



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 21, 2017

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:	)	Case No. 17-13663-mkn
	)	Chapter 13
KATHLEEN LYNNE RAY,	)	
	)	Date: July 19, 2017
Debtor.	)	Time: 2:30 p.m.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND IN REM RELIEF<sup>1</sup>**

On July 19, 2017, the court heard the Motion for Relief from Automatic Stay and In Rem Relief (ECF No. 11) (“Motion”) brought by Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series, and its Assignees and Successors (“Deutsche”). Debtor Kathleen Lynne Ray (“Debtor”) appeared pro se, and Matthew Schriever, Esq. appeared on behalf of Deutsche. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On July 21, 2010, Deutsche recorded a “Trustee’s Deed Upon Sale” with the Clark County Recorder at Instrument No. 201007210001904 (“Deutsche Trustee Deed”) reflecting Deutsche’s purchase of 4631 Ondoro Avenue, Las Vegas, NV 89141 (“Ondoro Property”) at a

<sup>1</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the bankruptcy 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 foreclosure sale.<sup>2</sup>

2 On July 6, 2017, the Debtor filed a skeletal voluntary chapter 13 petition with this court.<sup>3</sup>

3 On July 7, 2017, Deutsche filed the instant Motion requesting relief from the automatic  
4 stay as to the Ondoro Property under Sections 362(d)(1) and (d)(2), as well as in rem relief under  
5 Section 362(d)(4). Pursuant to Deutsche's request, the court scheduled the hearing on the  
6 Motion on shortened time for July 19, 2017, and imposed a deadline of July 18, 2017, at 3:00  
7 p.m. for oppositions. (ECF Nos. 12-14, 23).

8 On July 19, 2017, at 9:31 a.m., the Debtor filed a late objection to the Motion  
9 ("Objection").<sup>4</sup> (ECF No. 26).

10 On July 19, 2017, the court held a hearing on the Motion. Deutsche's counsel argued,  
11 among other things, that the Debtor filed this bankruptcy case (her fourth)<sup>5</sup> hours before a hearing  
12 that very same day in justice court involving the Debtor's eviction from the Ondoro Property.  
13 The Debtor admitted during the July 19 hearing that one of the reasons she filed her current  
14 bankruptcy case was to stay the state court eviction proceeding. As a result of the stay imposed  
15 by the filing of this bankruptcy case, the justice court continued the eviction proceeding to July  
16 25, 2017, to allow Deutsche time to obtain relief from this court. At the conclusion of the July

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18 <sup>2</sup> "It is appropriate to take judicial notice of this information, as it was made publicly  
19 available by government entities . . . , and neither party disputes the authenticity of . . . or the  
20 accuracy of the information displayed therein." Daniels-Hall v. Nat'l Educ. Assoc., 629 F.3d  
21 992, 998-99 (9th Cir. 2010) (citing FED. R. EVID. 201).

22 <sup>3</sup> On that same day, James Kimsey also filed a skeletal voluntary chapter 7 petition with  
23 this court at case no. 17-13664-btb. Although Mr. Kimsey has not yet filed his schedules of  
24 assets and liabilities, his voluntary petition lists his home address as being the Ondoro Property.  
25 (#17-13664-btb, ECF No. 1 at p. 2). The court's order herein lifting the stay in Ms. Ray's  
26 bankruptcy case does not apply to any stay which may be applicable in Mr. Kimsey's bankruptcy  
27 case.

28 <sup>4</sup> Although the Objection was untimely filed, the court has nevertheless considered it.

<sup>5</sup> The Debtor has filed three prior bankruptcy cases and five prior adversary proceedings  
in an effort to forestall Deutsche's state law rights and remedies as to the Ondoro Property. See  
Bankruptcy Case Nos. 09-14228, 11-25172, and 14-16060, all of which were assigned to the  
undersigned judge; see also Adversary Proceeding Nos. 12-01159, 15-01117, 16-01008, 16-  
01116, and 16-01127.

19 hearing, the court took the Motion under submission and now issues this order.

