



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 22, 2016

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	Case No.: 16-10686-MKN
)	Chapter 11
BLUE LEOPARD, L.L.C.,)	
)	Date: September 21, 2016
Debtor.)	Time: 9:30 a.m.

**ORDER ON MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AND IN REM RELIEF¹**

On September 21, 2016, the court heard the Motion for Relief from the Automatic Stay and In Rem Relief (“RAS Motion”) brought on behalf of PennyMac Holdings, LLC (“PennyMac”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On February 18, 2016, a voluntary Chapter 11 petition was filed by Blue Leopard, L.L.C. (“Debtor”). (ECF No. 1).

On March 10, 2016, Debtor filed its schedules of assets and liabilities (“Schedules”) along with its statement of financial affairs (“SOFA”). (ECF No. 23). In Part 9 of its property Schedule “A/B,” Debtor listed certain real property located at 7885 W Flamingo Road, Unit 2167, Las Vegas, Nevada 89147 (“Flamingo Road Property”). In Part 1 of its secured creditor Schedule “D,” Debtor listed Washington Mutual Bank, F.A., as having a claim in the amount of

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

1 \$245,000 secured by the Flamingo Road Property. In Part 1 of its SOFA, Debtor discloses under
2 penalty of perjury that it had no gross business or non-business revenue during its fiscal year. In
3 Part 2 of its SOFA, Debtor discloses under penalty of perjury that it made no payments to any
4 creditors within one year prior to filing for bankruptcy relief.

5 On June 22, 2016, a proof of claim (“POC”) in the amount of \$86,333.65 was filed on
6 behalf of PennyMac Loan Services secured by the Flamingo Road Property.

7 On August 15, 2016, PennyMac filed the instant RAS Motion. (ECF No. 82).
8 PennyMac seeks relief from stay under Sections 362(d)(1), 362(d)(2) and 362(d)(4). The RAS
9 Motion was noticed to be heard on September 21, 2016. (ECF No. 83).

10 On August 18, 2016, Debtor filed a proposed plan of reorganization (ECF No. 87)
11 accompanied by a proposed disclosure statement (“Disclosure Statement”) (ECF No. 88).

12 On August 26, 2016, Debtor filed opposition to the RAS Motion. (ECF No. 94).

13 **DISCUSSION**

14 PennyMac seeks relief from stay for “cause” under Section 362(d)(1). It also seeks relief
15 from stay under Section 362(d)(2) for lack of equity in the Flamingo Road Property and the
16 absence of necessity for an effective reorganization. Finally, PennyMac seeks relief from stay in
17 rem under Section 362(d)(4) on a requested finding that the Debtor’s filing of the Chapter 11
18 proceeding was part of a scheme to delay, hinder, or defraud creditors that involved either (A) a
19 transfer of all or part ownership of the Flamingo Road Property without consent of PennyMac of
20 court approval, or (B) multiple bankruptcy filings affecting the same property. 11 U.S.C. §
21 362(d)(4).

22 In its opposition, Debtor does not dispute any of the allegations in the RAS Motion, nor
23 the admissibility of any of the documents accompanying the RAS Motion. Debtor does not
24 dispute that postpetition payments to PennyMac have not been made, nor that the Debtor lacks
25 equity in the Flamingo Road Property. It does not dispute that the Flamingo Road Property was
26 transferred on multiple occasions, with the final transfer to the Debtor occurring on the eve of a
27 pending foreclosure sale. Instead, Debtor only refers to the treatment of PennyMac’s claim in its
28 proposed Plan, and offers to both correct the amount of PennyMac’s claim and to provide

1 adequate protection payments.

2 At the hearing on the RAS Motion, PennyMac rejected the Debtor's offer of adequate
3 protection payments as well as stipulated plan treatment. Moreover, counsel for PennyMac
4 advised the court that the Flamingo Road Property was the subject of a Chapter 11 proceeding
5 commenced by its prior owners, Steve Mattos and Lorraine Mattos ("Mattos"), in the Northern
6 District of California, denominated Case No. 10-73201.

