

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 4, 2009 at 9:31 A.M.

1. [08-37913](#)-B-13J JOE/ANGELA PEREIRA HEARING - MOTION FOR
RFM #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A., VS. 7-14-09 [[55](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). 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 (203 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 2004 Fleetwood Pioneer Trailer 17T4 (VIN 1EB1T172X41595804) (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 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 will issue a minute order.

2. [09-28735](#)-B-13J MARILYN GARCIA CONT. HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
AMERICAN HONDA FINANCE CORP., VS. 6-8-09 [[12](#)]

CONT. FROM 7-21-09, 7-7-09

Disposition Without Oral Argument: This matter was withdrawn by the moving party on July 23, 2009 and is removed from the calendar.

3. [09-20040](#)-B-13J CHRIS MORRIS
KAT #1
METLIFE HOME LOANS, VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-27-09 [[54](#)]

CONT. FROM 6-30-09

Tentative Ruling: This matter continued with movant's consent from June 30, 2009 without a briefing schedule. Among other things, movant was ordered to serve debtor, debtor's counsel, and the newly appointed chapter 13 trustee with the notice of continued hearing by July 7, 2009. Movant timely complied and filed a notice of continued hearing and certificate of service on July 2, 2009. (Dkt. 74; Dkt. 75). Due to the size of this morning's three related calendars (203 matters), the court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The motion fails to comply with LBR 4001-1(d). In relevant part, movant has not provided evidence that the debtor is delinquent to the trustee under the terms of the initial plan or that movant has conferred with the chapter 13 trustee to confirm the alleged delinquency. LBR 4001-1(d)(1) and (d)(2). Failure to comply with the foregoing local rule is alone grounds to deny the motion. LBR 1001-1(g).

In addition, the initial proposed plan (Dkt. 68) provides for movant's claim in class 1, and there is no evidence that the debtor is delinquent under the proposed plan.

The court will issue a minute order.

4. [09-27641](#)-B-13J MARK/PATRICIA SPEED
TJS #1
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-8-09 [[24](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). 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 (203 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 permit the movant to obtain possession of its collateral, a 2008 Chevrolet Silverado (VIN 1GCHK29K18E51683) (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 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 will issue a minute order.

5. [09-31842](#)-B-13J BRAD BROOME HEARING - MOTION FOR
WAJ #1 RELIEF FROM AUTOMATIC STAY
RAMZI SALAMEH, VS. 7-2-09 [[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. Considering the automatic extension provided by Fed. R. Bankr. P. 9006(a) and by operation of 11 U.S.C. § 521(i), this case was automatically dismissed as of 12:01 a.m. on July 28, 2009. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

6. [08-31244](#)-B-13J TODD/LORRETTA CARLSON HEARING - MOTION FOR
PD #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES LLC, VS. 7-17-09 [[42](#)]

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.

7. [06-20945](#)-B-13J MERRY/KENNETH SEAVER HEARING - MOTION FOR
VC #1 RELIEF FROM AUTOMATIC STAY
G.E. MONEY BANK, VS. 6-25-09 [[41](#)]

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. [09-29555](#)-B-13J JOHN NORGAUER HEARING - MOTION FOR
DJD #1 RELIEF FROM AUTOMATIC STAY
PROVIDENT FUNDING ASSOCIATES, L.P., VS. 6-23-09 [[17](#)]

Tentative Ruling: This motion for relief from the automatic stay has been improperly filed under LBR 4001-1 and LBR 9014-1(f)(1). The motion was filed and served only twenty-five (25) days before the date of the hearing. Therefore, the court treats the motion as filed under LBR 9014-1(f)(2). 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 (203 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 debtor pursuant to 11 U.S.C. § 362 (d) (1) in order to permit the movant to foreclose on the real property located at 5841 October Hill Road, Placerville, CA 95667 (APN 319-070-36-100) ("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.

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

The court will issue a minute order.

