

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Modesto, California

September 14, 2004 at 2:00 P.M.

1. 03-94014-A-7 PHILIP VAN NUYS HEARING ON MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 8/18/04 [27]
SYSTEMS, INC. VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

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 and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtor has claimed the equity in the property exempt and on August 18, 2004 the trustee filed a No-Asset Report. The property cannot benefit the Chapter 7 estate. Cause exists against the debtor because movant has alleged without dispute that debtor has failed to make eight mortgage payments.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

2. 04-92616-A-7 JENNIFER L. LINEAWEAVER HEARING ON MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
AMERICREDIT FINANCIAL 8/16/04 [6]
SERVICES, INC. VS.

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely

written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, because the debtor is pro se, the court issues a tentative ruling.

The automatic stay is modified as against the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. Cause exists for relief because the debtor has defaulted in making three installment payments. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors.

Movant's allegation of value is not persuasive. The evidence submitted by movant, the Kelley Blue Book Private Party Value, does not state that the value of this vehicle is \$0.00. The evidence specifically states that "Kelley Blue Book does not attempt to report a value on a "poor" condition vehicle because the value of cars in this category varies greatly." Assuming that the vehicle is in poor condition, an assumption for which there is also no evidence, the quote provided declined to opine a value. It did not assign a \$0.00 value. For this reason, relief under 11 U.S.C. § 362(d)(2) is inappropriate because movant has failed on its burden of proving a lack of equity. 11 U.S.C. § 362(g)(1).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is already in its possession.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

3.	03-93219-A-7	WILLIAM & WENDY STOERMER	HEARING ON MOTION TO
	JEG #3		AVOID JUDICIAL LIEN ON
	WILLIAM & WENDY STOERMER VS.		DEBTORS' RESIDENCE
	JOHN W. LEE, INC., DBA PAUL		8/16/04 [86]
	DAVIS RESTORATION OF SACRAMENTO,		
	AND JOHN W. LEE		

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A) subject to the provisions of 11 U.S.C. § 349. The subject real property has a value of \$310,000 as of the date of the petition. The unavoidable liens total \$248,000. The debtors claimed the property as exempt under California Code of Civil Procedure Section 704.730(a)(2), under which they exempted \$75,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the

debtors' exemption of the real property and its fixing is avoided.

Counsel for debtors shall submit an order that conforms to the court's ruling.

4. 04-91133-A-7 TIFFANY R. SANTOS HEARING ON MOTION TO
CLH #1 MODIFY AUTOMATIC STAY
RANDY THOMAS VS. 8/17/04 [22]

Tentative Ruling: The motion is denied.

The court notes that this motion fails to comply with LBR 4001-1(c) because movant failed to file a Relief from Stay Information Sheet. But that is not the reason the motion is denied. Relief against the bankruptcy estate appears unnecessary as movant does not seek to take any action against the estate or its property; rather, movant only seeks to include the debtor Tiffany R. Santos as a named defendant in order to proceed against her insurance coverage. Relief from the automatic stay against the debtor Tiffany R. Santos is denied as moot since the debtor was discharged from all dischargeable debts on July 6, 2004 (42 days before this motion was filed) and the automatic stay terminated as to the debtor at that time. 11 U.S.C. § 362(c)(2)(C). However, movant would require relief from the discharge injunction of 11 U.S.C. §§ 727 and 524. Movant has not addressed the legal standard for such relief. See LBR 9014-1(d)(5).

The court will issue a minute order.

5. 04-92937-A-7 CRISELIO PEREZ HEARING ON MOTION FOR
ADR #1 RELIEF FROM AUTOMATIC STAY
CAROL NUNES, NORMAN GASPAR, 8/6/04 [7]
LOUISA SARASQUETA VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to proceed with the state court unlawful detainer action. The movant served the debtor with a three day notice to quit on June 7, 2004. The debtor did not cure the lease default stated in the three day notice, and movant filed an unlawful detainer action in state court on June 11, 2004. The debtor answered the state court complaint and after trial on July 20, 2004, judgment for movants was entered July 22, 2004. A writ of possession issued on July 24, 2004. Execution on the writ was halted by the filing of the debtor's bankruptcy petition on July 30, 2004.

