



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
April 05, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 18-15549-MKN  
          ) Chapter 13  
HUGO LARA-MORALES, )  
                                  ) Debtor. ) Date: April 3, 2019  
                                  ) Time: 1:30 p.m.  
                                  )

**(AMENDED) ORDER REGARDING SECURED CREDITOR FULL HOUSE LEASING, LLC'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY<sup>1</sup>**

On April 3, 2019, the court heard Secured Creditor Full House Leasing, LLC's Motion for Relief from the Automatic Stay ("MRAS"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On September 17, 2018, Hugo Lara-Morales ("Debtor") filed a voluntary Chapter 13 petition. (ECF No. 1). On the petition, he listed his residence as 6313 Sierra Pine Court, Las Vegas, Nevada 89130 ("Residence").

On October 24, 2018, a Notice of Removal ("Removal Notice") was filed by Special Default Services Inc. ("SDS"). (ECF No. 15). As a result of that Removal Notice, a civil action pending in the Eighth Judicial District Court, Clark County, Nevada ("State Court"), entitled

<sup>1</sup> 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. All references to "NRS" are to provisions of the Nevada Revised Statutes. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

Hugo Lara-Morales v. Special Default Services Inc., Complete Asset Management Inc., et al., Case No. A-18-780121-C, was removed to this bankruptcy court. Upon removal, the matter was assigned Adversary Proceeding No. 18-01113-MKN (“Removed Action”). The complaint in the Removed Action alleges that the defendants named therein are seeking to foreclose on a debt secured by the Residence that previously had been “written off” or otherwise discharged by the Debtor in a prior bankruptcy proceeding. The court’s records reflect that the Debtor filed a prior Chapter 7 proceeding on April 18, 2016, denominated Case No. 16-12085-MKN, for which he received a Chapter 7 discharge on July 25, 2016 (“Prior Chapter 7”).<sup>2</sup>

On November 2, 2018, Debtor filed his schedules of assets and liabilities (“Schedule”) along with his statement of financial affairs (“SOFA”). On his Schedule “A/B,” Debtor lists the Residence as having a value of \$280,900. On his Schedule “C,” Debtor claims the Residence as being exempt under NRS 21.090(1)(l) and 115.050. On his Schedule “D,” Debtor lists Seterus as having a claim in the amount of \$189,308 secured by a mortgage against the Residence. Debtor does not attest that the Seterus claim is contingent, unliquidated, or disputed. On his Schedule “E/F,” Debtor does not list any unsecured creditors.

On November 2, 2018, Debtor filed a proposed Chapter 13 Plan #1. (ECF No. 22).

On November 26, 2018, a proof of claim (“POC”) in the amount of \$97,168.15 was filed by Full House Leasing, LLC (“Full House”). The POC attests that the claim is secured by a deed of trust (“DOT”) against the Residence based on a promissory note dated December 14, 2006,<sup>3</sup>

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<sup>2</sup> Under Section 727(b), a discharge under Chapter 7 discharges an individual debtor from all debts that arose before the bankruptcy was filed. The docket in the Prior Chapter 7 proceeding indicates that a deadline for creditors to file proofs of claim was never established. Because it was closed as a “no asset” case by the assigned Chapter 7 trustee, Lenard E. Schwartzter, no claims bar date was ever established. In the Ninth Circuit, the claims of creditors who are not scheduled by a Chapter 7 individual debtor are discharged in no asset cases. See In re Beezley, 994 F.2d 1433, 1434 (9th Cir. 1993). See also White v. Nielsen (In re Nielsen), 383 F.3d 922, 925 (9th Cir. 2004). Thus, even the debts of creditors who were not scheduled by the Debtor in his Prior Chapter 7 were discharged under Chapter 7, unless they were of the type specified in Section 523(c).

<sup>3</sup> The DOT dated December 14, 2006, reflects the Residence address as “6313 Sierra Pine[s] Court, Las Vegas, Nevada 89130.

1 between Lehman Brothers Bank, FSB, and the Debtor. Included in the attachments to the POC  
2 is a copy of a Corporate Assignment of Deed of Trust indicating that an assignment was recorded  
3 on July 14, 2014, transferring to Full House a deed of trust securing a debt in the principal  
4 amount of \$46,500.

5 On December 3, 2018, Full House filed an objection to confirmation of Plan #1. (ECF  
6 No. 31).

7 On March 4, 2019, the instant MRAS was filed by Full House. (ECF No. 34). Attached  
8 to the MRAS is a single exhibit, consisting only of a copy of the POC.

