



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 16, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 19-13714-MKN
) Chapter 11
VICTOR A. SORIANO aka VICTOR A.)
SORIANO-FLORES dba NESSI CLEANING)
SERVICE, INC. and MARIBEL E. SORIANO) Date: September 4, 2019
aka MARIBEL E. SANTILLAN,) Time: 9:30 a.m.
)
)
Debtors.)

**ORDER ON U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF8
MASTER PARTICIPATION TRUST'S MOTION FOR RELIEF FROM
AUTOMATIC STAY (IN REM)¹**

On September 4, 2019, the court heard "U.S. Bank Trust, N.A. as Trustee for LSF8 Master Participation Trust's Motion for Relief From Automatic Stay (In Rem)" [hereafter "RAS Motion"]. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On June 11, 2019, a voluntary Chapter 11 petition was filed by Victor A. Soriano and Maribel E. Soriano ("Debtors"). (ECF No. 1). At the time they commenced the instant Chapter 11 proceeding, Debtors were in a previously filed proceeding denominated Case No. 17-11472-MKN ("2017 Case"). Debtors also filed three previous Chapter 11 cases, all of which were dismissed, denominated as Case No. 11-23322-MKN, Case No. 13-14770-MKN, and 16-10429-

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, et seq. All references to "FRBP" are to provisions of the Federal Rules of Bankruptcy Procedure.

1 MKN (“2016 Case”). The 2017 Case was dismissed by an order entered on August 19, 2019.
2 (2017 ECF No. 91). The 2016 Case was dismissed by an order entered on January 11, 2017.
3 (2016 ECF No. 90).

4 In all five of their Chapter 11 proceedings, Debtors’ schedule of assets includes certain
5 real estate located at 62 East Ford Avenue, Las Vegas, Nevada 89123 (“East Ford Property”). In
6 Schedules A/B and D of their current case, Debtors attest that the East Ford Property has a
7 current market value of \$459,789, and that the holder of the first mortgage against the property is
8 owed \$777,171.87. (ECF No. 18). In none of the first four Chapter 11 cases did the Debtors file
9 a proposed plan of reorganization or accompanying disclosure statement.

10 On July 26, 2019, U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust
11 (“US Bank”) filed the instant RAS Motion. (ECF No. 39). It was noticed to be heard on
12 September 4, 2019. (ECF No. 41).

13 On August 16, 2019, Debtors filed an opposition to the RAS Motion (“Opposition”).
14 (ECF No. 56).

15 DISCUSSION

16 US Bank maintains that the automatic stay in the current case expired on July 11, 2019,
17 because the Debtors failed to obtain an extension of the automatic stay as required by Section
18 362(c)(3)(C)(i). See RAS Motion at 4:3-9. Additionally, US Bank argues that relief from stay is
19 appropriate under Sections 362(d)(1), (d)(2) and (d)(4). Id. at 4:20-23. It represents that the East
20 Ford Property is worth \$459,789 according to the Debtors’ own Schedule A/B and that US Bank
21 currently is owed \$889,961.79. See RAS Motion at 2:7-20. US Bank also alleges that the
22 Debtors have not made a payment on the underlying promissory note since August 1, 2009, i.e.,
23 for ten years. Attached to the RAS Motion are copies of a variety of unauthenticated documents
24 evidencing the underlying obligation and the lien against the East Ford Property, none of which
25 are objected to by the Debtors.

26 Debtors’ written response is minimal. They do not dispute any of the values or claim
27 amounts alleged in the RAS Motion, or that they have no equity in the subject property. They
28 make no argument as to whether the automatic stay already terminated under Section 362(c)(3)

1 and only suggest that they are generating income from the East Ford Property and will seek to
2 confirm a plan of reorganization.² See Opposition at 2.

3 Having considered the written and oral arguments and representations of counsel,
4 together with the record, the court concludes that the RAS Motion should be granted.

5 With respect to whether the automatic stay terminated in the current case on July 11,
6 2019, the pertinent language refers to a case of the debtor that “was pending within the preceding
7 1-year period but was dismissed...” 11 U.S.C. § 362(c)(3). Clearly the 2017 Case was pending
8 within the preceding year, but the dismissal occurred after the preceding one-year period. US
9 Bank does not discuss this factual circumstance in its papers, nor do the Debtors address it at all.
10 Assuming for the purposes of the instant case that the automatic stay has not expired in the
11 current case both as to the Debtors and as to property of the estate, see Reswick v. Reswick (In re
12 Reswick), 446 B.R. 362, 373 (B.A.P. 9th Cir. 2011), however, the court concludes that relief
13 from stay otherwise is appropriate.

14 Section 362(d)(1) requires the moving party to establish “cause” for relief from stay,
15 including a lack of adequate protection. Ordinarily, the moving party must demonstrate that the
16 subject property has declined in value since the bankruptcy was filed. See First Federal Bank of
17 California v. Weinstein (In re Weinstein), 227 B.R. 284, 296-97 (B.A.P. 9th Cir. 1998). Upon
18 such proof, the debtor must provide some form of “adequate protection” to ensure that the
19 automatic stay does not worsen the value of the creditor’s secured claim allowed as of the
20 petition date. Under Section 361(1), adequate protection typically consists of a cash payment
21 equal to the decrease in value of the claim. But cause for relief from stay under Section
22 362(d)(1) is not restricted to a lack of adequate protection.