9. [08-32456](#)-B-13J LORI BULLIS HEARING - MOTION FOR
KAT #1 RELIEF FROM AUTOMATIC STAY
LASALLE BANK NATIONAL 7-9-09 [[48](#)]
ASSN., VS.

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.

10. [09-31559](#)-B-13J DIAN KULP HEARING - MOTION FOR
RSS #1 RELIEF FROM AUTOMATIC STAY
AURORA LOAN SERVICES, LLC, VS. 7-7-09 [[14](#)]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f) (2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is converted to an adversary proceeding. Pursuant to Fed. R. Bankr. P. 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number RSS-1 shall no longer be used in reference to this matter. On or before August 18, 2009, movant Aurora Loan Services, LLC, as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Fed. R. Bankr. P. 7008 and all other applicable rules and that names debtor Dian Kulp and Jan Johnson, in his capacity as bankruptcy trustee, as defendants. On or before August 18, 2009, plaintiff shall serve a summons and the amended complaint. Pursuant to Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(a) (3), defendants shall have to and including the later of September 1, 2009 or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

This bankruptcy case was dismissed by order entered July 24, 2009 (Dkt. 24). The motion may be withdrawn. If it is not withdrawn, the is

converted to an adversary proceeding because it includes requests for relief that can only be obtained, if at all, by adversary proceeding. In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court will issue a minute order.

11. [06-23468](#)-B-13J WILLIAM/SANDRA MITCHELL CONT. HEARING - MOTION FOR
MDE #1 RELIEF FROM AUTOMATIC STAY
LITTON LOAN SERVICING, LP, VS. 6-10-09 [48]

CONT. FROM 7-21-09

Tentative Ruling: This matter continued from July 21, 2009 without a briefing schedule. Nothing further has been filed in this matter, aside from a notice of continued hearing and a certificate of service. (Dkt. 58; Dkt. 59).

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 Fed. R. Civ. P. 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 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 (2) 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
SW #1 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 7-21-09 [[30](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). 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 (203 matters), the court issues the following abbreviated tentative ruling.

The motion is granted in part and denied 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 the movant to obtain possession of its collateral, a 2006 Chevrolet Silverado (VIN 1GCEK19T967135744) (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 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 will issue a minute order.

13. [09-31770](#)-B-13J VIOLA HANSEN HEARING - MOTION FOR
RDR #1 RELIEF FROM THE AUTOMATIC STAY
LITTON LOAN SERVICING, AND ANNULMENT OF THE AUTOMATIC
LP, VS. STAY - UNLAWFUL DETAINER
7-10-09 [[15](#)]

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(i) as of 12:01 a.m. on July 28, 2009. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

14. [09-30472](#)-B-13J MARK MALACAS AND ASW #1 GWENDOLEN FERNANDEZ DEUTSCHE BANK NATIONAL TRUST COMPANY, ET AL., VS. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-29-09 [[15](#)]

Tentative Ruling: This motion is converted to an adversary proceeding. Pursuant to Bankruptcy Rule 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number ASW-1 shall no longer be used in reference to this matter. On or before August 18, 2009, movant Deutsche Bank National Trust Company ("Deutsche Bank"), as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules and names debtors Mark G. Malacas and Gwendolen R. Fernandez and Jan P. Johnson, in his capacity as chapter 13 trustee, as defendants. On or before August 18, 2009, plaintiff shall serve a summons and the amended complaint. Pursuant to F.R.Bankr.P. 7015, incorporating F.R.Civ.P. 15(a)(3), defendants shall have to and including the later of August 25, 2009 or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

This motion includes requests for relief that can only be obtained, if at all, by adversary proceeding. In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court will issue a minute order.

15. [09-30379](#)-B-13J MANUEL GUERRERO, SR. KAT #1 DEUTSCHE BANK NATIONAL TRUST COMPANY, VS. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY (UNLAWFUL DETAINER) 7-14-09 [[19](#)]

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.

