FILED

MAR 6 2020

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re: 31801 VIA COYOTE LLC, Debtor.	BAP No. CC-19-1233-FSTa Bk. No. 8:19-bk-10666-CB
31801 VIA COYOTE LLC, Appellant, v. WILMINGTON TRUST, NATIONAL ASSOCIATION, as trustee for MFRA Trust 2014-2, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC, Appellee.	**MEMORANDUM**[*]

Argued and Submitted on February 27, 2020
at Pasadena, California

Filed – March 6, 2020

[*] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: M. Jonathan Hayes of Resnik Hayes Moradi LLP argued for appellant; Merdaud Jafarnia of McCarthy & Holthus, LLP argued for appellee.

Before: FARIS, SPRAKER, and TAYLOR, Bankruptcy Judges.

INTRODUCTION

In short order, chapter 11[1] debtor 31801 Via Coyote LLC ("Debtor") acquired a third-priority lien on the real property sharing its name, foreclosed on its lien, acquired the property (subject to the first and second liens), and filed for bankruptcy protection. The bankruptcy court granted relief from the automatic stay to the first-position lienholder.

Debtor appeals, arguing that the bankruptcy court erred in finding bad faith and lifting the stay. However, it does not address the bankruptcy court's other bases for stay relief. We discern no reversible error and AFFIRM.

---

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

FACTUAL BACKGROUND

A. Prepetition events

Iulian Capatina was the owner of real property located at 31801 Via Coyote, Coto De Caza, California (the "Property"). Appellee Wilmington Trust, National Association, as trustee for MFRA Trust 2014-2, its assignees and/or successors, by and through its servicing agent Fay Servicing, LLC ("Wilmington") and Wells Fargo Bank, N.A. held the first- and second-position liens, respectively, on the Property. John S. Hennessy held a third-position lien against the Property. The Internal Revenue Service ("IRS") also held a tax lien.

Mr. Capatina defaulted on his loans with Wilmington, Wells Fargo, and Mr. Hennessy. Wilmington then recorded a notice of default and scheduled a foreclosure sale for November 27, 2018.

Debtor was created on September 13, 2018. It acquired Mr. Hennessy's lien on the Property five days later and commenced a nonjudicial foreclosure the following day. It purchased the Property at its nonjudicial foreclosure sale, subject to Wilmington's and Wells Fargo's senior liens.

When Debtor acquired the Property, it brought current Wilmington's loan but could not cure the arrears owed to Wells Fargo. Wells Fargo scheduled a foreclosure sale for February 26, 2019.

B. Bankruptcy events

Only a month after it acquired the Property and a day before the scheduled foreclosure sale, Debtor filed for chapter 11 bankruptcy protection. It scheduled the Property as its only asset and stated that it rented out the Property for $4,500 per month through January 2020.

After filing its petition, Debtor ceased making monthly payments to Wilmington and Wells Fargo. However, it claimed that it was holding the monthly rent in a separate bank account.

At a scheduling and case management conference, Debtor's representative, Andrew Fielder, explained that the purpose of Debtor's bankruptcy filing was "to stop foreclosure." He acknowledged that the rental income was not sufficient to pay both Wilmington's and Wells Fargo's liens. The court voiced concerns that Debtor could not pay the secured creditors and that it was created solely for the purpose of filing for bankruptcy to obtain the automatic stay. The court also noted that "the assignments and then the foreclosure and then the bankruptcy all coming pretty darn close together, it was very suspicious." It indicated that it was unsympathetic to Debtor's plans and did not want to encourage Debtor's business model.

C. Proceedings on Wilmington's Motion for Relief

Wilmington moved for relief from the automatic stay ("Motion for Relief") using the standard form provided by the bankruptcy court for the

Central District of California. As relevant here, it sought relief under § 362(d)(1) and asserted that its interest in the Property was not adequately protected.

Wilmington did not check the box identifying bad faith as a basis for stay relief, but it did identify other facts beyond non-payment that supported its assertion that cause for stay relief existed. It represented that Debtor had failed to make the past four monthly payments of $3,254.81 and was $13,019.24 in arrears. It argued that the debt was due in full and that Debtor did not have adequate resources to satisfy the lien.

In response, Debtor argued that Wilmington was adequately protected and offered to make reduced monthly payments. Mr. Fielder stated in his declaration that Debtor had significant equity in the Property and was proceeding toward reorganization.

The bankruptcy court held two hearings on the Motion for Relief. At the first hearing, the court repeated its concern with Debtor's business model, particularly because Debtor had not made any postpetition payments to Wilmington. The court continued the hearing and ordered the parties to submit additional briefing addressing its concerns.

