

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman

Bankruptcy Judge

Modesto, California

October 12, 2004 at 2:00 p.m.

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1. 04-93300-D-7 TIMOTHY/CARRIE WILSON HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 9-16-04 [5]

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.

2. 04-92709-D-11 L.L.-G.L. ENTERPRISES, INC. HEARING - MOTION FOR
ARM #1 RELIEF FROM AUTOMATIC STAY
DAVID CARLIN, ADRIANNA CARLIN FOR CAUSE AND LACK OF EQUITY
AND ZACHARY MILLER, VS. 9-17-04 [162]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules and the Federal Rules of Bankruptcy Procedure, 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 Fed. R. Bankr. P. 4001(a) (requiring all motions for relief from automatic stay be served on those creditors included on the list filed pursuant to Rule 1007(d) where a creditor's committee has not been formed). Movant failed to serve In Touch and Budget Tire with the motion. Also, the motion violates LBR 9014-1(c) because it was filed utilizing the docket control number from another motion filed by another attorney. Movant's belated notice of errata seeking to cure the defect does not cure the confusion present on the docket. It also shows a lack of familiarity with the Local Bankruptcy Rules of this court. The correct use of Docket Control Numbers is particularly necessary as this court moves to electronic filing and will be strictly enforced.

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.

3. 04-92723-D-7 PAUL & ROSE ANCHONDO HEARING - MOTION FOR
SML #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN 9-2-04 [8]
MORTGAGE CORP., VS.

Disposition Without Oral Argument: This matter was withdrawn by the moving party on September 29, 2004 and is removed from the calendar.

4. 03-91524-D-7 TAMMY MONTGOMERY HEARING - MOTION FOR
PPR #13 RELIEF FROM AUTOMATIC STAY
LOMAS MORTGAGE USA, INC., VS. 9-13-04 [51]

DISCHARGED 7-28-03

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.

5. 04-92636-D-7 MARK YOUNGBLOOD HEARING - MOTION FOR
LJB #1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, VS. AND FOR LEAVE TO EXERCISE
POWER OF SALE IN DEED OF
TRUST TO REAL PROPERTY; OR,
ALTERNATIVELY, FOR ADEQUATE
PROTECTION; ATTORNEY'S FEES
9-7-04 [11]

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.

As against the estate, the automatic stay is modified 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 11, 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 October 7, 2004, and the automatic stay ended as to him 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 waived.

Except as so ordered, the motion is denied.

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

6. 04-92861-D-7 BRENDA MOTA HEARING - MOTION FOR
MET #1 TERMINATION OF AUTOMATIC STAY
AMERICAN HONDA FINANCE 9-16-04 [6]
CORPORATION, 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.

7. 04-91568-D-7 CARLOS/MARIA GARCIA, VS. HEARING - MOTION TO
MSN #2 AVOID LIEN ON DEBTORS'
FORD MOTOR CREDIT CO. RESIDENCE
8-25-04 [17]

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. 04-93083-D-7 DAVID/SUSAN CAMMACK HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 9-15-04 [7]
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 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.

As against the estate and the debtors, the automatic stay is modified 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 have 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. Movant also alleges without dispute that debtors have not made four mortgage payments. 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.

9. 03-95099-D-7 ROSENDO UMALI HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC REGISTRATION 9-14-04 [79]
SYSTEMS, INC., VS.

DISCHARGED 9-13-04

Disposition Without Oral Argument: The moving party withdrew this motion on October 6, 2004. It is removed from the calendar.

10. 04-92709-D-11 L.L.-G.L. ENTERPRISES, INC. CONT. HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
FORD MOTOR CREDIT COMPANY VS. 7-27-04 [30]

CONT. FROM 9-28-04

Disposition Without Oral Argument: This matter was erroneously placed on this calendar. It is also correctly found on the 9:30 calendar. The matter is therefore removed from this calendar as a duplicate.

11. 04-93045-D-7 SHARON EPPERSON HEARING - MOTION FOR
MET #1 TERMINATION OF AUTOMATIC STAY,
AMERICAN HONDA FINANCE OR ALTERNATIVELY, MODIFICATION
CORPORATION, VS. OF AUTOMATIC STAY
9-27-04 [9]

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.

12. 04-92757-D-7 GUADALUPE/CATHERINE HEARING - MOTION FOR
EAT #1 MIRAMONTES RELIEF FROM AUTOMATIC STAY
MORTGAGE ELECTRONIC 9-27-04 [12]
REGISTRATIONS SYSTEMS, INC. VS.

Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). The court notes that the motion fails to comply with LBR 9014-1(d)(1) and the Guidelines for Preparation of Documents (effective January 20, 2004). The

motion, declaration, and exhibits were filed as a single document. The Guidelines require that they be separate documents. In this instance, the court will reach the merits. Counsel for movant should modify his forms. Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

13. 04-92879-D-11 WATERFRONT WAREHOUSE, CONT. HEARING - MOTION FOR
DBP #1 INC. RELIEF FROM AUTOMATIC STAY
GLENN MOFFATT, ET AL. VS. 9-14-04 [103]

CONT. FROM 9-28-04

Tentative Ruling: No tentative is being posted for this matter. This matter is trailed to the specially-set 3:00 p.m. calendar.

14. 00-90387-D-7 DAVE NELSON, VS. HEARING - MOTION TO
DN #2 AVOID JUDICIAL LIEN ON
NORTH AMERICAN EXEMPT PROPERTY
COLLECTORS, INC. 9-28-04 [14]

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.

15. 00-94393-D-7 MICHELE STACY, VS. HEARING - MOTION TO
DN #2 AVOID JUDICIAL LIEN ON
FRESNO CREDIT BUREAU, EXEMPT PROPERTY
A CALIFORNIA CORP. 9-28-04 [10]

DISCHARGED 2-22-01

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. 00-94393-D-7 MICHELE STACY, VS. HEARING - MOTION TO
DN #3 AVOID JUDICIAL LIEN ON
LAW OFFICE OF EXEMPT PROPERTY
WILLIAM A. SCHUCKMAN 9-28-04 [19]

DISCHARGED 2-22-01

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.

17. 00-94393-D-7 MICHELE STACY, VS. HEARING - MOTION TO
DN #4 AVOID JUDICIAL LIEN ON
MONOGRAM CREDIT CARD EXEMPT PROPERTY
BANK OF GEORGIA 9-28-04 [14]

DISCHARGED 2-22-01

Disposition Without Oral Argument: This motion is continued by the court to October 26, 2004 at 2:00 p.m. The street address for the lienholder listed on the proof of service does not match that on the abstract of judgment. Service of the motion is therefore incorrect.

So as to provide proper notice of the continued hearing, movant shall correctly serve the lienholder with the moving papers on or before October 12, 2004; the date of this hearing. Movant shall file proof of such service on or before October 15, 2004. If movant fails to do either of these things, the motion will be denied without prejudice for improper service.

The court will issue a minute order.

18. 04-92709-D-11 L.L.-G.L. ENTERPRISES, INC. HEARING - MOTION FOR
KNM #1 RELIEF FROM AUTOMATIC STAY
DAVID CARLIN, ET AL., VS. 9-29-04 [189]

Disposition Without Oral Argument: This motion is continued by the court to October 26, 2004 at 2:00 p.m. This motion suffers from the same notice defect as the one in matter 2. It fails to comply with Fed. R. Bankr. P. 4001(a) (requiring all motions for relief from automatic stay be served on those creditors included on the list filed pursuant to Rule 1007(d) where a creditor's committee has not been formed). Movant failed to serve In Touch and Budget Tire with the motion.

So as to provide proper notice of the continued hearing, movant shall correctly serve In Touch and Budget Tire with the moving papers and a notice of continued hearing on or before October 12, 2004; the date of this hearing. Also by October 12, 2004, movant shall service notice of the continued hearing on all parties previously served with the motion. Movant shall file proof of such service on or before October 15, 2004. If movant fails to do any of the foregoing, the motion will be denied without prejudice for improper service.

The court will issue a minute order.

19. 04-92879-D-11 WATERFRONT WAREHOUSE, INC. HEARING - MOTION FOR
CLH #1 RELIEF FROM THE AUTOMATIC STAY
EVERGREEN CEMETERY AND/OR ADEQUATE PROTECTION
ASSOCIATION, VS. 9-30-04 [135] O.S.T.

Tentative Ruling: This matter is trailed to the specially-set 3:00 p.m. calendar. This motion is filed under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore,

the court issues no tentative ruling on the merits of the motion.

20. 04-93580-D-11 COLIMA, INC.
CLH #1
JESSE/DORIS WILLARD AND
HAROLD/CYNTHIA BRAZIL, VS.

HEARING - MOTION TO
ANNUL AUTOMATIC STAY
9-30-04 [13] O.S.T.

Tentative Ruling: This motion is filed under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.