16. [08-32685](#)-B-13J MARTIN/KRISTEN STAPLETON ASW #1 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., VS. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 7-2-09 [[32](#)]

Tentative Ruling: The motion is denied as moot. The plan, filed September 8, 2008 (Dkt. 5) and confirmed by order entered July 10, 2009 (Dkt. 45), already provides relief from the automatic stay for this Class 4 claim secured by real property located at 7124 Whyte Avenue, Citrus Heights, CA 95621 ("Property").

Because movant has not established that the value of the Property, less the amount of the senior lien, 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.

17. [09-22688](#)-B-13J WILLIAM UWOGHIREN HEARING - MOTION TO
PD #1 ANNUL AND TERMINATE THE
GMAC MORTGAGE, LLC, VS. AUTOMATIC STAY
7-14-09 [[35](#)]

Tentative Ruling: This motion is converted to an adversary proceeding. Pursuant to Bankruptcy Rule 9014(c), all of the rules of Part VII shall apply. The clerk shall assign an adversary proceeding number, and docket control number PD-1 shall no longer be used in reference to this matter. On or before August 18, 2009, movant GMAC Mortgage, as plaintiff, shall (1) pay the balance of the adversary proceeding filing fee that is due and (2) shall file an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules and names debtor William Uwoghiren and Jan P. Johnson, in his capacity as chapter 13 trustee, as defendants. On or before August 18, 2009, plaintiff shall serve a summons and the amended complaint. Pursuant to F.R.Bankr.P. 7015, incorporating F.R.Civ.P. 15(a)(3), defendants shall have to and including the later of August 25, 2009 or the response date set forth in the summons to answer or otherwise respond to the amended complaint. The adversary proceeding will next appear on the status conference calendar date set in the summons.

This motion includes requests for relief that can only be obtained, if at all, by adversary proceeding. In re Van Ness, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

The court will issue a minute order.

18. [09-23689](#)-B-13J JESSE/ALEXANDERA PAINTER HEARING - MOTION FOR
MET #1 RELIEF FROM AUTOMATIC STAY
BANK OF THE WEST, VS. 6-29-09 [[37](#)]

Tentative Ruling: The request for relief from the automatic stay of 11 U.S.C. § 362(a) is denied as moot. The plan, filed March 3, 2009 (Dkt. 5) and confirmed by order entered May 10, 2009 (Dkt. 47), already provides relief from the automatic stay for this Class 3 surrender claim regarding a 2006 Extreme Mega Lite Travel Trailer (VIN 5XT21LT276100252).

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.

19. [09-31690](#)-B-13J DAVID CLARK HEARING - MOTION FOR
EAT #1 RELIEF FROM AUTOMATIC STAY
U.S. BANK N.A., VS. 7-7-09 [[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 by operation of 11 U.S.C. § 521(i) as of 12:01 a.m. on July 25, 2009. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

20. [08-37397](#)-B-13J RUSSELL/KIM DUANE HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WACHOVIA DEALER 7-10-09 [[86](#)]
SERVICES, INC., VS.

Tentative Ruling: The motion is denied as moot. The plan filed April 11, 2009 (Dkt. 58), confirmed by order entered July 13, 2009 (Dkt. 92), already provides relief from the automatic stay for this vehicle, a 2005 Honda Civic (VIN 1HGEM225X5L049101).

The court will issue a minute order.

21. [08-37397](#)-B-13J RUSSELL/KIM DUANE HEARING - MOTION FOR
SW #2 RELIEF FROM CO-DEBTOR STAY
WACHOVIA DEALER 7-10-09 [[80](#)]
SERVICES, INC., VS.

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.

22. [09-31479](#)-B-13J MARIANO LOPEZ HEARING - MOTION FOR
RSS #1 RELIEF FROM AUTOMATIC STAY
DEUTSCHE BANK NATIONAL (UNLAWFUL DETAINER)
TRUST COMPANY, VS. 7-23-09 [[26](#)]

Disposition Without Oral Argument: The motion is denied.

The motion is moot. The bankruptcy case was dismissed by order signed on July 31, 2009. Movant already has the relief that it seeks.

The court will issue a minute order.