

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 29, 2014 at 9:31 A.M.

1. [13-29611](#)-B-13 KENNETH POHL MOTION FOR RELIEF FROM
SW-2 AUTOMATIC STAY
4-14-14 [[20](#)]
- BANK OF AMERICA, N.A. VS.
CASE DISMISSED 8/2/13

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

The stipulation filed April 18, 2014 (Dkt. 26) is approved to the following extent: the hearing on the motion is continued to May 27, 2014, at 9:31 a.m.; the debtor's written opposition is due May 13, 2014; and the movant's written reply, if any, is due May 20, 2014.

The court will issue a minute order.

2. [11-46037](#)-B-13 JAVIER CONTRERAS MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
3-28-14 [[46](#)]
- ONEWEST BANK, FSB VS.

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

The Stipulation Terminating the Automatic Stay (Dkt. 44) between the movant and the debtor filed on February 7, 2014, is approved and shall be binding between the parties thereto. The motion is granted in part. To the extent it applies, the automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to foreclose on the real property located at 2919 Camero Drive, Lincoln, 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 waived. Except as so ordered, the motion is denied.

The court confirmed a chapter 13 plan in this case by order entered May 15, 2012 (Dkt. 31). The confirmed plan does not provide for the movant's claim secured by the Property. The movant alleges without dispute that the obligation on which the movant's claim is based is 26 months in post-petition default. The movant and the debtor have entered into a

stipulation for relief from the automatic stay. The foregoing facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

3. [14-21466](#)-B-13 ANTHONY/SUZANNE VENTURA MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
3-26-14 [[26](#)]
CENTRAL MORTGAGE COMPANY VS.

Tentative Ruling: As to the debtors, the movant's request for relief from the automatic stay is dismissed as moot. The automatic stay terminated with respect to the debtors at 12:01 a.m. on March 21, 2014, by operation of 11 U.S.C. § 362(c)(3)(A). As to the bankruptcy estate, the motion is granted in part. To the extent it applies, the automatic stay is modified as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to foreclose on the real property located at 2881 Autumn Falls Lane, Lincoln, California (APN 329-120-034) (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 court awards no fees or costs. Except as so ordered, the motion is denied.

As to the debtors, the court's records confirm that within the preceding one-year period of the filing the debtors' instant chapter 13 case that the debtors had another chapter 13 case that was pending and dismissed. The debtors' motion in filed in the instant seeking an extension of the automatic stay as to them was denied by order entered April 4, 2014 (Dkt. 39). Therefore, the automatic stay terminated with respect to the debtors at 12:01 a.m. on March 21, 2014, by operation of 11 U.S.C. § 362(c)(3)(A).

As to the estate, the movant alleges without dispute that the debtors are not the obligors on the secured obligation which the movant seeks to enforce, and that said obligation is 26 months in pre-petition arrears. The movant further alleges without dispute that the debtors have proposed no treatment for the movant's claim in their proposed chapter 13 plan. The chapter 13 trustee has filed a statement of non-opposition to the motion. The foregoing facts constitute cause for relief from the automatic stay. Nothing in this ruling shall be construed as a finding regarding the debtors' ability to propose or obtain confirmation of a chapter 13 plan which rehabilitates the debt of a non-debtor.

The court does not find the debtors' opposition persuasive. Medical problems are very unfortunate, but they are not a defense to a motion for relief from automatic stay. A potential loan modification is similarly not a defense. Loan modifications are voluntary, and the creditor is not disabled from entering into a loan modification as a result of obtaining relief from the automatic stay. An offer to make payments in lieu of monthly rent payments is not persuasive when the debtors' Schedule G (Dkt. 1, p. 24) states that the debtors have no executory contracts or unexpired leases. If the debtors think they have a claim against the creditor for "double tracking" or for any other reason, they may assert

that claim in an appropriate court; however, simply suggesting that such a claim might exist is not sufficient to defeat a motion for relief from 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.