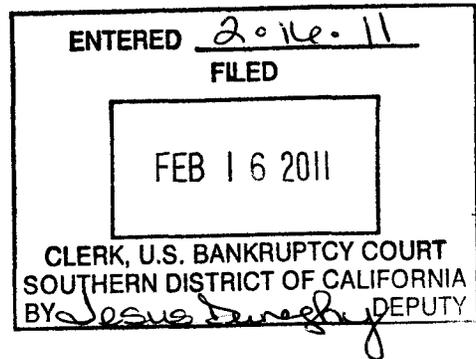


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WRITTEN DECISION - NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re: ) Bk. No. 10-15196-LT7  
Louis George Valle and Cynthia Ann ) RS No. JEB-1  
Valle, )  
Debtors. )  
\_\_\_\_\_ ) MEMORANDUM DECISION  
Southland Home Mortgage, LLC, )  
Moving Party, )  
v. )  
Louis George Valle and Cynthia Ann )  
Valle, )  
Respondents. )

Louis George Valle and Cynthia Ann Valle ("Debtors") leased a home (the "Home") from Rosalia Mariz ("Lessor") by lease dated August 1, 2009 (the "Lease"). Unbeknownst to the Debtors, Lessor was in default of her obligations on a loan secured by the Home (the "Loan"), and, as a result, the real estate secured lender (the "Lender") recorded a notice of default on June 29, 2009.

1 At issue here is the intersection between the Protecting Tenants in Foreclosure Act  
2 (the "Act") and the automatic stay. The Act allows renters to remain in a leasehold for the  
3 later of 90 days or the end of the lease term if, among other things, they entered into a lease  
4 prior to the date of a "Notice of Foreclosure." Movant Southland Home Mortgage LLC  
5 ("Movant") argues that a notice of default provided under California law is a "Notice of  
6 Foreclosure" for purposes of the Act and that, as a result, the Act does not protect Debtors.  
7 Debtors argue, to the contrary, that a California notice of default is not a "Notice of  
8 Foreclosure" within the meaning of the Act and, thus, that they are entitled to remain in  
9 possession of the Home through the Lease term.

10  
11 The Court, having considered various documents filed by the parties and having  
12 independently researched this matter, concludes that Movant provided erroneous authority  
13 to the Court and, in particular, failed to appropriately advise the Court of modifications to  
14 the Act which make clear that a notice of default is not a "Notice of Foreclosure" within the  
15 meaning of the Act. As a result, the Court concludes that the Act protects Debtors and that  
16 relief from stay to allow eviction is not appropriate provided that they remain current on  
17 Lease payments. The Court also finds on this record that any defaults under the Lease were  
18 caused, in whole or in part, by Movant's unwillingness to accept payments and lack of  
19 appropriate cooperation and that Debtors should have a short opportunity to become current  
20 on Lease obligations.

21  
22 Finally, the Court notes that the Act requires that the rental amount not be  
23 substantially less than fair market rental value. Movant argued that the Lease is not at  
24 market, but provides no real evidence in this regard. The Court concludes on this record  
25 that the Lease is at or near market here as there is no evidence that the transaction is not  
26 arms-length, the Debtors have use of the Home but the Movant remains in control of the  
27 remainder of the Property and, in particular, of the avocado crop thereon, and the Movant's  
28 evidence and argument should be given little if any weight in this regard given serious

1 misrepresentations of law and fact made to the Court by Movant in connection with this  
2 case.

3  
4 Finally, the Court agrees with the parties that, except as to the matters directly  
5 decided herein, all issues should be decided by the State Court.

6  
7 **1. Facts.**

8 Prior to August 1, 2009, Lessor obtained a loan and secured her obligations with a  
9 deed of trust on real property located in Fallbrook, California (the "Property"). The  
10 Property consists of at least the Home and an avocado grove, possibly among other things.

11  
12 Lessor defaulted in her obligations to Lender and, as a result, on June 29, 2009,  
13 Lender executed and delivered a notice of default under the California Civil Code.

14  
15 Notwithstanding the notice of default, Lessor entered into the Lease with Debtors on  
16 August 1, 2009. The Lease relates to the Home and provides for a two-year term. The  
17 Debtors assert that the Lease results from an arm's length transaction; the Movant provides  
18 no evidence supporting a contrary conclusion.

