

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

February 11, 2014 at 9:31 A.M.

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1. [13-33107](#)-B-7 BUTTE STEEL & MOTION FOR RELIEF FROM  
RJW-4 FABRICATION, INC. AUTOMATIC STAY  
1-28-14 [[87](#)]  
NORTHERN CALIFORNIA NATIONAL  
BANK 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.

2. [13-34511](#)-B-7 ROBERT/LOLITA WILLIAMS MOTION FOR RELIEF FROM  
PKB-1 AUTOMATIC STAY  
1-3-14 [[15](#)]  
GREEN TREE SERVICING, LLC  
VS.  
WITHDRAWN BY M.P.

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

The motion is removed from the calendar. The movant withdrew the motion on January 21, 2014 (Dkt. 23).

3. [13-35316](#)-B-7 BRUCE/JUDITH SCHNEIDER MOTION FOR RELIEF FROM  
DJD-1 AUTOMATIC STAY  
1-28-14 [[24](#)]  
SETERUS, INC. VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtors filed a statement of intention to surrender the Property (as that term is defined herein), the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as to the

debtors and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 8096 Gilleland Drive, Roseville, California (APN 481-140-013) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make thirteen (13) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intention to surrender the Property. The trustee has filed a report of no distribution.

The court will issue a minute order.

4. [10-25229](#)-B-7 ALLAN WEST AND CHERYL POWELL MOTION FOR RELIEF FROM AUTOMATIC STAY  
MJ-1 12-31-13 [[119](#)]  
U.S. BANK, N.A. VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on June 11, 2013, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 20454 Lakeview Drive, Lakehead, California (APN 083-360-015) ("Property") and to obtain possession of the Property following the sale, all 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.

Movant alleges without dispute that the debtors have failed to make eighteen (18) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The court will issue a minute order.

5. [13-33539](#)-B-7 JUGJEEV/MINERVA MANGAT MOTION FOR RELIEF FROM  
MJ-1 AUTOMATIC STAY  
12-27-13 [[21](#)]  
PNC BANK, N.A. VS.

**Tentative Ruling:** The debtors' opposition is overruled. The motion is granted in part. The automatic stay is modified as to the debtors and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 6720 E. Kettleman Lane, Lodi, California (APN 061-132-56) ("Property") and to obtain possession of the Property following the sale, all 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.

Movant alleges without dispute that the debtors have failed to make seventy (70) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case.

The debtors' late-filed opposition is not persuasive. The debtors request that the motion be continued to a later date in order to permit them to attempt to short-sell the Property or to convert the bankruptcy case to one under chapter 13. However, the court will not withhold relief to which the movant is legally entitled in order to create negotiating leverage for the debtors while they decide whether to short-sell the Property or convert the case to one under chapter 13. The court notes that nothing in this ruling prevents the movant and the debtors from continuing to pursue short sale negotiations even after relief from the stay is granted.

The court will issue a minute order.

6. [13-25643](#)-B-7 TODD/CHRISTINE DUPONT MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
1-8-14 [[34](#)]

AMERICAN HONDA FINANCE  
CORPORATION VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2012 Honda Odyssey (VIN 5FNRL5H63CB134219) (the "Collateral"), at 12:01 a.m. on May 25, 2013 by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2).

The court will issue a minute order.

7. [13-29149](#)-B-7 JASON/TERESA TAYLOR MOTION FOR RELIEF FROM  
CJO-1 AUTOMATIC STAY  
1-23-14 [[37](#)]  
EVERBANK 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.

8. [13-35869](#)-B-7 CARLOS/AMBER GUEVARA MOTION FOR RELIEF FROM  
SCF-1 AUTOMATIC STAY  
1-14-14 [[12](#)]  
VALLEY FIRST CREDIT UNION  
VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2007 Honda Odyssey (VIN 5FNRL38227B056314) (the "Collateral"), at 12:01 a.m. on May 25, 2013 by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2).

The court will issue a minute order.

9. [13-36071](#)-B-7 MICHAEL KUNTZ MOTION FOR RELIEF FROM  
JEB-1 AUTOMATIC STAY  
1-14-14 [[10](#)]  
PENTAGON FEDERAL CREDIT  
UNION VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtor has filed a statement of intention to surrender the Boat (as that term is defined herein), the court issues the following tentative ruling.

The motion is granted in part and dismissed in part as moot. As to the movant's request for relief from stay with respect to a trailer/carrier with vehicle identification number 405118BB42C000116 (the "Trailer"), the motion is dismissed as moot. The automatic stay terminated as to the Trailer at 12:01 a.m. on January 26, 2014 by operation of 11 U.S.C. § 362(h), and the Trailer has from that date no longer been property of the estate. As to the movant's request for relief from stay with respect to

a 2007 Maxum Marine (VIN MXP56NJC202) (the "Boat"), 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 the Boat "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 14-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 debtor has failed to make three (3) payments on the obligation secured by the Trailer and the Boat. Also, movant alleges without dispute that there is no equity in the Boat and the Boat is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intention to surrender the Boat.

