

IT IS ORDERED

Date Entered on Docket: May 16, 2022



The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

PATRICIA A. SAENZ

Case No. 13-21-11251-TL

Debtor(s).

**DEFAULT ORDER GRANTING U.S. BANK, NATIONAL ASSOCIATION RELIEF FROM
AUTOMATIC STAY AND ABANDONMENT OF PROPERTY LOCATED AT 819 SWARTZ
RD LAS CRUCES, NEW MEXICO 88007**

This matter came before the Court on the Motion for Relief from Automatic Stay for the Abandonment of Property to U.S. Bank, National Association, as Trustee, as successor-in-interest to Bank of America, N.A., as successor to LaSalle Bank National Association, as Trustee for EMC Mortgage Loan Trust 2006-A, Mortgage Pass-Through Certificates, Series 2006-A (“Creditor”), filed on March 16, 2022, (DOC 36) (the “Motion”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On March 21, 2022, Creditor served the Motion and a Notice of the Motion (the “Notice”) on R. Trey Arvizu, III, Attorney for Debtor(s) and Tiffany M. Cornejo, Trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of

notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor Patricia A. Saenz, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the property located at 819 Swartz Rd Las Cruces, New Mexico 88007, more fully described as:

A tract of land situate in the Dona Ana Bend Colony Grant and in the East half of Section 2, T23S, R1E, of the U.S.R.S Surveys in Dona Ana County, New Mexico, being part of U.S.R.S. Tract 7-14 and more particularly described as follows, to wit: Beginning at the Southeast corner of the tract herein described marked-by a concrete monument, whence the Southeast corner of U.S.R.S. Tract 7-16B bears S.23 deg. 24' 15"E. a distance of 536.23 feet; thence S.66 deg. 31'W. 286.74 feet; thence S. 68 deg. 13'45"W. 245.16 feet to the Southwest corner of this tract marked by an iron rod; thence N.3 deg. 56'W. 177.77 feet to the Northwest corner of this tract marked by an iron rod; thence N.66 deg. 31'E. 472.54 feet to the Northeast corner of this tract marked by a concrete monument; thence S.23 deg. 24'15"E. 174.84 feet to the place of beginning containing 2.000 acres of land, more or less. Together with a perpetual easement for ingress and egress over and across the following described parcel of land: An easement being part of Serial No. 7-14 as shown on the U.S.R.S. Property Maps being located in Section 2, T23S, R1E, U.S.R.S Surveys North of Las Cruces, Dona Ana County, New Mexico, and being more particularly described as follows, to wit: Beginning at the Southeast corner of the easement herein described, whence a concrete monument at the Southeast corner of U.S.R.S Tract 7-16B bears the following two courses and distances: S.3 deg. 56'E. a distance of 96.65 feet; thence S. 68 deg. 20'43"E. a distance of 756.52 feet; thence from the place of beginning S.86 deg. 04'W. 20.00 feet to the Southwest corner of this easement; thence N.3 deg. 56' W: 252.44 feet; thence N. 67 deg. 21'30"W. 77.78 feet; thence N. 40 deg. 17'E. 20.99 feet to the Northwest corner of this easement; thence S.67 deg. 21'30"E. 83.78 feet to a concrete monument at the Northeast corner of this easement; thence S.3 deg. 56'E. 264.80 feet to the place of beginning of this easement,

Corrected as:

A tract of land situate north of Las Cruces, Dona Ana County, New Mexico, in Section 2, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys as part of U.S.R.S. Tract 7-14E and being more particularly described as follows to wit: BEGINNING ½" iron rod set for the southeast corner of this tract; whence a concrete monument found for the southeast corner of U.S.R.S. Tract 7-16B1 bears the following two courses and distances; N. 66° 33' 18"E., 258.98 feet;

**THENCE S. 23° 49' 39" E., 536.23 feet;
THENCE from point of beginning S. 66°33' 18" W., 274.98 feet to a ½" iron rod found for the southwest corner of this tract; THENCE N.04° 00' 27" W. 89.63 feet to a ½" iron rod set for the northwest corner of this tract; THENCE along the centerline of a 25 foot wide road and utility easement N. 66° 31' 00" E., 244.59 feet to a ½" iron rod set for the northeast corner of this tract; THENCE leaving said centerline S. 23° 49' 39" E., 84.69 feet to the point of beginning, containing 0.505 acre of land more or less. (Subject to a 12.5 foot wide road and utility easement parallel and immediately adjacent to the north boundary of this tract.)**

Together with a perpetual easement for ingress and egress over and across the following described parcel of land: An easement being part of Serial No. 7-14 as shown on the U.S.R.S. Property Maps being located in Section 2, T23S, R1E, U.S.R.S Surveys North of Las Cruces, Dona Ana County, New Mexico, and being more particularly described as follows, to wit:

Beginning at the Southeast corner of the easement herein described, whence a concrete monument at the Southeast corner of U.S.R.S Tract 7-16B bears the following two courses and distances: S.03 deg. 56'E. a distance of 96.65 feet; thence S. 68 deg. 20'43"E. a distance of 756.52 feet; thence from the place of beginning S.86 deg. 04'W. 20.00 feet to the Southwest corner of this easement; thence N.3 deg. 56' W: 252.44 feet; thence N. 67 deg. 21'30"W. 77.78 feet; thence N. 40 deg. 17'E. 20.99 feet to the Northwest corner of this easement; thence S.67 deg. 21'30"E. 83.78 feet to a concrete monument at the Northeast corner of this easement; thence S.03 deg. 56'E. 264.80 feet to the place of beginning of this easement,

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the "Property"). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on April 11, 2022;

(f) As of April 28, 2022, neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) By submitting this Order to the Court for entry, the undersigned counsel for Creditor certifies under penalty of perjury that, on the date this Order was presented Rose L. Brand & Associates, P.C. searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Creditor and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to it under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Creditor need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, in the event that a discharge order is entered. The Debtor can be named as a defendant in litigation to obtain judgment or to repossess the Property in accordance with applicable non-bankruptcy law, pursuant to any discharge order entered.

4. This Order does not waive Creditor's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Creditor may file an amended proof of claim in this bankruptcy case within thirty (30) days after a foreclosure sale of the Property, should it claim that Debtor owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. Creditor is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtor and to enter into a loan modification with the Debtor.

XXX END OF ORDER XXX

RESPECTFULLY SUBMITTED:

ROSE L. BRAND & ASSOCIATES, P.C.

/s/Elizabeth Dranttel e-signed

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