

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

July 21, 2009 at 9:31 A.M.

- 
1. [09-25115](#)-B-13J JOHN/LAN NGUYEN HEARING - MOTION FOR  
SKI #1 RELIEF FROM AUTOMATIC STAY  
AMERICARECREDIT FINANCIAL 6-25-09 [[44](#)]  
SERVICES, INC., VS.

**Disposition Without Oral Argument:** This motion is unopposed. Due to the number of matters on this morning's three related calendars (221 matters), the court issues the following abbreviated ruling.

The motion is denied as moot. The plan filed April 30, 2009 (Dkt. 32), confirmed by order entered June 19, 2009 (Dkt. 43), already provides relief from the automatic stay for this claim.

The debtors filed a statement of non-opposition on July 7, 2009 (Dkt. 51).

The court will issue a minute order.

2. [09-25917](#)-B-13J DON/CONNIE GODFREY HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
MELLON TRUST CO, N.A., VS. 6-16-09 [[34](#)]

**Disposition Without Oral Argument:** This motion is unopposed. Due to the number of matters on this morning's three related calendars (221 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit movant to foreclose on the real property located at 1418 East 9<sup>th</sup> Street 3, Reno, NV 89512 ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Debtors are three months in post-petition arrears and debtors' proposed plan provides for this claim in Class 3 (surrender).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

3. [09-31317](#)-B-13J MARIA RAWLS  
RSS #1  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, ET AL., VS. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
7-1-09 [[10](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied as moot. This case was automatically dismissed by operation of 11 U.S.C. § 521(a)(1) as of 12:01 a.m. on July 21, 2009. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

4. [09-30519](#)-B-13J GUADALUPE GONZALEZ  
DLP #1  
LASALLE BANK N.A., VS. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY OR  
FOR ORDER CONFIRMING THAT THE  
AUTOMATIC STAY DOES NOT APPLY  
6-23-09 [[22](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied as moot. This case was automatically dismissed by operation of 11 U.S.C. § 521(a)(1) as of 12:01 a.m. on July 11, 2009 and confirmed by order entered July 17, 2009 (Dkt. 36). The movant already has the relief it seeks by this motion.

The court will issue a minute order.

5. [09-29526](#)-B-13J RONNIE EVANS AND  
APN #1 KARON CAPLE  
NISSAN-INFINITI, LT, VS. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
6-22-09 [[20](#)]

**Disposition Without Oral Argument:** This motion is unopposed. Due to the number of matters on this morning's three related calendars (221 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of the leased vehicle, a 2007 Nissan Infiniti M35 (VIN JNKAY01EX7M310746) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Debtor's proposed plan filed May 13, 2009 (Dkt. 4) provides for rejection of movant's lease. Movant alleges without dispute that debtor is two (2) months in post-petition arrears on the lease. The foregoing fails to provide movant with adequate protection.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

6. [09-28735](#)-B-13J MARILYN GARCIA  
MET #1  
AMERICAN HONDA FINANCE CORP., VS. CONT. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
6-8-09 [[12](#)]

CONT. FROM 7-7-09

**Tentative Ruling:** This motion is unopposed. In this instance, due in part to the number of matters on this morning's three related calendars (221 matters), the court issues the following abbreviated tentative ruling.

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to obtain possession of the subject vehicle, a 2007 Honda Ridgeline (VIN 2HJYK16217H552555) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Debtor's initial plan provides for movant's claim in class 2. Movant alleges without dispute that it has not received at least one (1) post-petition payment from the chapter 13 trustee. The foregoing fails to provide movant with adequate protection. Movant further alleges without dispute that no equity exists as to this Vehicle. These facts constitute grounds for relief from the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

7. [09-26245](#)-B-13J JERRY/SONDRA SIFFORD  
SW #2  
WACHOVIA DEALER  
SERVICES, INC., VS. HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
7-6-09 [[57](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

8. [09-26352](#)-B-13J KELLY/TWILA PATRICK HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
HSBC BANK USA, N.A., VS. 6-19-09 [[22](#)]

**Tentative Ruling:** The motion is denied as moot. The plan, filed April 6, 2009 (Dkt. 5) and confirmed by order entered May 29, 2009 (Dkt. 19), already provides relief from the automatic stay for this Class 3 claim regarding real property located at 6725 Paseo Del Sol Way, Elk Grove, CA 95758 ("Property").

The court will issue a minute order.

9. [08-24155](#)-B-13J TERRY WHITE HEARING - MOTION FOR  
APN #3 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO FINANCIAL, VS. 6-17-09 [[128](#)]

**Disposition Without Oral Argument:** This motion is unopposed. Due to the size of this calendar (221 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to obtain possession of its collateral, a 2001 Chevrolet S10 Pickup Truck (VIN 1GCCS14551K147133) ("Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition of the Vehicle and/or insurance proceeds from the Vehicle to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the Vehicle was involved in an accident and declared a total loss by debtor's insurance carrier. The debtor's proposed modified plan filed June 29, 2009 (Dkt. 137) provides for movant's claim in Class 3 with the notation "AAA insurance paid."

The court will issue a minute order.

10. [09-21766](#)-B-13J DARIOUSH/NAJMA KHANIANI HEARING - MOTION FOR  
PD #1 RELIEF FROM AUTOMATIC STAY  
DEUTSCHE BANK TRUST COMPANY AMERICAS, VS. 6-18-09 [[19](#)]

**Disposition Without Oral Argument:** This matter was withdrawn by the moving party on July 9, 2009 and is removed from the calendar.

11. [06-23468](#)-B-13J WILLIAM/SANDRA MITCHELL  
MDE #1  
LITTON LOAN SERVICING, LP, VS.