7 The court takes judicial notice of the docket of the Mattos bankruptcy proceeding in the
8 Northern District of California. The docket reveals the following: Mr. and Mrs. Mattos filed a
9 joint Chapter 11 proceeding on November 16, 2010; the Flamingo Road Property was scheduled
10 as an asset on their real property Schedule "D"; a Chapter 11 plan of reorganization was
11 proposed that included an abandonment of the Flamingo Road Property; an order confirming the
12 proposed plan was entered on April 5, 2013; a final decree closing the Chapter 11 case was
13 entered on October 1, 2015; no order granting a Chapter 11 discharge has been entered as of
14 September 21, 2016.

15 Attached as Exhibit "4" to the RAS Motion is a copy of a Grant, Bargain, Sale Deed
16 executed by Steve M. Mattos and Lorraine M. Mattos on August 4, 2015, transferring the
17 Flamingo Road Property to an entity specified as RLP-Flamingo Rd Unit 2167, LLC, a series of
18 Red Lizard Productions, LLC ("RLP-Flamingo"). Exhibit "4" also reflects that the Grant,
19 Bargain, Sale Deed was recorded in Clark County on November 4, 2015.

20 Attached as Exhibit "5" to the RAS Motion is a copy of a Grant, Bargain, Sale Deed
21 executed on behalf of RLP-Flamingo on February 16, 2016, transferring the Flamingo Road
22 Property to above-captioned Debtor. Exhibit "5" also reflects that the latter Grant, Bargain, Sale
23 Deed was recorded in Clark County on February 17, 2016.

24 The court takes judicial notice that the Debtor's bankruptcy petition was filed on
25 February 18, 2016.

26 Debtor describes itself as "a business which operates as a holding company for five
27 pieces of real estate." Disclosure Statement at 5:14. It then elaborates that "Debtor's property
28 portfolio is somewhat unique as each property is encumbered by a mortgage or mortgages in the

1 name of a previous owner. The previous owner for each property later surrendered the property
2 in bankruptcy or otherwise abandoned the property and sold the property for a nominal fee to
3 Debtor. Debtor took each property subject to its mortgages or other encumbrances.” Id. at 5:15-
4 18. Debtor further explains that “Because these properties are subject to mortgages that are not
5 in Debtor’s name, Debtor chose to file chapter 11 bankruptcy in order to satisfy the
6 encumbrances on each property by paying the secured portion of the mortgages on the
7 properties, pursuant to §506(a) of the bankruptcy code, and to pay the secured portion of the
8 liens in a manner that is consistent with the industry standard, over the course of a 30 year note.”
9 Id. at 25-28. As to PennyMac and all other lienholders, Debtor estimates that the unsecured
10 portion of their respective mortgages total approximately \$257,860, for which those unsecured
11 portions will be paid a total of \$3,720 over five years. Id. at 14:1-11.

12 The court having considered the written and oral representations of counsel, together
13 with the record in this proceeding, concludes that relief from stay should be granted. Numerous
14 reasons support this conclusion.

15 First, the exhibits attached to the RAS Motion provide a sufficient evidentiary basis to
16 support the allegations made by PennyMac. As there are no objections to the admissibility of the
17 exhibits and the Debtor offers no countervailing evidence whatsoever, PennyMac has met its
18 burden by a preponderance of the evidence as to all issues required for relief from stay.
19 Moreover, Debtor clearly has not met its burden of proof in opposition to the RAS Motion as
20 prescribed by Section 362(g)(2).

21 Second, grounds for in rem relief under Section 362(d)(4) have been established by the
22 admissions in the Debtor’s Disclosure Statement. Debtor concedes that it is not the borrower on
23 any of the loans secured by the real property assets now in its name. It concedes that it acquired
24 the real property assets for a nominal fee often by individuals who have gone through
25 bankruptcy or individuals who have simply abandoned the properties. It points to no agreements
26 of any kind with the lenders to assume the loan obligations of the original borrowers, nor that it
27 ever sought consent of the lenders to assume the obligations. It admits that its purpose is not to
28 restructure its own indebtedness, but to use the automatic stay to prevent lenders from

1 foreclosing on real property while it attempts to create a business by cramming down a Chapter
2 11 plan. It attests that had no business or nonbusiness income during the fiscal year and made no
3 payments to creditors within one year before filing its bankruptcy petition. Under these
4 circumstances, the court concludes that the commencement of the Chapter 11 proceeding was
5 part of a scheme to delay and hinder PennyMac from exercising its nonbankruptcy rights against
6 the Flamingo Road Property. Although the confirmed Chapter 11 plan of Mr. and Mrs. Mattos
7 permitted them to abandon the Flamingo Road Property, the transfer of the real property
8 admittedly was without the consent of PennyMac. In rem relief therefore is appropriate under
9 Section 362(d)(4)(A).