Debtor argued in its supplemental brief that there was no evidence about the impropriety of its business model. It also argued that it was procedurally improper to consider the business model as a ground for relief, because Wilmington did not assert bad faith in the Motion for Relief.

In response, Wilmington explicitly argued for the first time that relief was appropriate under § 362(d)(4) for bad faith, because Debtor was created solely to assume title to the Property, generate rents, and file for bankruptcy to avoid foreclosure and "hold hostage" the secured creditors.

At the continued hearing, the court confirmed with Debtor's counsel that Debtor was not current on postpetition payments to Wilmington or Wells Fargo. It said that it was "flabbergasted" that Debtor was not current on the two liens. It again raised concerns that Debtor was not paying the liens and was instead just "a stranger" interested in the equity in the Property. The court further emphasized that there was a due on sale clause that was triggered by Debtor's foreclosure.[2]

The court discussed two bases for granting the Motion for Relief: the failure to make payments and bad faith based on Debtor's retention of the rent payments. Ultimately, it granted the Motion for Relief due to Debtor's failure to make postpetition payments; it concluded, "I'm granting for cause. The payments are not current." The court entered the order granting the Motion for Relief under § 362(d)(1).

Debtor timely appealed.

[2] The deed of trust provided: "If all or any part of the Property or any interest in the Property is sold or transferred . . . without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument."

JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(G). We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Whether the bankruptcy court erred in granting Wilmington relief from the automatic stay.

STANDARD OF REVIEW

We review for abuse of discretion the bankruptcy court's decision to grant relief from the automatic stay. *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 913 (9th Cir. BAP 2011). To determine whether the bankruptcy court has abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court "identified the correct legal rule to apply to the relief requested" and (2) if it did, we consider whether the bankruptcy court's application of the legal standard was illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *United States v. Hinkson*, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

"[W]e may affirm on any basis reasonably found in the record." *Van Zandt v. Mbunda (In re Mbunda)*, 484 B.R. 344, 359 n.11 (9th Cir. BAP 2012), *aff'd*, 604 F. App'x 552 (9th Cir. 2015) (citing *Caviata Attached Homes, LLC v. U.S. Bank, N.A. (In re Caviata Attached Homes, LLC)*, 481 B.R. 34, 44 (9th Cir. BAP 2012)).

DISCUSSION

Debtor argues that the bankruptcy court erred in finding bad faith and lifting the automatic stay. We hold that the bankruptcy court did not abuse its discretion when it determined that "cause" existed to lift the automatic stay under § 362(d)(1).

The automatic stay of § 362(a) enjoins specific acts against the debtor, property of the debtor, and property of the estate. The bankruptcy court may terminate the automatic stay for "cause" under § 362(d)(1). *See Delaney-Morin v. Day (In re Delaney-Morin)*, 304 B.R. 365, 368-69 (9th Cir. BAP 2003).

The Bankruptcy Code does not define cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *Mac Donald v. Mac Donald (In re Mac Donald)*, 755 F.2d 715, 717 (9th Cir. 1985) (citation omitted); *see Edwards v. Wells Fargo Bank, N.A. (In re Edwards)*, 454 B.R. 100, 107 (9th Cir. BAP 2011) ("The bankruptcy court generally has broad discretion in granting relief from stay for cause under § 362(d)." (citation omitted)).

In this case, the historical facts are undisputed. Debtor was created shortly before it acquired the Property and filed for bankruptcy protection. It had no assets other than the Property with which to satisfy its debts. It had failed to make any postpetition payments to Wilmington for over nine months even though it claimed to have sufficient rental income to do so.

The bankruptcy court gave Debtor ample notice of and opportunity to respond to its concerns. It first raised its concerns at the case management conference held only three weeks after Debtor filed its petition. It gave Debtor the opportunity to brief these issues, and it emphasized its concerns (including the effect of a due on sale clause and the lack of postpetition payments) at both hearings on the Motion for Relief. Nevertheless, Debtor was unable or unwilling to file a plan or take any other action to address the court's concerns.

We hold that the bankruptcy court acted within its permissible discretion when it decided that cause existed to lift the stay. We do not mean to suggest, however, that this constellation of facts necessitates stay relief. Other judges might have weighed the facts differently; other cases will present additional or different facts; and remedies other than stay relief are always available. We hold only that the grant of stay relief in this case did not amount to reversible error.

CONCLUSION

We AFFIRM.