

Then, counsel believed that no response to this Order to Show Cause was appropriate. Possibly, counsel believes that if he dismissed the case he could deprive the court of addressing conduct of counsel. Such an assumption is incorrect. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.');

Greenberg v. Sala, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).")

The court discharges the Order to Show Cause without ordering sanctions to be paid by counsel. The court is confident that counsel will not allow other cases to languish. Further, when the court issues an order to show cause affording counsel an opportunity to address the court's concerns, he will do so in writing. If not, then counsel will demonstrate the need for the court to first order monetary corrective sanctions (beginning with \$500.00), then suspending counsel's electronic filing privileges, certifying the matter to the District Court for punitive sanctions and suspending his admittance to practice in the Eastern District of California.

Counsel should not believe that the court not imposing corrective sanctions is a sign that compliance with the procedural rules or ignoring an order to show cause is acceptable conduct. It is not, and counsel has now been clearly advised of the need for the court to address such conduct and the failure to respond to orders to show cause in the future.

The Order to Show Cause is discharged, with no sanctions ordered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, Plaintiff and counsel for Plaintiff having dismissed the Adversary Proceeding, the court being advised that the Defendant has reconveyed the deed of trust Plaintiff sought to have declared void, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no corrective sanctions ordered.

2. [11-20817-E-13](#) JACK/HELENE BLOMGREN
EGS-1 John A. Tosney

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-2-13 [[68](#)]

BAYVIEW LOAN SERVICING, LLC
VS.

Final Ruling: Creditor Bayview Loan Servicing, LLC having filed a Withdrawal of the Motion for Relief from Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Relief from Stay was dismissed without prejudice, and the matter is removed from the calendar.**

3. [07-29525-E-13](#) KEVIN BROWN
TJS-1 Chinonye Ugorji

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-27-13 [[269](#)]

JP MORGAN CHASE BANK, N.A.
VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 27, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion for Relief from the Automatic Stay is denied as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JPMorgan Chase Bank, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2003 Mercedes-Benz CLK500, VIN ending in 16985. FN.1. The moving party has provided the Declaration of Maritsa Sanchez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The Sanchez Declaration states that the Debtor has not made 4 post-petition, post-confirmation payments, with a total of \$3,074.87 in payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$8,090.45, as stated in the Sanchez Declaration, while the value of the asset is determined to be \$9,441.00, as stated in the Kelly Blue Book valuation provided by Creditor.

Creditor asserts the fair market value of the property is declining and that the equity cushion does not provide enough protection. Creditor also asserts that Debtors are in default under the terms of the Chapter 13 plan in that Debtors have failed to make all direct payments to it.

While the court granted JPMorgan Chase Bank, N.A. relief from the automatic stay with respect to an asset identified as a 2003 Mercedes-Benz CLK500, VIN ending in 16985 on December 19, 2011, the Debtor subsequently confirmed a Chapter 13 Plan. Dckt. 218. On May 14, 2012, Debtor confirmed his Fourth Amended Chapter 13 plan, which provides for the Creditor as Class 4, to be paid \$630.00 per month. Dckt. 224.

Under the confirmed plan, Class 4 claims are not modified by the plan and entry of the confirmation order shall constitute a 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. Dckt. 224, ¶ 3.15.

Here, Creditor's Class 4 claim was not modified by the confirmed plan and entry of the confirmation order, May 14, 2012, constituted an order modifying the automatic stay to allow Creditor to exercise its rights against its collateral in the event of default. Therefore, Creditor's Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by JPMorgan Chase Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is denied as moot, the automatic stay having been terminated pursuant to the Debtor's

confirmed Chapter 13 Plan for Creditor's Class 4 Claim secured by the 2003 Mercedes-Benz CLK500, VIN ending in 6985.

4. [13-23180-E-13](#) TONG/ARLENE BE
HB-1

STATUS CONFERENCE RE: MOTION TO
COMPEL
4-2-13 [[21](#)]

Debtors' Atty: Eric John Schwab
Creditor's Atty: Mohammad Walizadeh

Notes:

[HB-1] FW CA-Auburn Village, LLC's Notice of Motion and Motion to Compel Immediate Payment of Post-Petition Lease Obligations, or Other Appropriate Relief filed 4/2/13 [Dckt 21]; heard 4/23/13

The court removes the Status Conference from the calendar, no appearance by counsel required.

The court *sua sponte* scheduled a status conference concerning the rejection to the lease and status of turnover of the property. On April 29, 2013, the Debtors filed their Notice of Rejection of lease for the 2150 Grass Valley Highway Property. Dckt. 44. The Notice states that Debtor will surrender the keys (which the court construes to be possession) for the Property to the agent for the landlord by "noon, Monday, April 19, 2013 [sic]." The court accepts the April 19 date as a typographical error, based on counsel for Debtors advising the courtroom deputy for Department E that pursuant to the prior order the Debtors were turning over possession of the Property by noon on April 29, 2013. Counsel for the landlord confirmed for the courtroom deputy that the keys (which the court construes as possession) for the Property have been returned to the landlord.