Service of the three day notice and expiration of the time to cure terminated the lease. Cal. Civ. Code § 1951.2; 7 Miller & Starr, California Real Estate § 19:196 (3d Ed. 2001). Neither the estate nor the debtor has any remaining leasehold interest. Neither the estate nor the debtor has any equity in the property, and it is not necessary for an effective reorganization. The movant alleges without dispute that the debtor has failed to maintain required insurance and has defaulted in lease payments. The pre-petition termination of the lease and the absence of opposition by the trustee shows that the trustee cannot administer the property for the benefit of creditors. The foregoing constitutes cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is waived.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

6. 04-92940-A-7 CARLOS & MARIA CARDENAS HEARING ON MOTION FOR
VVF #1 RELIEF FROM AUTOMATIC STAY
ARCADIA FINANCIAL LTD. VS. 8/13/04 [5]

Tentative Ruling: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, because the debtors are pro se, the court issues a tentative ruling.

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 dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. Movant claims without dispute that the value of the vehicle is \$9,500.00. Movant holds a lien on the vehicle in the amount of \$17,301.00. There is no equity in the subject property and it is not necessary for an effective reorganization or rehabilitation. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors. Movant also alleges without dispute that debtors have not made three installment payments. This is cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property has been surrendered by the debtors.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

7. 03-93163-A-7 WILLIAM STOERMER & HEARING ON MOTION TO
AV #2 ASSOCIATES, INC. ANNUL, TERMINATE OR MODIFY
MARILYN C. STEINAU, TRUSTEE OF AUTOMATIC STAY
MARILYN C. STEINAU 1986 TRUST VS. 8/2/04 [50]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtor, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The automatic stay is modified to the extent set forth herein. The automatic stay is modified effective February 4, 2004 to allow San Joaquin County Superior Court case no. CV 022739 (the "State Court Action") to proceed to judgment on the issues of liability and damages, if any. Movant requests relief in the State Court Action solely to include debtor as a named defendant so that movant may proceed against any insurance coverage which was in place at the time the underlying alleged breach of contract occurred. Relief from the automatic stay is not granted to allow any collection or enforcement of any judgment that may be obtained from the debtor.

Counsel for the movant shall submit an order that conforms to the court's ruling.

8. 04-92863-A-7 RODNEY & BRENDA LEE HEARING ON MOTION FOR
SML #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 8/13/04 [6]
SYSTEMS, INC. VS.

Tentative Ruling: Termination of the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (\$24,336.54) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is also inappropriate. The debtor's in their opposition admit the delinquency but propose to cure through the sale of the subject property.

Adequate protection is ordered as follows: The automatic stay shall remain in effect through November 1, 2004 if the debtors (1) pay the September 2004 mortgage payment, including any associated late fees, so that it is received by movant on or before September 20, 2004, (2) pay the October 2004 mortgage payment within the grace period, if any, and (3) become completely current, including associated late charges and other fees, either through payments or by sale of the property by November 1, 2004, the last date for complaints objecting to the debtors' discharge.

If the debtors fail to do any of the foregoing, the court will grant relief from stay prior to November 1, 2004 based on the declaration of a competent witness. Any declaration of default and proposed order shall

be served by facsimile on the debtors' 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 showing that the claimed default did not occur. Any order granting relief shall be served on the debtors, debtors' counsel, the chapter 7 trustee and the holders of all junior liens, if any.

Regardless of the debtors' performance under the foregoing adequate protection order, the automatic stay is modified as to the debtors and the estate, effective at 12:01 a.m. on November 2, 2004, to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

9. 04-92468-A-7 BRANDON JAMES OSBORNE HEARING ON MOTION FOR
ISL #1 RELIEF FROM AUTOMATIC STAY
FIRST FINANCIAL CREDIT UNION VS. 8/24/04 [7]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with LBR 9014-1(d)(3)(setting forth the required contents for a Notice of Hearing) and 9014-1(f)(1)(requiring at least twenty-eight days notice of motions requiring written opposition). Movant only provided twenty-five days notice of the subject motion. The notice of hearing also fails to state on whom and where written opposition is required to be served.

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

10. 04-90969-A-7 SEAN & CINTHIA CLANCEY HEARING ON MOTION FOR
SJM #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE 8/4/04 [67]
COMPANY VS.

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1).

The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

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 foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The subject real property has a value of \$250,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the movant. That security interest secures a claim of \$237,234.65. Considering the junior lien of \$29,820.00, there is little or no equity and there is no evidence that the subject real property is necessary to an effective reorganization or rehabilitation. The debtors have failed to make ten mortgage payments. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors. This is cause for relief from the automatic stay.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

11.	04-91769-A-7	DAVE A. ARMOUR	CONT. HEARING ON MOTION TO
	FW #1		AVOID LIEN ON DEBTOR'S
	DAVE A. ARMOUR VS.		RESIDENCE
			6/16/04 [5]
	EMMA BURNS SOUZA		

Tentative Ruling: This matter continued at the request of the parties. No additional pleading have been filed in this matter. Therefore, the court re-issues the prior ruling.