## JURISDICTION

The court has jurisdiction to consider the Motion pursuant to section 362 and 28 U.S.C. §§ 1334 and 157. This matter constitutes a proceeding under 28 U.S.C. § 157(b)(2)(G), and venue of this case in the District of Nevada is proper under 28 U.S.C. § 1409.

## DISCUSSION

Deutsche seeks relief from the automatic stay under sections 362(d)(1) and (d)(2), as well as in rem relief under section 362(d)(4). In her Objection, the Debtor challenges Deutsche's standing. Therefore, the court first addresses Deutsche's standing.

### I. Deutsche's Standing

The BAP "has previously held that 'a party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate.'" Edwards v. Wells Fargo Bank, N.A. (In re Edwards), 454 B.R. 100, 105 (B.A.P. 9th Cir. 2011), quoting Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011). In Edwards, the BAP stated, in pertinent part:

The issue here is not, as it was in *Veal*, whether Wells Fargo has an ownership or other property interest in the debtor's secured note. Indeed, due to the foreclosure, the debtor's note has been satisfied by Wells Fargo's credit bid. Rather the issue here is the simpler one of whether, when taken together, Wells Fargo's recorded Trustee's Deed and the Unlawful Detainer Judgment demonstrate that Wells Fargo has *some* property interest in the Property. As shown below, this combination establishes, under applicable California law, that Wells Fargo is the presumptive current title owner. As a result, there can be no doubt that Wells Fargo has a sufficient "colorable" claim required for standing.

454 B.R. at 105 (emphasis in original). Similarly, the Deutsche Trustee Deed establishes that Deutsche has some property interest in the Ondoro Property, which provides it with a sufficient colorable claim required for standing. See also Ray v. Deutsche Bank Nat'l Trust Co. (In re Ray), 2016 WL 6699315, at \*5-6 (B.A.P. 9th Cir. Nov. 14, 2016) (in the Debtor's appeal of a prior stay relief order entered in one of her prior bankruptcy cases before this court, the BAP held that Deutsche had standing to seek stay relief as to the Ondoro Property). The documents attached to the Objection, which the Debtor contends support her argument as to Deutsche's lack

of standing, are unauthenticated and do not contain any information that contradicts or supersedes the information contained in the Deutsche Trust Deed.<sup>6</sup> For these reasons, the court overrules the Debtor's Objection to the extent it challenges Deutsche's standing.

## II. Section 362(d)(1)

"Under Section 362(d)[1], the bankruptcy court 'shall' grant relief from stay upon a showing of 'cause.'" In re Ray, 2016 WL 6699315, at \*5. "If property is not property of the estate, that is cause for relief." Id. citing In re Edwards, 454 B.R. at 106. As the BAP has previously found in In re Ray, the Deutsche Trust Deed reflects that "Deutsche Bank is the presumptive current owner of the Property . . . ." 2016 WL 6699315, at \*6. Therefore, the Ondoro Property is not property of the estate, and "cause" exists under section 362(d)(1) to grant Deutsche relief from the automatic stay.

## III. Section 362(d)(2)

Section 362(d)(2) states:

(d) 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, such as by terminating, annulling, modifying, or conditioning such stay—

. . .

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property;  
and

(B) such property is not necessary to an effective reorganization . . . .

The Debtor clearly lacks equity in the Ondoro Property as it is not property of the estate.

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<sup>6</sup> Attached to the Objection is an unauthenticated copy of a pleading that was filed on the Debtor's behalf on June 11, 2017, in the justice court eviction proceeding. Attached to that unauthenticated pleading were similarly unauthenticated copies of various documents, two of which allegedly establish that an entity identified as FFMLT 2005-FF8-N was not in good standing in Delaware in January 2006, and therefore does not have standing to seek relief from stay. Those documents, of course, would not be determinative of the standing of that entity, nor are they material to the standing already established by Deutsche. Moreover, those documents apparently were presented to and may have been considered by the justice court in connection with the ongoing eviction proceedings.

