

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

February 25, 2014 at 9:31 A.M.

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1. [13-33116](#)-B-7 LUIS/REBECCA DOMINGUEZ MOTION FOR RELIEF FROM
RFM-1 AUTOMATIC STAY
1-16-14 [[18](#)]
PNC BANK, N.A. VS.

Tentative Ruling: The motion is granted in part, dismissed as moot in part and denied in part. As to the debtors, the motion is dismissed as moot. The debtor received a discharge on January 29, 2014, 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) in order to permit the movant to foreclose on the real property located at 4722 E. Fourth St., Stockton, California (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. The movant's request pursuant to 11 U.S.C. § 362(d)(4) for a finding that the bankruptcy case was filed as part of a scheme to delay, hinder and defraud creditors is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute it is the title owner of the Property pursuant to a Quitclaim Deed (Dkt. 20 at 31) transferring the Property from Federal National Mortgage Association ("FNMA") to the movant prior to the date of the filing of the petition. Movant alleges without dispute that FNMA acquired the Property at a pre-petition foreclosure trustee's sale, as evidenced by a Trustee's Deed upon Sale (Dkt. 20 at 28), which was recorded in the official records of San Joaquin County on March 18, 2010. Neither the estate nor the debtors have anything more than a mere possessory interest in the Property. This constitutes cause for relief from the automatic stay.

The movant's request for a finding under 11 U.S.C. § 362(d)(4) that the bankruptcy case was filed as part of a scheme to delay, hinder or defraud creditors is denied. The sole basis for the movant's request is that the debtors previously filed a bankruptcy case on November 5, 2012, case number 12-39532-C-7, which case was closed without a discharge on February 19, 2013, due to the debtors' failure to file post-petition financial management course certificates. The instant bankruptcy case was filed nearly eight months later on October 8, 2013. The court does not find these facts sufficient to establish the existence of a scheme as defined under § 362(d)(4). The court does not consider multiple filings alone to constitute evidence of a scheme to delay, hinder and defraud. See Downey Savings and Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987).

The court will issue a minute order.

2. [13-33231](#)-B-7 WAYNE/PATRICIA PAXTON MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
1-28-14 [[15](#)]
TD AUTO FINANCE, LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral, a 2011 Chevrolet Impala (VIN 2G1WG5EK5B1245308) (the "Collateral"), at 12:01 a.m. on December 21, 2013, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

There is no evidence that the debtors performed their stated intention (reaffirm) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The court will issue a minute order.

3. [13-34042](#)-B-7 MARICELA BARRON MOTION FOR RELIEF FROM
KER-1 AUTOMATIC STAY
1-16-14 [[15](#)]
SELENE FINANCE, LP 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 February 5, 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 2828 Laura Road, Spokane, Washington ("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 six (6) mortgage payments. The debtor has filed a statement of intention to surrender the Property. The trustee has filed a report of no distribution. These facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

4. [10-51746](#)-B-7 US LOAN AUDITORS, INC., MOTION FOR RELIEF FROM
DNL-24 A CALIFORNIA CORPORATION AUTOMATIC STAY
1-31-14 [[406](#)]
SUSAN SMITH 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.

5. [14-20048](#)-B-7 CHRISTOPHER/ANGELIE MOTION FOR RELIEF FROM
PD-1 BERNARDO AUTOMATIC STAY
1-23-14 [[10](#)]
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. The automatic stay is modified as to the debtor 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 110 Connor Circle, Sacramento, California (APN 225132007500000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. 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 thirty-one (31) 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.

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.

6. [13-34957](#)-B-7 JOHN KERR MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
1-28-14 [[17](#)]
TD AUTO FINANCE, LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2010 Dodge Ram 1500 (VIN 1D7RV1GP8AS142674) (the "Collateral"), at 12:01 a.m. on January 31, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from

that date no longer been property of the estate.

There is no evidence that the debtor performed his stated intention (reaffirm) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The court will issue a minute order.

7. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON CONTINUED MOTION FOR RELIEF
APN-1 FROM AUTOMATIC STAY
1-2-14 [[64](#)]
KIA MOTORS FINANCE VS.

Tentative Ruling: None.

8. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON MOTION FOR RELIEF FROM
TJS-1 AUTOMATIC STAY
1-21-14 [[72](#)]
JPMORGAN CHASE BANK, N.A.
VS.

Tentative Ruling: None.

9. [13-34879](#)-B-7 ANTHONY PRUITT MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
1-15-14 [[13](#)]
FORD MOTOR CREDIT COMPANY,
LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2012 Ford Mustang (VIN 1ZVBP8CU3C5254419) (the "Collateral"), at 12:01 a.m. on December 23, 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 debtor 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 debtor intends to retain the Collateral and "maintain payments current" is not a compliant statement of intention. 11 U.S.C. § 362(h)(1)(A). If retaining the collateral, the statement of intention must state that the debtor will either redeem the collateral or reaffirm the debt secured by the Collateral. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

The court will issue a minute order.

10. [12-32289](#)-B-7 JESSE/BEATRIZ IMEL
SW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-3-14 [[154](#)]

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

11. [13-32990](#)-B-7 PATRICIA PENGELLY
PKB-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-28-14 [[32](#)]

GREEN TREE SERVICING, LLC
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 22, 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 8585 Whispering Oaks Road, Redding, CA 96002 (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 five (5) 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. The debtor has filed a statement of intention to surrender the Property.

The court will issue a minute order.