This matter involves disputed facts that cannot be resolved on declarations. 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 FW-1 shall no longer be used in reference to this matter. On or before August 11, 2004, David A. Armour, as plaintiff, shall pay the adversary proceeding filing fee and file and serve a summons and an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules. Defendant is Emma Burns Souza. The adversary proceeding will next appear on the status conference calendar date set in the summons. After adversary numbers are assigned, the court will issue a separate order pursuant to Bankruptcy Rule 7042 and Federal Rule of Civil Procedure 42(a) consolidating Matters 11 and 13 for case management and trial.

The court will issue a minute order.

12. 04-91769-A-7 DAVE A. ARMOUR HEARING ON MOTION
DRW #1 FOR RELIEF FROM AUTOMATIC
ACCREDITED HOME LENDERS, INC. VS. STAY
8/18/04 [43]

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. 04-91769-A-7 DAVE A. ARMOUR CONT. HEARING ON MOTION TO
FW #2 PARTIALLY AVOID LIEN ON
DAVE A. ARMOUR VS. DEBTOR'S RESIDENCE
6/16/04 [10]
DONNA M. ARMOUR

Tentative Ruling: This matter continued at the request of the parties. No additional pleading have been filed in this matter. Therefore, the court re-issues the prior ruling.

This matter involves disputed facts that cannot be resolved on declarations. 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 FW-2 shall no longer be used in reference to this matter. On or before August 11, 2004, David A. Armour, as plaintiff, shall pay the adversary proceeding filing fee and file and serve a summons and an amended complaint that complies with Bankruptcy Rule 7008 and all other applicable rules. Defendant is Donna M. Armour. The adversary proceeding will next appear on the status conference calendar date set in the summons. After adversary numbers are assigned, the court will issue a separate order pursuant to Bankruptcy Rule 7042 and Federal Rule of Civil Procedure 42(a) consolidating Matters 11 and 13 for case management and trial.

The court will issue a minute order.

14. 04-92669-A-7 GARY & VERONICA DAVIS HEARING ON MOTION FOR
VVF #1 RELIEF FROM AUTOMATIC STAY
ARCADIA FINANCIAL LTD VS. 8/16/04 [5]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

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 repossess its 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. Movant claims the value of the vehicle to be \$10,000.00. Movant holds a lien on the vehicle in the amount of \$13,088.00. There is no equity in the subject property and it is not necessary for an effective reorganization or rehabilitation. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors. Movant also alleges that debtors have not made three installment payments and have failed to provide proof of insurance. This is cause for relief from the automatic stay.

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's property is being used by the debtors without compensation and is depreciating in value.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

15. 04-92872-A-7 CHRISTOPHER & KELLY HEARING ON MOTION FOR
EAT #1 MANNING RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 8/16/04 [6]
SYSTEMS, INC. VS.

Tentative Ruling: Termination of the automatic stay is denied; adequate protection is ordered as set forth herein. Relief is inappropriate under 11 U.S.C. § 362(d)(2) because the value of the subject real property exceeds the total of the liens. There is equity (\$23,497.14) as defined in Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984).

Termination of the automatic stay under 11 U.S.C. § 362(d)(1) is also inappropriate. The debtors in their opposition state that they paid \$1,700.00 toward the arrears on August 19, 2004. That brings them current through July 2004 and leaves them \$627.83 in arrears for August 2004. The September 2004 payment is due but not yet late.

Adequate protection is ordered as follows: The automatic stay shall remain in effect through October 19, 2004 if the debtors (1) pay the September 2004 mortgage payment, including any associated late fees, so that it is received by movant on or before September 20, 2004, (2) pay the October 2004 mortgage payment within the grace period, if any, and (3) become completely current including associated late charges and other fees, on or before October 18, 2004.

If the debtors fail to do any of the foregoing, the court will grant relief from stay prior to October 19, 2004 based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' 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 showing that the claimed default did not occur. Any order granting relief shall be served on the debtors,

debtors' counsel, the chapter 7 trustee and the holders of all junior liens, if any.

Regardless of the debtors' performance under the foregoing adequate protection order, the automatic stay is modified as to the debtors and the estate, effective at 12:01 a.m. on October 19, 2004, to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

16. 04-92674-A-7 STEPHANIE CANDEVAN CONT. HEARING ON MOTION FOR
KK #1 RELIEF FROM AUTOMATIC STAY
GREEN TREE SERVICING, LLC VS. 7/29/04 [8]

Tentative Ruling: This matter continued from August 24, 2004. The court did not issue a tentative ruling for the previous calendar. No additional pleadings having been filed in this matter, the court issues the following tentative ruling.