1 However, because this bankruptcy case is only two weeks old and the Debtor has yet to file a  
 2 proposed chapter 13 plan, it is premature for the court to find, at this point, that the Ondoro  
 3 Property is not necessary to an effective reorganization. For this reason, the court denies the  
 4 Motion to the extent it seeks relief under section 362(d)(2).

#### 5 IV. Section 362(d)(4)

6 Section 362(d)(4) states:

7 (d) On request of a party in interest and after notice and a  
 8 hearing, the court shall grant relief from the stay provided under  
 9 subsection (a) of this section, such as by terminating, annulling,  
 10 modifying, or conditioning such stay—

11 . . .

12 (4) with respect to a stay of an act against real property under  
 13 subsection (a), ***by a creditor whose claim is secured by an interest  
 14 in such real property***, if the court finds that the filing of the  
 15 petition was part of a scheme to delay, hinder, or defraud creditors  
 16 that involved either—

17 (A) transfer of all or part ownership of, or other interest  
 18 in, such real property without the consent of the secured creditor or  
 19 court approval; or

20 (B) multiple bankruptcy filings affecting such real  
 21 property.

22 (emphasis added). Deutsche argues that the Debtor’s multiple bankruptcy filings,<sup>7</sup> including the  
 23 filing of her current bankruptcy case hours before an eviction hearing, evidence a scheme under  
 24 section 362(d)(4) warranting in rem relief. Although not raised by the Debtor, the court notes  
 25 that the plain language of section 362(d)(4) is only applicable to “a creditor whose claim is  
 26 secured by an interest in such real property . . . .” Notwithstanding the fact that the Debtor listed  
 27 Deutsche as a creditor in her verified creditor matrix (ECF No. 1, pp. 9-10), and Deutsche  
 28 continuously refers to itself as a “secured creditor” in its Motion, Deutsche, via the Deutsche  
 Trust Deed, is essentially claiming that it owns the Ondoro Property. The Debtor, on the other  
 hand, claims that she owns the Ondoro Property.

The Bankruptcy Appellate Panel of the Ninth Circuit has held that a party seeking in rem

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<sup>7</sup> See note 5, supra.

stay relief must demonstrate that it is a secured creditor in the property. See Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P 9th Cir. 2014). Indeed, on similar facts as herein where the movant and the debtor raised conflicting claims of ownership to the real property, the Ellis court concluded that the movant was not entitled to in rem relief under the plain language of section 362(d)(4). Id. Similarly, Deutsche claims an ownership interest in the Ondoro Property via the Deutsche Trust Deed and is not entitled to in rem relief under the plain language of section 362(d)(4). See In re Ray, 2016 WL 6699315, at \*6 (in the Debtor's appeal of a stay relief order entered in Deutsche's favor in a prior bankruptcy case, the Ninth Circuit BAP stated, in dicta, that "the bankruptcy court correctly denied in rem relief under that section, because, as the owner of the Property, Deutsche Bank is no longer a creditor whose claim is secured by an interest in the Property under § 362(d)(4)."), citing In re Ellis, 523 B.R. at 678-79. In view of the foregoing,

**IT IS HEREBY ORDERED** that the Motion for Relief from Automatic Stay and In Rem Relief brought by Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series, and its Assignees and Successors, Docket No. 11, be, and the same hereby is, **GRANTED IN PART and DENIED IN PART**;

**IT IS FURTHER ORDERED** that Deutsche's request for relief from the automatic stay under 11 U.S.C. § 362(d)(1) is **GRANTED**;

**IT IS FURTHER ORDERED** that Deutsche's request for relief from the automatic stay under 11 U.S.C. § 362(d)(2) is **DENIED**;

**IT IS FURTHER ORDERED** that Deutsche's request for in rem relief under section under 11 U.S.C. § 362(d)(4) is **DENIED**;

**IT IS FURTHER ORDERED** that Deutsche's request for waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) is **GRANTED**.

Copies sent to all parties via CM/ECF ELECTRONIC FILING.

Copies sent to the following parties by BNC:

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