HEARING - MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
6-10-09 [[48](#)]

**Tentative Ruling:** Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted in part, and adequate protection is ordered. Continuation of the automatic stay is conditioned as follows: As it pertains to movant's interest in the real property located at 4600 Kelton Way, Sacramento, CA 95838 (APN 237-0431-010) ("Property"), the automatic stay shall remain in effect if the debtors (1) on or before July 27, 2009, pay to the trustee the July 2009 plan payment of \$\_\_\_\_\_ (including the mortgage payment of \$2,276.87), (2) on or before August 25, 2009 become completely post-petition current in plan payments to the trustee (including the mortgage payments and any associated late fees) totaling \$\_\_\_\_\_, and (3) timely pay all plan payments (including any adjustments to mortgage payments) during the duration of the plan term.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor(s)' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a declaration by debtors with supporting evidence showing that the allegedly delinquent payments were, in fact, made. Except as so ordered, the motion is denied.

The court confirmed a plan in this case on December 11, 2006. The confirmed plan treats movant's claim pertaining to as a class 1 claim. Movant alleges that debtors are delinquent at least \$21,134.35 in monthly contract installments for the period from October 2008 through June 2009. The chapter 13 trustee, however, asserts that he has received plan payments from debtors on a regular basis through an employment deduction and that he has made all but three post-petition contract installment payments to movant. The trustee further asserts that, pursuant to notices generated by movant, the actual monthly contract installment on movant's claim has changed at least three times since the commencement of this case. Due to debtors' failure to increase or decrease the plan payment to correspond with the increases and decreases in the contract installment payment as required by section 3.10 of the plan, the trustee states that he has been unable to make three post-petition installment payments to movant.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

12. [09-30870](#)-B-13J FRANK/RONNI STEVENS HEARING - MOTION FOR  
JWC #1 RELIEF FROM AUTOMATIC STAY  
TRANSPORT FUNDING, LLC, VS. 6-25-09 [[15](#)]

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

13. [09-29883](#)-B-13J RAMON/MARTHA CARBAJAL HEARING - MOTION FOR  
EAT #1 RELIEF FROM AUTOMATIC STAY  
HSBC BANK USA, NA, VS. 6-15-09 [[12](#)]

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is denied as moot.

This case was automatically dismissed at 12:01 am on July 3, 2009 pursuant to 11 U.S.C. § 521(i), which dismissal was confirmed by order entered July 17, 2009. (Dkt. 25).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

14. [08-38585](#)-B-13J JOHN/MARCI KELSO CONT. HEARING - MOTION FOR  
RDW #1 RELIEF FROM AUTOMATIC STAY  
AMERICAN GENERAL FINANCIAL 6-9-09 [[23](#)]  
SERVICES, INC., VS.

CONT. FROM 7-7-09

**Tentative Ruling:** This matter continued from July 7, 2009 without a briefing schedule. Nothing further has been filed in this matter. Due to the size of this morning's three related calendars (221 matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After Oral Argument.

The motion is denied.

Through this motion, movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to obtain possession of its collateral, a 2000 GMC (VIN 1GTEK19TXYZ316161) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The court has yet to confirm a plan in this case. Prior to confirmation, cause for relief from the automatic stay under section 362(d)(1) exists if the movant is not adequately protected. In this case, the debtors' initial plan proposes

to pay the movant's claim as a class 2 claim, subject to section 506, with an interest rate of 8.0% and a monthly dividend of \$157.50 over sixty months. Based on the court's calculations, this proposal should generate a total payment of \$7,750.00 on movant's claim. Elsewhere on this calendar, the court granted debtors' motion to value the Collateral at \$7,750.00. Based on the foregoing, movant is adequately protected by the proposed treatment in the plan.

The court will issue a minute order.

15. [09-22987](#)-B-13J ROBERT HAVEN AND HEARING - MOTION FOR  
MKB #1 RENEE PROTICH RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A., VS. 5-11-09 [[53](#)]

**Tentative Ruling:** The court construes this motion as one filed under LBR 9014-1(f)(2) because the second amended notice of hearing fails to advise potential respondents whether and when written opposition is required. Opposition may be presented at the hearing. However, because debtors are proposing to treat movant's claim as a class 3 surrender claim and because of the size of this morning's three related calendars (221 matters), the court issues the following abbreviated tentative ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to obtain possession of its collateral, a savings account ending in 1229 (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The court awards no fees and costs. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Debtors' proposed plan provides for this claim in Class 3 (surrender).

The court awards no attorney's fees. Movant asserts entitlement to fees in the body of the motion but did not include a request for an award of fees in the prayer of the motion. As debtors have not opposed the motion, this is a default situation. Pursuant to Federal Rules of Civil Procedure 55(d) and 54(c) (incorporated here by Federal Rules of Bankruptcy Procedure 9014(c), 7054, and 7055), a default judgment cannot exceed the amount prayed for in the demand for judgment. As a result, the court cannot award attorney's fees, regardless of movant's assertion of entitlement.

The court will issue a minute order.

16. [09-22989](#)-B-13J PHILLIP/JUDITH THOMAS HEARING - MOTION FOR  
MBB #1 RELIEF FROM AUTOMATIC STAY  
MORTGAGE ELECTRONIC REGISTRATION 6-9-09 [[14](#)]  
SYSTEMS, INC., VS.

**Disposition Without Oral Argument:** This motion is unopposed. Due to the size of this calendar (221 matters), the court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d) (1) in order to permit the movant to foreclose on the real property located at 8408 Garry Oak Drive, Citrus Heights, CA 95610 (APN 224-0360-033-0000) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed. R. Bankr. P. 4001(a) (3) is waived. Except as so ordered, the motion is denied.

Debtors' proposed plan provides for this claim in Class 3 (surrender).

The court will issue a minute order.