19  
20 Lender recorded its Notice of Trustee's Sale on October 5, 2009. Lessor delayed this  
21 foreclosure through the filing of two bankruptcy cases. Debtors were not involved in this  
22 effort and paid rent to Lessor continuously throughout this period. Finally, Movant  
23 purchased the Property at Lender's May 26, 2010 foreclosure sale. Thereafter, Movant  
24 moved to evict Debtors from the Home.

25  
26 Movant initiated an unlawful detainer action in the State Court. The State Court  
27 issued a minute order thereon after a trial on July 20, 2010. The Minute Order requires that  
28 Movant: ". . . prepare the judgment, if warranted." The Debtors sought ex parte relief

1 thereafter (the "Ex Parte Motion"). The Register of Actions Notice ("State Court Docket")  
2 provided by Movant does not indicate the result of the Ex Parte Motion and also confirms  
3 that prior to issuance of any order, post July 20, 2010 judgment, or writ of possession, the  
4 Debtors initiated a chapter 7 bankruptcy.

5  
6 Notwithstanding the Lease, Movant is in full control of the avocado crop located on  
7 the Property and engages in active farming of the same through an agent.

8  
9 Movant initially sought relief from stay by motion filed on September 2, 2010 (the  
10 "First Motion").

11  
12 The Debtors opposed the First Motion asserting, among other things, that they were  
13 protected by the Act. The Court denied the First Motion, without prejudice, based on  
14 Movant's failure to provide any declaratory or other admissible evidence as required by the  
15 Local Rules of this Court and Movant's failure to respond in any manner to Debtors'  
16 arguments regarding the Act.

17  
18 Thereafter, on October 12, 2010, Movant filed a second relief from stay motion (the  
19 "Motion"). The Movant properly supported the Motion with declaratory evidence, but, once  
20 again, failed to respond to the arguments regarding the Act. At a hearing in connection with  
21 the Motion, Movant sent appearance counsel who was unable or unwilling to argue the  
22 merits and agreed to January dates for a continued hearing in connection with this matter.

23  
24 Thereafter, on November 17, 2010, Movant filed an emergency application seeking  
25 to expedite the hearing date. In connection therewith, Movant filed the Declaration of  
26 Steven Niednagel (the "Niednagel Declaration") and requested that the Court expedite  
27 hearing on this matter due to an alleged emergency situation. The Niednagel Declaration  
28 suggested that Debtors were involved in a prior conversion of an avocado crop on the

1 Property, that they were operating a business on the Property, that they intended actions  
2 inconsistent with Movant's interest in the current avocado crop, and that Movant reasonably  
3 assumed that grave injury would result if Debtors stayed in the Home. Based on the  
4 significant concerns created by this document, the Court expedited the hearing date.  
5

6 Debtors responded to the Niednagel Declaration by the Declaration of Cynthia Valle  
7 filed on December 14, 2010. The Cynthia Valle Declaration made clear that the Niednagel  
8 Declaration contained significant misstatements of fact. In particular, it evidenced that the  
9 Debtors do not operate a business on the Property, that the Debtors have not, do not, and  
10 will not interfere with the avocado crop in that Movant is completely in control of the  
11 avocado crop through onsite management, that the Lease covers only the Home, and that  
12 Ms. Valle has worked at her church for over 17 years.  
13

14 At the hearing on this matter, the Court questioned Movant regarding the apparent  
15 lack of candor in the Niednagel Declaration. The Movant failed to satisfy the Court that any  
16 true evidentiary dispute exists on these issues and, instead, confirmed the lack of merit in  
17 the Niednagel Declaration. The Court ultimately concluded that it would not continue its  
18 inquiry, but notes that the Niednagel Declaration appeared to contain what can generously  
19 be described as inaccuracies and certainly reflected more paranoia than precision in its  
20 creation.  
21

22 Also at the hearing, and in relation to the arguments regarding the Act, the Court  
23 advised counsel for Movant of its concerns regarding the meaning of the term "Notice of  
24 Foreclosure" as used in the Act. As the Court explained, the Act is federal legislation and  
25 the foreclosure systems of the fifty states are widely variant. Thus, use of the term "Notice  
26 of Foreclosure," is ambiguous as to whether it equates to a notice of default under California  
27 law. The Court noted that under California law there are several documents that are  
28 recorded during the non-judicial foreclosure process and that each could constitute a "Notice

1 of Foreclosure" within the meaning of the Act. Here, only the notice of default issued prior  
2 to the Lease. As a result, if this is the operative document, the Act does not protect Debtors.  
3 If, however, the operative document for purposes of the Act is a notice of sale or the notice  
4 of completion of foreclosure, then the Lease pre-dates these documents and the Act protects  
5 the Debtors.