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 and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtor has claimed the equity in the property exempt. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors. The property cannot benefit the Chapter 7 estate. As to the debtor, cause exists because she has failed to make thirteen mortgage payments on the subject loan. Finally, the court notes that the debtor is also apparently delinquent on payments to the holder of the first deed of trust as evidenced by that creditor's motion for relief from stay set for September 28, 2004.

Debtor's opposition is unpersuasive. Nothing therein disputes that she is delinquent at least thirteen mortgage payments. Debtor is correct that adequate protection may be provided through a series of cash payments but that is not happening here. Reaffirmation of the debt does not cure the arrears. It only reinstates the debtor's personal liability for them. Finally, debtors' arguments that this property is necessary for an effective reorganization are irrelevant. This is a chapter 7 liquidation. There is no reorganization. Therefore, the property cannot be necessary for one. Debtor's argument also shows an utter lack of understanding of the burden of proof of that issue. It does not lie with movant. It lies with debtor. See 11 U.S.C. § 362(g)(2). In any event, relief is unavailable for movant under Section 362(d)(2) because there is

equity for debtor in the subject property.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

17. 04-90596-A-7 JAY & BRIDGETT JORDAN HEARING ON MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
NATIONAL CITY MORTGAGE CO. VS. 8/11/04 [41]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the matter is resolved without oral argument.

The motion is granted in part and denied in part as set forth herein. The automatic stay is modified as against the estate pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law. The debtors has claimed the equity in the property exempt. The lack of written opposition by the trustee shows that the trustee cannot administer the subject property for the benefit of creditors. The property cannot benefit the Chapter 7 estate.

As to the debtors, however, the motion is denied as moot. The debtors were discharged from all dischargeable debts on August 30, 2004, and the automatic stay ended as to them on that date by operation of law. 11 U.S.C. § 362(c)(2)(C).

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

18. 04-92709-A-11 L.L.-G.L. ENTERPRISES, INC. HEARING ON MOTION
ARM #1 FOR RELIEF FROM
RYAN VIGIL ET. AL. VS. AUTOMATIC STAY FOR
CAUSE AND LACK OF
EQUITY
8/31/04 [107]

Disposition Without Oral Argument: This matter continued to September 28, 2004 pursuant to order entered September 8, 2004. It is removed from this calendar.

19. 04-93113-A-7 YVONNE M. NELSON HEARING ON MOTION FOR
KJH #1 RELIEF FROM AUTOMATIC STAY
AND ADEQUATE PROTECTION
DONTON CONSTRUCTION, INC. VS. 8/30/04 [8]

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.

20. 03-92933-A-7 JEFFERY & VICTORIA SMITH HEARING ON MOTION
DN #2 TO AVOID JUDICIAL LIEN
JEFFERY & VICTORIA SMITH VS. ON EXEMPT PROPERTY
8/31/04 [12]
UNITED RENTALS

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.

21. 03-92933-A-7 JEFFERY & VICTORIA SMITH HEARING ON MOTION
DN #3 TO AVOID JUDICIAL LIEN
JEFFERY & VICTORIA SMITH VS. ON EXEMPT PROPERTY
8/31/04 [16]
UNITED RENTALS

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Ordinarily opposition may be presented at the hearing. But in this instance, the court does not find it necessary. The motion is denied. The abstract of judgment sought to be avoided in this motion is the same abstract as that in matter 20 above. Avoidance need only occur once. Therefore, this duplicate motion is denied.

The court will issue a minute order.

22. 03-92933-A-7 JEFFERY & VICTORIA SMITH HEARING ON MOTION
DN #4 TO AVOID JUDICIAL LIEN
JEFFERY & VICTORIA SMITH VS. ON EXEMPT PROPERTY
8/31/04 [20]
SURENDRA SOOD

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.

23. 03-92933-A-7 JEFFERY & VICTORIA SMITH HEARING ON MOTION
DN #5 TO AVOID JUDICIAL LIEN
JEFFERY & VICTORIA SMITH VS. ON EXEMPT PROPERTY
8/31/04 [24]
BARGAIN HUNTERS, ET AL.

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.

24. 03-92933-A-7 JEFFERY & VICTORIA SMITH HEARING ON MOTION
DN #6 TO AVOID JUDICIAL LIEN
JEFFERY & VICTORIA SMITH VS. ON EXEMPT PROPERTY
8/31/04 [28]
DONALD R. PAYNE

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.

25. 04-92534-A-7 ALFREDO & GUADALUPE ALVAREZ HEARING ON MOTION FOR
RLE #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER SERVICES VS. 8/30/04 [10]

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.

