



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 10, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 15-15696-MKN
)	Chapter 13
RALPH STEVEN LEWIS,)	
)	
Debtor.)	Date: May 22, 2019
)	Time: 1:30 p.m.
)	

ORDER REGARDING MOTION FOR RELIEF FROM STAY (11 U.S.C. SECTION 362 BANKRUPTCY RULE 4001)¹

On May 22, 2019, the court heard the Motion for Relief From Stay (11 U.S.C. Section 362 Bankruptcy Rule 4001) (“MRAS”), brought by Wilmington Savings Fund Society, FSB, Owner Trustee of the Residential Credit Opportunities Trust V-C (“Wilmington”). Appearances were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND²

On October 2, 2015, Ralph Steven Lewis (“Debtor”) filed a voluntary Chapter 13 petition, along with his schedules of assets and liabilities (“Schedule(s)”). (ECF No. 1). The Chapter 13 proceeding was assigned for administration to a panel Chapter 13 trustee, Rick A. Yarnall. In Schedule “A,” Debtor listed a fee simple interest in certain real property located at

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, unless otherwise indicated.

² Pursuant to FRE 201(b), the court takes judicial notice of the documents appearing in the claims register and docket of the above-captioned Chapter 13 case.

1 2470 Citrus Garden Circle, Henderson, NV 89052 (“Citrus Garden Property”). On that
2 Schedule, Debtor attested that the current value of the Citrus Garden Property was \$295,000.00.
3 In Schedule “F,” Debtor listed “Bk of Amer,” which the court understands is Bank of America
4 (“BofA”), as holding an unsecured claim relating to the Citrus Garden Property. BofA’s claim
5 was not identified as being contingent, disputed, or unliquidated.

6 On October 2, 2015, in addition to his Schedules and SOFA, Debtor filed a Chapter 13
7 Statement of Current Monthly Income and Calculation of Commitment Period (“Form 22-C”).
8 (ECF No. 4). The Schedules and SOFA are signed by the Debtor under penalty of perjury.

9 On February 8, 2016, BofA filed proof of claim 8-1 (“POC 8-1”) asserting a claim in the
10 amount of \$360,741.96, secured by the Citrus Garden Property.

11 On October 14, 2016, a “Transfer Of Claim Other Than For Security” was filed reflecting
12 the transfer of BofA’s claim to Wilmington Savings Fund Society, FSB, as trustee for Stanwich
13 Mortgage Loan Trust A (“Wilmington-Stanwich”). (ECF No. 40).

14 On February 5, 2018, Debtor filed an objection to POC 8-1 on the basis that “Creditor has
15 not served any notice that it has obtained or recorded a corrected Assignment of a Note and Deed
16 of Trust and therefore has inadequate evidence by which to assert any right in support of any
17 Claim and I deny that I have any financial obligation owed to Creditor and Object to Creditor
18 Claim #8.” (ECF No. 99, ¶ 6).

19 On April 20, 2018, the court entered an Order overruling without prejudice Debtor’s
20 objection to POC 8-1. (ECF No. 116).

21 On April 27, 2018, Wilmington-Stanwich filed an amended proof of claim 8-2 (“POC 8-
22 2)”) asserting a claim in the amount of \$360,741.96, secured by the Citrus Garden Property.
23 Attached to POC 8-2 was a “Corrective Assignment of Deed of Trust” filed with the Clark
24 County Recorder on March 30, 2018, as Instrument No. 20180330-0001072.

25 On May 29, 2018, Debtor filed an objection to POC 8-2 (“Claim Objection”). (ECF No.
26 122).

27 On June 26, 2018, Wilmington-Stanwich filed its response to the Claim Objection. (ECF
28 No. 132).

1 On July 12, 2018, the initial hearing on the Claim Objection was held. Debtor and
2 counsel for Wilmington-Stanwich appeared. Upon Debtor's request to conduct discovery, the
3 court established an October 11, 2018, discovery deadline and scheduled a status hearing for the
4 week thereafter.

5 On October 17, 2018, the status hearing on the Claim Objection was held. Debtor and
6 counsel for Wilmington-Stanwich appeared, and the Debtor stated he had conducted "very
7 minimal" discovery because Wilmington-Stanwich was having difficulty obtaining documents
8 from the prior claimant, BofA. In a colloquy with the court, Debtor admitted to borrowing
9 money to purchase the Citrus Garden Property under a December 12, 2017 agreement, which he
10 admitted he had not yet paid in full. Debtor stated that he wanted to view a copy of the original
11 note to allow him to determine the current holder of the note. The court, therefore, continued the
12 hearing for ninety days to allow the parties additional time to conduct discovery and scheduled a
13 status hearing for January 16, 2019.