23 In this instance, Debtors have filed five separate Chapter 11 petitions over an eight-year
24 span and have never filed a proposed Chapter 11 plan of reorganization in any of their cases. In
25 the 2017 Case, an order was entered on April 25, 2019, terminating the automatic stay in favor of
26 US Bank with respect to the East Ford Property. (2017 ECF No. 81). In the 2016 Case, an order

27 ² At the hearing, counsel for US Bank acknowledged that the Debtors individually may
28 have attempted to tender a partial monthly payment at counsel’s office, but the payment was
declined.

1 was entered on October 11, 2016, approving a stipulation terminating the automatic stay in favor
2 of US Bank with respect to the East Ford Property. (2016 ECF No. 75). In other words, in their
3 two most recent Chapter 11 proceedings, the Debtors never filed a proposed plan of
4 reorganization and orders were entered in both cases granting US Bank's requests for relief from
5 stay for the same real property. Under this combination of circumstances, the court concludes
6 that cause exists under Section 362(d)(1) to terminate the automatic stay.

7 Section 362(d)(2) requires the moving party to establish that the debtor lacks equity in the
8 subject property and that the property is not necessary to an effective reorganization. If the
9 moving party meets its burden under Section 362(g)(1) of establishing the lack of equity, the
10 burden shifts to the respondent under Section 362(g)(2) to establish that the property is necessary
11 to an effective reorganization. The latter element requires the responding party to demonstrate
12 that there is a reasonable possibility of a successful reorganization within a reasonable amount of
13 time. See United Savings Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S.
14 365, 376 (1988).

15 In this instance, Debtors concede that they lack equity in the East Ford Property, see
16 Opposition at 2, but allege that the subject property is generating a positive cashflow. Id. No
17 evidence is offered to demonstrate that cashflow, but the Debtors' only two operating reports
18 filed in the case attest that they collected \$210 of net rents for the East Ford Property in June
19 2019, and \$1,769 of net rents in July. (ECF Nos. 30 and 57). Even if the court considers the
20 Debtors' operating reports filed under penalty of perjury, however, they have failed to meet their
21 burden of demonstrating a reasonable possibility of a successful reorganization. Because the
22 Debtors have been in five different Chapter 11 proceedings over the past eight years, there also is
23 no basis to conclude that their efforts to reorganize will be successful within a reasonable amount
24 of time. Under these circumstances, the court concludes that relief from stay is appropriate
25 under Section 362(d)(2).

26 Section 362(d)(4) authorizes in rem relief from stay in favor of a party secured by an
27 interest in real property "if the court finds that the filing of the petition was part of a scheme to
28 delay, hinder, or defraud creditors that involved...multiple bankruptcy filings affecting such real

1 property.” 11 U.S.C. § 362(d)(4)(B). An order granting relief under Section 362(d)(4) that is
2 recorded in the county where the real property is located is “binding in any other [bankruptcy]
3 case...purporting to affect such real property” for a period of two years. See 11 U.S.C. §
4 362(d)(4).

5 There is no question that the Debtors have filed five separate Chapter 11 proceedings
6 affecting the East Ford Property. In the 2016 Case and 2017 Case, US Bank sought and obtained
7 relief from stay to foreclose on the East Ford Property only to be stopped by the filing of another
8 case. The term “scheme” as used in Section 362(d)(4) is not defined, but some courts have
9 required the moving party to demonstrate the existence of “an artful plot or plan.” See, e.g., Lira
10 v. Wells Fargo Bank, N.A. (In re Lira), 2015 WL 4641600, at *6-7 (B.A.P. 9th Cir. Aug. 4,
11 2015).

12 It is self-evident that any bankruptcy filing could be characterized as a plan to delay or
13 hinder a creditor because that is exactly what results from filing any bankruptcy petition: the
14 automatic stay arises. See 11 U.S.C. § 362(a) (“a petition filed under section 301, 302 , or 303 of
15 this title..operates as a stay...”). Without the automatic stay, a creditor can continue or
16 commence collection of its claim immediately and without impediment. But not every
17 bankruptcy filing can be characterized as fraud, even though disgruntled creditors may think so.
18 Thus, a scheme under Section 364(d) does not appear to require proof of some nefarious intent
19 by the debtor. Rather, Section 362(d)(4) only appears to require evidence of a plan to delay or
20 hinder a creditor through multiple bankruptcies affecting the same real property.

21 Under the circumstances of this case, the Debtors have delayed US Bank on multiple
22 occasions from pursuing its foreclosure remedies under the deed of trust. Debtors do not dispute
23 that they have made no payments for approximately ten years, yet they have filed five Chapter
24 11 cases without ever proposing a plan of reorganization. Additionally, that the Debtors have
25 filed successive Chapter 11 petitions after US Bank obtains relief from stay in the prior case,
26 infers that the successive case is intended to hinder US Bank’s efforts to exercise its rights under
27 nonbankruptcy law. In rem relief under Section 362(d)(4), therefore, is appropriate.

1 **IT IS THEREFORE ORDERED** that U.S. Bank Trust, N.A. as Trustee for LSF8
2 Master Participation Trust's Motion for Relief From Automatic Stay (In Rem), Docket No. 39,
3 be, and the same hereby is, **GRANTED**.

4 Copies sent via CM/ECF ELECTRONIC FILING

5 Copies sent via BNC to:

6 VICTOR A. SORIANO
7 MARIBEL E. SORIANO
8 7450 S. EASTERN AVENUE, SUITE 1092
9 LAS VEGAS, NV 89123

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