

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

January 7, 2014 at 9:31 a.m.

---

1. [13-26082](#)-B-13 LINDA DIXON  
WSS-3

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-5-13 [[68](#)]

AUBURN INVESTORS, LLC VS.

**Tentative Ruling:** The debtor's opposition is sustained. The motion is denied.

The movant seeks relief from the automatic stay of 11 U.S.C. § 362(a) to allow it to obtain possession of certain personal property consisting of, inter alia, furniture and equipment (the "Collateral") used in the debtor's former fitness center business and pledged by the debtor as security for the performance of a lease of the commercial real estate in which the fitness center was operated. Elsewhere on this morning's calendars the court has granted the debtor's motion to value the Collateral without oral argument. The debtor has filed a modified plan which provides for payment of the movant's allowed secured claim and a motion to confirm the modified plan which is set for hearing on January 21, 2014, at 9:32 a.m.

The court finds that relief under 11 U.S.C. § 362(d)(1) is not appropriate. As the debtor has filed a modified plan which provides for payment of the movant's secured claim and has valued the Collateral in an amount that is provided for in the modified plan, the movant's only remaining alleged cause for relief from stay is that the Collateral is allegedly being used by an unidentified third party and the movant is worried that the Collateral will be damaged if relief is not granted. The court has reviewed the Commercial Lease Agreement, the Lease Addendum and the Guaranty of Lease filed as exhibits to the motion (Dkt. 72) and found no provision restricting the debtor from allowing a third party to use the Collateral or from removing the Collateral from the leased property. In light of the foregoing and the debtor's proposal to pay the movant's allowed secured claim in a modified plan, the court finds that the movant's fear of possible damage to the Property does not constitute cause for relief from stay under 11 U.S.C. § 362(d)(1).

The court also finds that relief under 11 U.S.C. § 362(d)(2) is not appropriate. Although the movant has shown that the debtor does not have an equity in the Collateral, thereby sustaining its burden under 11 U.S.C. § 362(g)(1), the court also finds that the debtor has sustained her burden of showing that the Collateral is necessary for an effective reorganization. "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property

will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988). As the debtor has filed a modified plan which proposes to pay the amount of the movant's allowed secured claim, which plan is set for a confirmation hearing on January 21, 2014, only two weeks from the date of the hearing on this motion, the court finds that the debtor has sustained her burden of showing that the Collateral is necessary for an effective reorganization or rehabilitation this is in prospect.

The court will issue a minute order.

2. [13-31989](#)-B-13 MARK VASQUEZ  
RCO-2

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
10-23-13 [[25](#)]

STATE FARM BANK, FSB VS.  
CASE DISMISSED 12/20/13

**Disposition Without Oral Argument:** This matter continued from December 10, 2013, to allow the movant to file supplemental evidence and briefing. The movant did so timely. This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified, effective as of 12:57 p.m. on September 12, 2013, as against the estate and the debtor pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to obtain possession of the real property located at 1280 O'Malley Drive, South Lake Tahoe, California (APN 031-206-0610) (the "Property") in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The debtor's bankruptcy case was dismissed by order entered December 20, 2013; therefore, the movant does not require relief from the automatic stay on prospective basis. As for the movant's request for retroactive relief or annulment of the automatic stay, the court finds, in the absence of any opposition by the debtor or any party in interest, that the movant has shown sufficient cause to justify retroactive relief. As the movant argues in its supplemental brief, the movant did not have knowledge of the debtor's bankruptcy case when it conducted a post-petition foreclosure sale of the Property, and if it is not granted retroactive relief the movant will be forced to re-notice and conduct another foreclosure sale and incur the costs related thereto. In the absence of opposition, the court finds that the movant has shown cause for retroactive relief under the analytical framework established in In re Fjeldsted, 293 B.R. 12, 25 (9th Cir. 2003).

The court will issue a minute order.