14 On December 6, 2018, a "Transfer Of Claim Other Than For Security" was filed
15 reflecting the transfer of Wilmington-Stanwich's claim to Wilmington Savings Fund Society,
16 FSB, Owner Trustee of the Residential Credit Opportunities Trust V-C ("Wilmington-VC").
17 (ECF No. 155).

18 On January 11, 2019, an "Assignment of Deed of Trust" was recorded with the Clark
19 County Recorder at Instrument No. 20190111-0000507, reflecting the assignment of the deed of
20 trust on the Citrus Garden Property from Wilmington-Stanwich to Wilmington Savings Fund
21 Society, FSB, As Owner Trustee of the Residential Credit Opportunities Trust V-B
22 ("Wilmington-VB"). On that same day, another "Assignment of Deed of Trust" was recorded
23 with the Clark County Recorder at Instrument No. 20190111-0000508, reflecting the assignment
24 of the deed of trust on the Citrus Garden Property from Wilmington-VB to Wilmington-VC. See
25 id. at ¶ 10 and Ex. 3.

26 On January 16, 2019, the second status hearing on the Claim Objection was held. Debtor
27 appeared, as did counsel for Wilmington-Stanwich who advised the court that he did not
28 represent Wilmington-VC, the current owner of the claim asserted in POC 8-2. Debtor stated

1 that he had not received any discovery since the October 17 status hearing and asked the court to
2 sustain the Claim Objection. Because of the lack of any appearance or written objection from
3 Wilmington-VC, the court sustained the Claim Objection and directed the Debtor to upload an
4 appropriate order.

5 On January 18, 2019, Wilmington-VC filed a Notice of Substitution stating that it “does
6 hereby substitute Jennifer R. Bergh, Esq., of GHIDOTTI|BERGER as Counsel and removes
7 Tiffany & Bosco, P.A[.] as Counsel for this matter.” (ECF No. 158).

8 On January 28, 2019, Wilmington-VC, by and through Ms. Bergh, filed a motion to
9 vacate the order sustaining the Claim Objection. (ECF No. 161).

10 On April 4, 2019, an order was entered vacating the order sustaining the Claim
11 Objection. (ECF No. 161). The same order scheduled a status conference to be held on May 1,
12 2019, for the purpose of scheduling an evidentiary hearing on the Claim Objection.

13 On April 16, 2019, Wilmington filed the instant MRAS. (ECF No. 177). Attached to the
14 MRAS is a “Declaration in Support of Motion for Relief from Automatic Stay” from Glenn
15 Howard, who apparently appraised the subject property at \$350,000.00 as of January 28, 2019
16 (“Howard Appraisal”). Also attached to the MRAS is a declaration filed by “the CEO of AMIP
17 Management, LLC, the operators of” Wilmington (“CEO Declaration”).³

18 On May 1, 2019, the status conference was held and the evidentiary hearing was
19 scheduled on the Claim Objection. Deadlines for completion of discovery, including an
20 discovery motions, in addition to a deadline for the submission of any dispositive motions, also

21
22 ³ The CEO Declaration has a blank space with the name of the declarant inserted in
23 handwriting on the first page and on the signature page, and then signed with an illegible
24 signature. The handwriting for the actual name of the declarant is difficult to discern and the
25 person may have “Ray” or “Roy” as a first name, and “McMann” or “McMahan” as a last name.
26 Paragraph 4 of the CEO Declaration attests that “FCI is the current loan servicer for the loan at
27 issue.” The first sentence of Paragraph 6 of the CEO Declaration attests that “Servicing of the
28 Loan was transferred to FCI.” Although Paragraph 2 of the CEO Declaration identifies the
declarant as CEO of the entity that operates Wilmington, nowhere does the declaration identify
what or who “FCI” is. If it is an acronym for another entity, the full name of the entity should be
disclosed. If the entity is the source of the information on which the declarant attests to the
Debtor’s payment history and the loan balance, then that information source also should be
disclosed.

1 were established. A written order memorializing the deadlines and hearing dates (“Scheduling
2 Order”) was entered on May 15, 2019. (ECF No. 184).

3 On May 8, 2019, Debtor filed an opposition to the MRAS. (ECF No. 183).

4 On May 15, 2019, Wilmington filed a reply. (ECF No. 185). Accompanying the reply is
5 a supplement to the prior CEO Declaration (“Supplemental CEO Declaration”). (ECF No. 186).

6 DISCUSSION

7 The court having reviewed the MRAS, the Debtor’s opposition, and the reply, as well as
8 the declarations submitted by the parties, concludes that the MRAS should be denied without
9 prejudice. The MRAS seeks relief under Sections 362(d)(1), 362(d)(2), and 362(d)(4).

10 Under Section 362(d)(1), “cause” for relief from stay, including a requirement for
11 adequate protection payments, requires the moving party to demonstrate that the subject property
12 is declining in value. See First Federal Bank of California v. Weinstein (In re Weinstein), 227
13 B.R. 284, 296 (B.A.P. 9th Cir. 1998).