26. 04-92955-A-7 EVA TOPETE HEARING ON MOTION FOR
DLH #1 RELIEF FROM AUTOMATIC STAY
RICHARD NORTHCUTT VS. 8/26/04 [8]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with LBR 9014-1(d)(1)(requiring that all pleadings and documents filed as part of a motion shall comply with the Guidelines for the Preparation of Documents (as amended January 20, 2004)); 9014-1(f)(1)(requiring at least twenty-eight days notice of motions requiring written opposition); and LBR 9014-1(e)(3) (requiring the proof of service for all documents be filed as a separate document). Movant only provided twenty-one days notice of the subject motion. Movant attached a separate proof of service for each document to the document purportedly served. In the future, movant should only file a single proof of service for all documents served concurrently in the same matter. Finally, the court notes that movant continues to use the term "motion control number" on his documents. The December 2002 Local Bankruptcy Rules changed the term to "docket control number (D.C. No.).

A copy of the current local rules of this court and the Guidelines are available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

27.	04-92879-A-11	WATERFRONT WAREHOUSE, INC.	HEARING ON MOTION
	CBM #1		FOR RELIEF FROM STAY
	GLEEN MOFFATT, JACK FRESCHI,		8/2/04 [13]
	DOUGLAS EGBERT & DEBRA EGVERT VS.		8/17/04 [39]

Disposition Without Oral Argument: Oral argument would not benefit the court in ruling on this matter.

The motion is denied, without prejudice, for filing defects. On August 17, 2004, the movant filed, an "Amended Motion," which improperly combined the motion and an "Amended Notice of" motion in one document (ECF-39). LBR 9014-1(d)(2). (The movant also filed another separate Notice of Hearing at ECF-41, which added further confusion). The movant also improperly included multiple motions in a single document with one docket control number, CBM-1. LBR 9014-1(c) (1) and (4). A Relief from Stay Information Sheet should only be filed in distinct motion for relief from the automatic stay. LBR 4001-1(c).

On August 26, 2004, the movant also improperly filed three separate Notices of Hearing for D.C. No. CBM-1, causing the document identified as CBM-1 to be calendared three times (on two different calendars) under the same Docket Control Number. Only one Notice of Hearing should be filed for each separate motion. LBR 9014-1(d)(2). These Notices of Hearing did not clearly state they amended anything, but it appears that the movant wanted to have its motions now treated as filed under LBR 9014-1(f)(2). This was a significant change, since both the August 17, 2004 notices required written opposition. One of the August 26, 2004 Notices of Hearing (ECF- 60) did not include the requirements for opposition at all in violation of LBR 9014-1(d)(3).

In short, movant's violations of the LBR have created confusion and an administrative nightmare. If movant re-files the motions, it should file separate motion documents for its motion to confirm state court receiver,

its motion to dismiss and its motion for relief from automatic stay, each set with its own Docket Control Number. Docket Control Number CBM-1 should not be used. The matters covered by that Docket Control Number are terminated, without prejudice, by the court's rulings of this date.

The court will issue a minute order.

28. 04-92988-A-7 FERNANDO & HORTENCIA HEARING ON MOTION FOR
RLE #1 CARRILLO RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER SERVICES VS. 8/30/04 [6]

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.

29. 04-92194-A-7 FRED W. STEPHENS RE-SET HEARING ON MOTION
RTD #1 FOR RELIEF FROM THE
THE GOLDEN 1 AUTOMATIC STAY PURSUANT TO
CREDIT UNION VS. LBR 9014-1(F)(2)
7/27/04 [11]
8/30/04 [27]

Tentative Ruling: This matter is reset on the calendar pursuant to this court's August 30, 2004 order denying approval of the stipulation between the parties. Based on the motion and debtor's opposition in this matter, the court issues the following tentative ruling.

As against the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim including any attorney fees awarded herein. There is no dispute that debtor has no equity in the subject vehicle. The motion asserts without dispute that the value of the vehicle is \$15,350.00. Movant holds a lien against the subject vehicle in the amount of \$19,309.74. The vehicle is also not necessary for an effective reorganization because this is a chapter 7 case in which there is no reorganization. Cause also exists as to the trustee because on July 29, 2004, the trustee filed a No-Asset Report. The property cannot benefit the Chapter 7 estate.

As to the debtor, however, the motion is denied as moot. The debtor was discharged from all dischargeable debts on September 13, 2004, and the automatic stay ended as to him on that date by operation of law. 11 U.S.C. § 362(c)(2)(C).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the vehicle is depreciating personal property.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.