The debtor did not file a compliant statement of intention with respect to the Trailer within the time allowed by 11 U.S.C. § 521(a) (2).

The court will issue a minute order.

10. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
1-2-14 [[64](#)]  
KIA MOTORS FINANCE VS.

**Tentative Ruling:** None.

11. [13-35874](#)-B-7 STEPHANIE WINSTON MOTION FOR RELIEF FROM  
TJS-1 AUTOMATIC STAY  
1-13-14 [[19](#)]  
JPMORGAN CHASE BANK, N.A.  
VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f) (1). Because the debtor is in pro se, 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 obtain possession of its collateral, 2010 Chrysler Sebring (VIN 1C3CC4FB8AN137197) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a) (3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make three (3) payments. The trustee has filed a report of no distribution. The debtor has filed a statement of intention to surrender the Collateral.

The court will issue a minute order.

12. [13-35376](#)-B-7 MAEROSE FLORES

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-19-13 [[14](#)]

HPROF, LLC VS.

**Tentative Ruling:** The debtor's opposition is overruled. The motion is granted in part, and 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 proceed with an unlawful detainer action against the debtor so that it may exercise its rights under applicable non-bankruptcy law in obtaining possession of the real property located at 120 Mainsail Court, Vallejo, CA 94591 (the "Property"). Except as so ordered, the motion is denied.

Cause for the modification exists because the movant acquired title to the Property at a pre-petition non-judicial foreclosure sale. Although the movant has failed to attach a copy of the trustee's deed upon sale, it alleges without dispute that the Property was sold at a non-judicial foreclosure sale on October 23, 2013. The debtor does not dispute that the sale occurred; rather, she questions only the validity of the sale. The debtor overlooks the fact, however, that a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of claims. As stated by the Ninth Circuit Bankruptcy Appellate Panel in In re Luz Intern., Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998):

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. See In re Johnson, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.") (citation omitted); In re Ellis, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985) ("In any case, stay litigation is not the proper vehicle for determination of the nature and extent of those rights."); Grella, 42 F.3d at 33 ("[W]e find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect, and ... a court hearing a motion for relief from stay should seek only to determine whether the party seeking relief has a colorable claim to property of the estate."); see also, 3 Collier on Bankruptcy ¶ 362.08 [6], 362-106 (15th ed. rev.1997).

The court finds that the movant has provided sufficient evidence that it has a colorable claim to the Property. It is not appropriate to adjudicate the merits of the non-judicial foreclosure sale in this proceeding. The trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

13. [13-33784](#)-B-7 OTH MALAIVANH  
JCW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-3-14 [[14](#)]

JPMORGAN CHASE BANK, N.A.  
VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on January 31, 2014, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose on the real property located at 240 Berkshire Lane, Stockton, CA 95207 (the "Property") and to obtain possession of the Property following the sale, all 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.

As it pertains to relief pursuant to 11 U.S.C. § 362(d)(2), the motion is denied. According to the movant's own calculations, the fair market value of the Property is \$103,823.00. The only encumbrance on the Property, according to documents attached to the movant's motion, is the first deed of trust held by the movant in the amount of \$100,941.50. Therefore, the debtor's equity in the Property is \$2,881.50.

The movant alleges without dispute that the debtor has failed to make four (4) mortgage payments. The trustee has filed a report of no distribution. This constitutes cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The court will issue a minute order.

14. [13-23893](#)-B-7 VERNON/CELESTE BELL  
APN-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-9-14 [[18](#)]

SANTANDER CONSUMER USA, INC.  
VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2008 Dodge Charger (VIN 2B3LA43R08H183453) (the "Collateral"), at 12:01 a.m. on April 22, 2013, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2). A statement of intention that merely states that the debtors intend to retain the Collateral and "keep current" is not a compliant statement of intention. 11 U.S.C. § 362(h)(1)(A).

The court will issue a minute order.

15. [13-33396](#)-B-7 TAMARA MADISON-ZOET  
CJO-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-23-14 [[16](#)]

NATIONSTAR MORTGAGE, LLC VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtor filed a statement of intention to surrender the Property (as that term is defined herein), the court issues the following abbreviated tentative ruling.

The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on January 28, 2014, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 4809 Stonewood Drive, Fairfield, CA 94534 (the "Property") and to obtain possession of the Property following the sale, all 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.

Movant alleges without dispute that the debtor has failed to make thirteen (13) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution and a statement of non-opposition to the motion. The debtor has filed a statement of intention to surrender the Property.

The court will issue a minute order.