14 Under Sections 362(d)(2), the moving party bears the burden of proving that the debtor
15 lacks equity in the subject property. See 11 U.S.C. §§ 362(d)(2)(A) and 362(g)(1). If that
16 burden is met, the debtor then is required to demonstrate that the subject property is necessary to
17 an effective reorganization. See 11 U.S.C. §§ 362(d)(2)(B) and 362(g)(2). As to that inquiry,
18 the debtor is required to demonstrate that there is a reasonable possibility of confirming a plan
19 within a reasonable amount of time. See United Savings Ass’n v. Timbers of Inwood Forest
20 Assoc., Ltd., 484 U.S. 365, 370 (1988).

21 Under Section 362(d)(4), the moving party bears the burden of establishing three
22 elements: (1) debtor’s bankruptcy filing must have been part of a scheme, (2) the object of the
23 scheme must be to delay, hinder, or defraud creditors, and (3) the scheme must involve either (a)
24 the transfer of some interest in the real property without the secured creditor’s consent or court
25 approval, or (b) multiple bankruptcy filings affecting the property. See In re Benzeen, 2018 WL
26 6627275, at *5 (B.A.P. 9th Cir. Dec. 18, 2018).

27 As to relief under Section 362(d)(1), Wilmington has failed to establish “cause.” At no
28 time during this lengthy Chapter 13 proceeding has Wilmington or its predecessors in interest

1 offered evidence that the Citrus Garden Property is declining in value.⁴ In fact, the Howard
2 Appraisal that is attached as Exhibit “7” to the CEO Declaration indicates that the property has a
3 value of \$350,000 as of January 28, 2019. Since the only other evidence of value in the record is
4 the Debtor’s attestation in Schedule “A” that the property was worth \$295,000 on the petition
5 date, Wilmington’s own evidence indicates that the Citrus Garden Property has increased in
6 value during the Chapter 13 proceeding. Thus, irrespective of whether there is an equity cushion
7 in the subject property, Wilmington has failed to demonstrate that there is a lack of adequate
8 protection constituting cause under Section 362(d)(1).

9 Wilmington’s alternative theory of cause under Section 362(d)(1), i.e., that the Debtor
10 has no income to be eligible for Chapter 13 relief under Section 109(e) is more significant. To
11 be eligible for Chapter 13 relief under Section 109(e), an individual must have “regular income.”
12 Debtor attests in his Schedule “I” that he is employed as a “sale consultant” on the petition date,
13 but has no monthly income. On his expense Schedule “J”, Debtor attests that he has expenses of
14 \$1,522 each month, resulting in a net monthly income of negative \$1,522. In Item 1 of his
15 SOFA, Debtor attests that had zero gross income (rather than taxable income) during the 2015
16 calendar year from his employment, trade, profession, or operation of a business, and no such
17 gross income during the two preceding years. In Item 2 of his SOFA, Debtor attest that he had
18 zero income during the preceding two years from any other source. In other words, even though
19 the Debtor attests that he is employed as a sales consultant, his Schedules and SOFA establish
20 that he has had no daily income, no weekly income, no monthly income, and no annual income
21 for approximately three years.

22 In his Form 22-C, Debtor confirms that in the six month period immediately preceding
23 the commencement of his Chapter 13 proceeding, he had zero income. Because Debtor has zero
24 income, in Section 1.04 of each of his four proposed Chapter 13 plans, he asserts his disposable
25 income for each month of his plans to be \$0.00. (ECF Nos. 13, 33, 106, and 108). In Section 2.5
26 of his latest proposed Chapter 13 plan, Debtor proposes to pay a total of \$3,900, consisting of a
27

28 ⁴ A prior motion for relief from stay was filed on December 8, 2017, but was not
accompanied by an appraisal or other evidence of value. (ECF No. 78),

1 single payment of \$300 on October 25, 2015, and 36 additional monthly payments of \$300
2 commencing July 25, 2016. The last monthly payment would occur on July 25, 2019. The
3 source of any such payments is unknown. In Section 2.8 of his latest proposed Chapter 13 plan,
4 Debtor also proposes to remit to the Chapter 13 trustee the non-exempt portion of all tax refunds
5 for the 2017, 2018, 2019, 2020, and 2021 tax years. This proposal appears to be largely
6 meaningless because the Debtor attests that he had zero income before filing his Chapter 13
7 Petition and he has the \$10,000 exemption available under the Nevada wildcard for any property,
8 including tax refunds. See NRS 21.090(1)(z). In the unlikely event the Debtor actually receives
9 tax refunds, any non-exempt portions of refunds for the 2020 and 2021 tax years likely will be
10 received beyond the maximum, 60-month payment duration for a confirmed Chapter 13 plan.
11 See 11 U.S.C. § 1322(d).