6  
7 Counsel for Movant argued vigorously that the notice of default was the operative  
8 document. In fact, she advised the Court that she has been so arguing all over the State and  
9 that she would be able to provide authority to the Court. As a result, the Court set this  
10 matter out for additional briefing on two issues. First, the Court asked that the parties  
11 respond with precision to the meaning of the term "Notice of Foreclosure" under the Act.  
12 Second, the Court asked for additional argument as to whether issue preclusion bars this  
13 Court from determining that the Act protects Debtors such that the Motion must be denied.

14  
15 The Court received all evidence and argument and carefully considered the same and  
16 now concludes as follows:

17  
18 **2. This Court Is Not Bound By The Determinations Of The Court Below As To**  
19 **Interpretation Of The Act.**

20 For purposes of California law, issue preclusion does not occur until an order is final  
21 and non-appealable. *Border Business Park, Inc. v. City of San Diego*, 142 Cal. App. 4th  
22 1538, 1564 (2006). In this case, the record fails to establish that there is a final non-  
23 appealable judgment. There is no notice of entry on the State Court Docket, so Debtors had  
24 180 days from July 20, 2010 to appeal if the Minute Order constituted entry of a judgment.  
25 Cal. R. Ct. 8.104. And as the Minute Order submitted into evidence required Movant to  
26 prepare a judgment, it does not appear that the Minute Order suffices to commence the  
27 running of the time to appeal. Cal. R. Ct. 8.104(c). And finally, the unresolved Ex Parte  
28 Motion may have extended the time for appeal. Cal. R. Ct. 8.108(b), (c), and (e). Thus, the

1 Court has no evidence indicating that any determination was final such that issue preclusion  
2 is appropriate.

3  
4 Further, there is insufficient evidence from which the Court can determine what was  
5 necessarily decided by the State Court. As discussed above, the Court will defer to the State  
6 Court and allow it to make appropriate determinations consistent with its ruling or after  
7 appeal in most regards, but concludes that it is free to examine the meaning of "Notice of  
8 Foreclosure" under the Act in connection with the Motion.

9  
10 **3. The Notice Of Default Is Not A Notice Of Foreclosure For Purposes Of The**  
11 **Act.**

12 The Act protects tenants who enter into bona fide leases prior to a "Notice of  
13 Foreclosure." The Act originally failed to define "Notice of Foreclosure." Subsequently,  
14 Congress amended the Act and expressly provided as follows:

15  
16 For the purposes of this section, the date of the notice of  
17 foreclosure shall be deemed to be the date on which complete  
18 title of a property is transferred to a successor entity or person as  
19 a result of an order of a court or pursuant to provisions in a  
20 mortgage, deed of trust, or security deed. Dodd-Frank Wall  
Street Reform and Consumer Protection Act, PO 11-203,  
July 21, 2010, 124 Stat. 1376 ("Dodd-Frank Act").

21 The above referenced amendment was scheduled to take effect one day after its date of  
22 enactment. 12 USCS § 5220; (citing § 1400(c) of Act July 21, 2010, P.L. 111-203).

23  
24 Rules of statutory construction focus on determining the legislative intent behind a  
25 statute. Both the United States Supreme Court and the Ninth Circuit recognize that:  
26 "Subsequent legislation declaring the intent of an earlier statute is entitled to great weight of  
27 statutory construction." *Loving v. United States*, 517 U.S. 748, 770 (1996) (citations  
28

1 omitted); *Chong Yia Yang v. California Department of Social Services*, 183 F.3d 953, 961  
2 (9th Cir. 1999).

3  
4 Further, the Ninth Circuit has stated that: "Titles are also an appropriate source from  
5 which to discern legislative intent." *United States v. Nader*, 542 F.3d 713, 717 (9th Cir.  
6 2008) (citations omitted). The title of section 1484 of the Dodd-Frank Act is "Protecting  
7 Tenants at Foreclosure Extension and Clarification." Thus, it is clear that the subsequent  
8 legislation declares the intent of the earlier statute. In short, Congress enacted this  
9 amendment expressly to clarify the meaning of "Notice of Foreclosure" and to remove any  
10 ambiguity.