9 On March 21, 2019, opposition to the MRAS was filed by the Debtor ("Opposition").  
10 (ECF No. 41).

11 On March 26, 2019, a reply was filed by Full House ("Reply"). (ECF No. 42).

### 12 DISCUSSION

13 Full House seeks relief from the automatic stay with respect to the Residence, pursuant to  
14 Sections 362(d)(1) and 362(d)(2). See MRAS at 2:15. Under Section 362(d)(1), "cause" for  
15 relief from stay, including a requirement for adequate protection payments, requires the moving  
16 party to demonstrate that the subject property is declining in value. See First Federal Bank of  
17 California v. Weinstein (In re Weinstein), 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998). Where  
18 relief from stay is sought under Sections 362(d)(2), the moving party bears the burden of proving  
19 that the debtor lacks equity in the subject property. See 11 U.S.C. §§ 362(d)(2)(A) and  
20 362(g)(1). If that burden is met, the debtor then is required to demonstrate that the subject  
21 property is necessary to an effective reorganization. See 11 U.S.C. §§ 362(d)(2)(B) and  
22 362(g)(2). As to that inquiry, the debtor is required to demonstrate that there is a reasonable  
23 possibility of confirming a plan within a reasonable amount of time. See United Savings Ass'n  
24 v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 370 (1988).

25 In this instance, Full House refers only to the value of \$280,900 for the Residence as  
26 represented by the Debtor in Schedule "A," see MRAS at 2:2-3, but offers no evidence of the  
27 value of the subject property after the bankruptcy was filed. In other words, there is no evidence  
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1 that the Residence has declined in value. As a result, Full House has failed to meet its burden of  
2 proof under Section 362(d)(1). Full House fares better, however, under Section 362(d)(2).

3 As previously indicated, Debtor scheduled Seterus as having a claim in the amount of  
4 \$189,308, secured by the Residence, that is not contingent, unliquidated, or disputed.<sup>4</sup>

5 Additionally, the POC filed by Full House is in the amount of \$97,168.15. Under FRBP 3001(f),  
6 a properly filed proof of claim constitutes prima facie evidence of its validity and amount.

7 Under Section 502(a), the claim is deemed allowed unless a party in interest objects. The total  
8 amount of the Seterus and Full House claims against the Residence is \$286,476.15. That total  
9 clearly exceeds the \$280,900 scheduled value of the Residence. For that reason, Full House

10 argues that the Debtor lacks equity in the Residence. See MRAS at 2:6-8. Absent contrary  
11 evidence from the Debtor, this record is sufficient to satisfy the moving party's burden of proof  
12 under Section 362(g)(1). Under these circumstances, the burden shifts to the Debtor under  
13 Section 362(g)(2) to demonstrate that there is a reasonable possibility of confirming a Chapter 13  
14 plan within a reasonable amount of time.

15 In this instance, Debtor filed his Chapter 13 petition on September 17, 2018. His Prior  
16 Chapter 7 was commenced on April 18, 2016, and he received his Chapter 7 discharge on July  
17 25, 2016.<sup>5</sup> Under Section 1328(f)(1), he is not eligible for a Chapter 13 discharge unless he  
18 commences such a proceeding after April 18, 2020. The inability to obtain a Chapter 13  
19 discharge, however, does not preclude confirmation of a Chapter 13 plan that includes a  
20 provision to strip a lien from the debtor's principal residence. See, e.g., In re Okosisi, 451 B.R.  
21 90 (Bankr. D. Nev. 2011) (confirming "Chapter 20" plan that meets requirements of Section  
22 1325(a)). Although the court is puzzled as to why the Removed Action was brought before the  
23 bankruptcy court at all, disposition of the claims raised in that proceeding is not essential to

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24 <sup>4</sup> A creditor with an undisputed claim is still required to file a proof of claim to receive a  
25 distribution under a confirmed Chapter 13 plan. See Drummond v. Barker (In re Barker), 839  
26 F.3d 1189, 1193 (9th Cir. 2016).

27 <sup>5</sup> According to the POC, Full House recorded the assignment of the deed of trust in July  
28 2014. The Prior Chapter 7 was filed in April 2016. Because the Prior Chapter 7 was a no asset  
case, the Debtor's discharge in that case applied to the claim of Full House. See discussion at  
note 2, supra.

1 determining confirmation of a Chapter 13 plan. The record reflects that the hearing on  
2 confirmation of the Debtor's proposed Plan #1 has been continued to April 11, 2019. Whether  
3 an evidentiary hearing will be required is not known.

4 Under these circumstances, the court concludes that there is a reasonable possibility of a  
5 successful reorganization in Chapter 13 within a reasonable amount of time. Thus, relief from  
6 stay is unwarranted under Section 362(d)(2).

7 **IT IS THEREFORE ORDERED** that Secured Creditor Full House Leasing, LLC's  
8 Motion for Relief from the Automatic Stay, Docket No. 34, be, and the same hereby is,  
9 **DENIED.**

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11 Copies sent via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:  
13 HUGO LARA-MORALES  
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LAS VEGAS, NV 89130

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