12 Had Wilmington's predecessor in interest, the Chapter 13 Trustee, or any other party
13 filed a motion to dismiss the Debtor's petition based on lack of eligibility under Section 109(e),
14 these concerns could have been addressed in the appropriate context.⁵ As a basis for cause under
15 Section 362(d)(1), however, the court concludes that the more appropriate resolution is at the
16 time plan confirmation is considered.

17 As to relief under Section 362(d)(2), POC 8-2 asserts that \$360,741.96 was owed as of
18 April 27, 2018. According to the Howard Appraisal, the property has a value of \$350,000 as of
19 January 28, 2019. Debtor asserts, however, that the subject property is worth \$395,000. See
20 Opposition at 6. If the Debtor is correct, there is equity in the subject property above the amount
21 in POC 8-2 and the threshold requirement for relief under Section 362(d)(2) has not been met.⁶

22 ⁵ Debtor asserts that his "income has been and remains adversely affected by the
23 fraudulent activities of the Movant and the predecessor creditors whom intentionally defaulted
24 on the Loan and filed derogatory credit information blocking my employment. By holding an
25 active Trustee's Sale Notice over the Property the Movant and its predecessors have blocked my
26 ability to bring in tenants whose rented will easily cover the loan which was Ordered by the
27 Justice Department in its August of 2014 Settlement with BoA who violated the Order by failing
28 to implement, operate and comply with the instructions therein." Opposition at 5. Whether the
Debtor's explanation is legally sufficient to overcome the regular income requirement of Section
109(e) has not been addressed by any party.

⁶ Wilmington maintains that the outstanding principal balance is \$279,196.48, but that 42
missed mortgage payments, 41 late fees, and various escrow and corporate advances results in a

1 If the Debtor is incorrect, then the burden shifts to the Debtor to establish that there is a
2 reasonable possibility of confirming a Chapter 13 plan within a reasonable amount of time. In
3 this instance, the evidentiary hearing on the Claim Objection is scheduled for October 8, 2019,
4 the outcome of which is likely determinative of whether the Debtor can confirm a Chapter 13
5 plan.⁷ Under these circumstances, the court concludes that Citrus Garden Property is necessary
6 to an effective reorganization under 362(d)(2)(B).

7 As to relief under Section 362(d)(4), Wilmington's arguments are misguided at best.
8 Instead of addressing any of the elements required for in rem relief under Section 362(d)(4),
9 Wilmington argues that the Debtor is acting in bad faith by commencing a Chapter 13 without
10 having any income to be able to confirm a plan. Even if those arguments would be a sufficient
11 basis to dismiss the Chapter 13 case under Section 109(e), or to deny plan confirmation under
12 Sections 1325(a)(3), 1325(a)(6), or 1325(a)(7), they meet none of the elements required for in
13 rem relief under Section 362(d)(4).⁸ Under these circumstances, Wilmington's request for relief
14 under Section 362(d)(4) is without merit.

15 Based on the foregoing, the court concludes that even if Wilmington has a "colorable
16 claim" entitling it seek relief from stay, none of the grounds for relief from stay under Sections
17 362(d)(1), 362(d)(2) and 362(d)(4) exist under the record now before the court.

18 **IT IS THEREFORE ORDERED** that the Motion for Relief from Stay (11 U.S.C.
19

20 claim in excess of \$405,000 as of April 8, 2019 (excluding, rather than including costs of sale).
21 See CEO Declaration at ¶¶ 24 and 29. Wilmington subsequently maintains that as of May 15,
22 2019, its claim is in excess of \$401,000 (excluding, rather than including costs of sale). See
23 Supplemental CEO Declaration at ¶¶ 21 and 24. (The actual name of the declarant remains
unclear.) In either instance, the amount of Wilmington's alleged claim would exceed the
property value suggested by the Debtor.

24 ⁷ Because any plan proposed by the Debtor cannot provide for plan payments occurring
25 after October 2, 2020, the Debtor likely will face separate confirmation difficulties under Section
26 1325(a)(6) irrespective of the source of any proposed plan payments.

27 ⁸ Even if Wilmington established that the Debtor's bankruptcy was part of a scheme
28 intended to delay, hinder, or defraud creditors, there is no suggestion that there was a prior
transfer of the Citrus Gardens Property or that there have been multiple bankruptcy filings
affecting the Citrus Gardens Property.

1 *Section 362* Bankruptcy Rule 4001), brought by Wilmington Savings Fund Society, FSB, Owner
2 Trustee of the Residential Credit Opportunities Trust V-C, Docket No. 177, be, and the same
3 hereby is, **DENIED**.

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5 Copies sent via CM/ECF ELECTRONIC FILING

6 Copy sent via BNC to:

7 RALPH STEVEN LEWIS
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9 HENDERSON, NV 89052

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