Debtor") real property

commonly known as 1167 Oak St, Red Bluff, California ("Property"). Movant has provided the Declaration of Shane Ellis to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues cause exists for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because Debtor is delinquent in postpetition payments.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on December 3, 2019. Dckt. 65. Trustee notes that the confirmed plan treated Movant's claim as a Class 4, and the stay was already modified. Trustee also notes other requested relief seems unsupported by legal argument.

DEBTOR'S REPLY

Debtor filed a Reply on December 3, 2019. Dckt. 68. Debtor concedes a postpetition delinquency, and argues a modified plan will be filed treating Movant's claim as a Class 1. Debtor requests the motion be denied or hearing continued to January 2019.

DISCUSSION

As noted by the Trustee, the Confirmed Chapter 13 Plan provides for Movant's claim as a Class 4. Plan, Dckt. 3; Order, Dckt. 54. The Confirmed Plan states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Id.

Based on the plain language of the Plan, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral. Therefore, the relief requested by the Motion is denied as moot.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic stay when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic "discretion is the better part of valor" principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of

the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dckt. 3, in this bankruptcy case, "all bankruptcy stays are modified to allow [Movant , and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

No other or additional relief is granted by the court.

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 Specialized Loan Servicing 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 relief is granted pursuant to the Motion, the court confirming that "all bankruptcy stays are modified to allow [Movant , and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Confirmed Chapter 13 Plan, Dckt. 3; Order Confirming, Dckt. 54.

CITIBANK, 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, Co-debtors, and the Chapter 13 Trustee on October 24, 2019. By the court's calculation, 33 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). 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 and other parties in interest 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.

Citibank, N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay with respect to Martha Masiel Ramirez's ("Debtor") real property commonly known as 912 Clark Ave, Yuba City, California ("Property"). Movant has provided the Declaration of James Stefani to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckt. 40.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on November 8, 2019. Dckt. 53. Trustee notes that Movant is not the creditor listed in Proof of Claim, No. 2, as holding this debt. While Trustee believes Movant is the proper party, Trustee is uncertain.

Trustee also notes that a payment of \$4,500.00 was made by Debtor, but was returned by Debtor's bank.

NOVEMBER 26, 2019 HEARING AND CONTINUANCE

Debtor appeared at hearing, stating that she has been hospitalized and unable to present an opposition. Civil Minutes, Dckt. 56. Further, she stated that she was prepared to prosecute case, and get the property sold and creditors paid. The court addressed with Debtor her multiple prior failed bankruptcy cases over the past decade, her failure to prosecute such cases, and need to demonstrate to the court that she has an actual plan in this case, can perform the plan, and can prosecute this case in good faith. An opposition to the motion is not merely "I need more time to sell the property." Debtor represented that she could present such an opposition and was opposing the Motion in good faith.

The Chapter 13 Trustee reported that Debtor has paid \$5,000+ so far to the Trustee. The court concluded that this \$5,000 was a fund which the court could order the payment of the fees incurred by the Trustee and Movant in the event that Debtor did not present a colorable, good faith opposition. Debtor stated that she understood and acknowledged that the court could order the immediate payment of such amounts for the additional fees and expenses incurred due to the continuance of the hearing.

DEBTOR'S OPPOSITION

Debtor filed an opposition on December 10, 2019. Dckt. 66. The opposition argues the following:

1. Movant could have foreclosed on the Property in March 2000.
2. Movant would not accept payment to cure the delinquency under the note.
3. Beneficial California Inc. indicated nothing was owed on the property before Debtor purchased it.
4. Debtor is having health problems and was not able to complete the opposition.

Attached to the Opposition is an emergency department discharge instruction dated December 9, 2019-the day before the opposition was due. Since the prior hearing was November 26, 2019, nearly two weeks had passed before Debtor went to the emergency room.

Reviewing the discharge, it states Debtor was suffering from:
1: Chest pain; 2: Bronchospasm; 3: Abdominal pain. The only recommendation is to follow up if the conditions worsen.

DISCUSSION

Debtor's opposition is not really to the Motion at hand. Debtor argues what she argued at the hearing—that she did not know about the lien on the property, and that she tried to pay the lien but Movant would not accept. She also argues Movant had the opportunity to foreclose and did not.

These arguments do not show the court that the present case was not filed as part of a scheme to delay Movant from exercising its rights. To the contrary, they clearly show that Debtor thinks Movant, for various reasons, should be prevented from foreclosing.

