

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

February 18, 2014 at 9:31 A.M.

1. [10-31413](#)-B-13 ALAN WINTHER MOTION FOR RELIEF FROM
JH-1 AUTOMATIC STAY
1-23-14 [[35](#)]
NATIONSTAR MORTGAGE, LLC VS.

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

The motion is dismissed.

The movant did not give sufficient notice of the motion to parties in interest. Because the movant's notice of hearing (Dkt. 36) indicates that written opposition to the motion is required, the court construes the motion as one filed under Local Bankruptcy Rule 9014-1(f)(1), which requires the motion to have been filed and served no less than 28 days before the date of hearing (31 days if service is being accomplished by mail – Fed. R. Bankr. P. 9006(f)). In this case, the court's records and the movant's certificates of service (Dkt. 43, 44) show that the motion was filed and served on January 23, 2014, 26 days before the date of the hearing.

In addition, the motion is moot. The debtor's chapter 13 plan (Dkt. 5), confirmed by order entered August 6, 2010 (Dkt. 22), provides for treatment of the movant's claim in class 4. Pursuant to Section 3.15 of the confirmed plan, "entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 4 secured claim to exercise its rights against its collateral in the event of a default under the terms of its loan or security documentation." The movant alleges that the debtor is in default of regular payments under the loan on which the movant's claim is based since March 1, 2011. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

2. [13-35332](#)-B-13 JAMES/IOLANI NEARY
SW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
1-16-14 [[35](#)]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, because the debtors have filed an amended plan which proposes to surrender the Collateral (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 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 2005 Toyota Camry (VIN 4T1BE32K85U095977) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The request for relief from the co-debtor stay of 11 U.S.C. § 1301(a) is granted as to co-debtor Adam Neary. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

The movant alleges that the debtors have failed to make one post-petition payment on the loan secured by the Collateral. In addition, the debtors' proposed amended plan filed February 4, 2014 (Dkt. 58) proposes to treat the movant's claim in class 3 by surrendering the Collateral in satisfaction the movant's secured claim. These facts constitute cause for relief from the automatic stay.

Relief from the co-debtor stay is appropriate where a debtor proposes not to pay the creditor's claim. 11 U.S.C. § 1301(c)(2). Continuation of the co-debtor stay would irreparably harm the movant's interest. 11 U.S.C. § 1301(c)(3).

The court will issue a minute order.

3. [11-35950](#)-B-13 TIMOTHY/TERESA COITO
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-10-14 [[123](#)]

TOYOTA LEASE TRUST VS.

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

The motion is granted in part. The automatic stay is modified pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of the leased vehicle, a 2011 Toyota Camry (VIN 4T1BK3EK4BU622316) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's 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.

The debtors' plan, filed January 13, 2012 (Dkt. 98) and confirmed by order entered May 16, 2012 (Dkt. 114) assumed movant's lease and required direct payment of all post-petition lease payments. Movant alleges without dispute that the debtors are four (4) months in post-petition arrears on the lease. The foregoing constitutes a breach of the confirmed plan and cause for relief from the automatic stay.

The court will issue a minute order.

4. [13-35775](#)-B-13 CHARLENE CHEUNG MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
1-13-14 [[20](#)]
GUILD MORTGAGE COMPANY 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 to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant exercise its rights against the real property located at 2124 Galen Drive, Elk Grove, CA 95758 (the "Property") and to obtain possession of 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. The court awards the movant no attorney's fees and costs. Except as so ordered, the motion is denied.

The movant alleges without dispute that it acquired title to the Property at a pre-petition non-judicial foreclosure sale and that the debtor had no right to continued occupancy of the property as of the petition date. The debtor has failed to file or confirm a chapter 13 plan in this case. These facts constitute cause for relief from the automatic stay.

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.

5. [13-33383](#)-B-13 CHRISTIAN STEELE MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
1-16-14 [[60](#)]
SUNTRUST BANK VS.

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