10 Third, grounds for relief from stay otherwise exists under Section 362(d)(2). Debtor
11 concedes that it lacks equity in the Flamingo Road Property. Therefore, it has the burden of
12 demonstrating that it has a reasonable possibility of confirming a plan with a reasonable amount
13 of time. See United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.,
14 484 U.S. 365, 376, 108 S.Ct. 626, 633 (1988). Other than referring to its proposed Chapter 11
15 plan, however, Debtor's opposition provides neither evidence nor analysis suggesting that the
16 proposed plan would be confirmed.² On its face, the proposed plan is susceptible to objections
17 on good faith and feasibility grounds under Sections 1129(a)(3) and 1129(a)(11). Moreover,
18 unless all impaired classes accept plan treatment, its proposal to pay the underlying secured
19 debts that it does not owe over a thirty year period likely fails the fair and equitable requirement
20 for cramdown under Section 1129(b)(2)(A). Finally, the proposal by the Debtor's owners to
21 retain their equity positions in the Debtor while unsecured claimants receive minuscule amounts
22 spread over five years almost certainly runs afoul of the absolute priority rule embodied by
23 Section 1129(b)(2)(B). Having conceded that it has no equity in the Flamingo Road Property,
24 the Debtor has failed to meet its burden of demonstrating that the property is necessary to an
25 effective reorganization as required by Section 362(d)(2)(B) and Section 362(g)(2).

26
27 ² It is well established that the court has an independent duty to determine whether the
28 requirements for confirmation under Section 1129 are present. See Liberty Nat'l Enters. v.
Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa), 115 F.3d 650, 653 (9th Cir. 1997).

1 Finally, grounds for relief from stay might otherwise exist under Section 362(d)(1), but it
2 appears that PennyMac has not provided evidence that the Flamingo Road Property has declined
3 in value since the commencement of the case. The adequate protection requirement exists to
4 prevent the creditor from being exposed to diminution of its collateral during the pendency of the
5 bankruptcy proceeding. See First Federal Bank of California v. Weinstein (In re Weinstein), 227
6 B.R. 284, 296-97 (B.A.P. 9th Cir. 1998). While PennyMac has demonstrated that the Debtor
7 lacks equity in the Flamingo Road Property by reference to admissions in the Debtor's real
8 property Schedule "D," it has not provided evidence by way of any appraisal or another
9 admission that the property has declined in value. Thus, PennyMac has not met its burden of
10 proof for obtaining relief for cause under Section 362(d)(1).

11 Based on the foregoing, the court concludes that relief from the automatic stay on an in
12 rem basis is warranted under Section 362(d)(4). The court also concludes that relief from the
13 automatic stay otherwise is appropriate under Section 362(d)(2), but not under Section 362(d)(1).

14 **IT IS THEREFORE ORDERED** that the Motion for Relief from the Automatic Stay
15 and In Rem Relief, Docket No. 82, be, and the same hereby is, **GRANTED AS PROVIDED**
16 **HEREIN.**

17 **IT IS FURTHER ORDERED** that relief from stay is granted in favor of PennyMac
18 Holdings, LLC, as to the real property located at 7885 W Flamingo Road, Unit 2167, Las Vegas,
19 Nevada 89147, on an in rem basis pursuant to 11 U.S.C. § 362(d)(4).

20 **IT IS FURTHER ORDERED** that relief from stay also is granted in favor of
21 PennyMac, LLC, as to the real property located at 7885 W Flamingo Road, Unit 2167, Las
22 Vegas, Nevada 89147, pursuant to 11 U.S.C. § 362(d)(2).

23 **IT IS FURTHER ORDERED** that PennyMac Holdings, LLC's request for attorneys
24 fees is **DENIED.**

25 **IT IS FURTHER ORDERED** that the 14-day stay under Rule 4001(a)(3) of the Federal
26 Rules of Bankruptcy Procedure is **WAIVED.**

27
28 Copies sent to all parties via CM/ECF ELECTRONIC FILING

1 Copies sent via BNC to:

2 KRISTA J. NIELSON
3 ALDRIDGE PITE, LLP
4 520 SO 4TH ST, STE 360
5 LAS VEGAS, NV 89101

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