11  
12 Thus, the Court concludes that this modification makes clear that a notice of default  
13 is not a "Notice of Foreclosure" for purposes of the Act. A notice of default does not give  
14 notice of the date on which "complete title of a property is transferred." Indeed, it does not  
15 even provide a date for a foreclosure sale.

16  
17 The Court notes that even without this clarifying language it would have found it  
18 unlikely that Congress intended the notice of default to be a "Notice of Foreclosure." Under  
19 California law, a notice of default does not say that a foreclosure will occur and certainly  
20 does not say that a foreclosure has occurred. Instead, it is a preliminary notice that advises a  
21 party that a foreclosure will be appropriate if additional actions are not taken. Thus, the  
22 Court finds that Movant's principal argument is without merit. The Act clearly protects  
23 Debtors; the fact that the Notice of Default issued prior to execution and delivery of the  
24 Lease in no way bars application of the Act here.

25  
26 The Court emphasizes its deep disappointment in the lack of candor exhibited by  
27 Movant's counsel. Given her asserted expertise regarding the Act, it is possible that her  
28 failure to bring the Dodd-Frank Act to the attention of the Court was intentional. In any

1 event, it was inconsistent with her obligations to the Court. But Debtors' counsel also failed  
2 to alert the Court to this change directly. Thus, while the Court considered issuance of an  
3 Order to Show Cause and the initiation of a further inquiry, the Court's current view is to  
4 limit this matter to a stern warning that the Court expects nothing less than a citation to all  
5 relevant portions of a statute.

6  
7 **4. Other Aspects Of The Act Do Not Bar Protection For Debtors Here.**

8 The Act also requires that a Lease must be bona fide. The Court finds on this record  
9 that the Lease meets this requirement. First, there is no evidence that the Debtors are a  
10 child, spouse, or parent of the Lessor. Second, the Debtors' evidence state that the Debtors  
11 and Lessor entered into the Lease pursuant to an arm's length transaction, and the Movant  
12 submits no evidence to the contrary. The Debtors' current difficulties also support a  
13 determination that they were not part of any scheme by the Lessor. Finally, there is no  
14 evidence that the rental is for substantially less than market value for the Home. While  
15 Movant argued that the Lease was not fair market, Movant failed to provide any evidence in  
16 this regard. Given the serious inaccuracies in Movant's submission of evidence and  
17 arguments of the law, the Court certainly will not rely on this bald assertion. The Court  
18 notes that the Debtors believe the rent to be reasonable and that, in particular, they assert an  
19 interest only in the Home and understand that they are required to share the Property with an  
20 avocado farming operation. This would necessarily impact the value of a home rental. As a  
21 result, the Court concludes that the Act protects Debtors and relief from stay is not  
22 appropriate provided that rent is paid.

23  
24 **5. Debtors Must Become Current On Rent Promptly.**

25 The Movant also argued that the Debtors are in default on rent. But here, the  
26 evidence establishes that the Movant was unwilling to properly account for rent and/or to  
27 accept rent and otherwise failed to cooperate with the Debtors. The Movant's unwillingness  
28 in this regard cannot be used to the detriment of the Debtors. Having said this, however, the

1 Debtors must become current on post-foreclosure rent and remain current thereafter. As a  
2 result, the Court will modify the stay to provide that the stay lifts unless they make all  
3 monthly rental payments that remain due to Movant through March 21, 2011 no later than  
4 March 21, 2011.

5  
6 **CONCLUSION**  
7

8 As a result of the above, the Court grants the Motion only to a limited extent.  
9 Immediate relief from stay is not appropriate because the Act protects Debtors' interest in  
10 the Lease, and it cannot be terminated by the Movant solely as a result of its foreclosure.  
11 Having said the foregoing, however, the stay will lift for all purposes if rent does not  
12 become current as discussed above.

13  
14 The Court notes that the automatic stay will soon terminate as the Debtors receive a  
15 discharge and the case is closed. At that point, however, the discharge similarly will be  
16 applicable and will protect Debtors. The Court agrees that post-discharge issues should be  
17 addressed by the State Court, albeit subject to the interpretation of the Act as contained  
18 herein.

19  
20 The Debtors are to submit an order consistent with this Memorandum Decision  
21 within 14 days.

22  
23 DATED: February 16, 2011

24   
25 LAURA S. TAYLOR, JUDGE  
26 United States Bankruptcy Court  
27  
28