But, none of those reasons are that the debtor is prosecuting this case. No description is given of what a confirmable plan in this case would look like. Debtor does not explain how Movant is adequately protected.

The opposition, like the filing of this case, was only intended to delay and buy extra time.

Prospective Relief from Future Stays

Movant argues that the Property has been used in a series of bankruptcy cases in a scheme to delay Creditor. The prepetition arrearage is over \$45,000.00 and represents more than 50 missed payments. Declaration, Dckt. 40.

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.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the several cases filed over the last decade, and Debtor's gross failure to prosecute a case.

Debtor's prior case history alone is as follows:

- A. Case No. 09-33215
 - 1. Filed: 6/26/2009
 - 2. Chapter 13
 - 3. Dismissal Date: 8/27/2009
 - 4. Reason for Dismissal: Failure to make payments and provide tax documents.

- B. Case No. 09-48498
 - 1. Filed: 12/30/2009
 - 2. Chapter 13, Converted to 11
 - 3. Dismissal Date: 5/13/2011
 - 4. Reason for Dismissal: Failure to comply with reporting requirements

- C. Case No. 11-36557
 - 1. Filed: 7/5/2011
 - 2. Chapter 13, Converted to 7
 - 3. Discharge Date: 3/16/2017

- D. Case No. 17-20943
 - 1. Filed: 2/15/2017
 - 2. Chapter 13
 - 3. Dismissal Date: 7/28/2017
 - 4. Reason for Dismissal: Failure to prosecute, delinquency in plan payments

- E. Case No. 17-25090
 - 1. Filed: 8/1/2017
 - 2. Chapter 13
 - 3. Dismissal Date: 4/25/2019
 - 4. Reason for Dismissal: Failure to confirm Chapter 13 Plan

In Case, No. 17-20943, the court made detailed findings as to the Debtor's inability to prosecute a bankruptcy case. 17-20943 , Civil Minutes, Dckt. 82.

Debtor's non-filing spouse also filed two bankruptcy cases, nos. 11-43998 and 12-20928, which were dismissed.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the co-debtor Santiago Ramirez has also participated in the scheme to delay.

Debtor's recently dismissed case was pending within a year of filing this case. Debtor filed a Motion To Extend the Automatic Stay, but that motion was denied. Dckts. 33, 35. Therefore, the automatic stay terminated as to the Debtor on October 9, 2019. There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

In reviewing the Motion and Movant's argument that Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors, 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). 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 Citibank, N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI, its assignees and/or successors in interest ("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 Movant, 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 that is recorded against the real property commonly known as 912 Clark Ave, Yuba City, California, ("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 to obtain possession of the Property.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Santiago Ramirez, Donald Pryde, and Carolyn Pride of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Martha M. Ramirez ("Debtor"), the stay having terminated as to the Debtor on October 9, 2019, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

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.

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, and Office of the United States Trustee on November 15, 2019. By the court's calculation, 32 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 is granted, the court confirming that the automatic stay provisions were modified by the confirmed plan.

Towd Point Master Funding Trust 2019-PM7, U.S. Bank National Association, as Trustee ("Movant") seeks an order confirming no stay is in effect as to Joan Barbara Nachreiner's ("Debtor") real property commonly known as 8916 Placer Rd, Redding, California ("Property").

Movant argues the plan provided for its claim (assigned to it by Bank of America (Exhibit C, Dckt. 47)) as a Class 4.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an opposition on December 3, 2019. Dckt. The opposition argues no relief from stay summary sheet was filed. However, Trustee agrees the claim was provided for as a Class 4. Trustee also notes that the plan payments have been completed, and argues that since no default was alleged the Trustee cannot determine a basis for the Motion.

DISCUSSION

As noted by the Trustee, the Confirmed Chapter 13 Plan provides for Movant's claim as a Class 4. Plan, Dckt. 28; Order, Dckt. 34. The Confirmed Plan states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Id.

Based on the plain language of the Plan, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral. Therefore, the Motion is granted.

No other or additional relief is granted by the court.

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 Towd Point Master Funding Trust 2019-PM7, U.S. Bank National Association, as Trustee ("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 relief is granted pursuant to the Motion, the court confirming that "all bankruptcy stays are modified to allow [Movant , and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Confirmed Chapter 13 Plan, Dckt. 28; Order Confirming, Dckt. 34.