

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 27, 2014 at 9:31 A.M.

1. [13-29611](#)-B-13 KENNETH POHL CONTINUED MOTION FOR RELIEF
SW-2 FROM AUTOMATIC STAY
4-14-14 [[20](#)]

BANK OF AMERICA, N.A. VS.
CASE DISMISSED 8/2/13

Tentative Ruling: The motion is denied without prejudice.

The movant seeks retroactive relief from or annulment of the automatic stay to validate a foreclosure sale of real property located at 4767 Wilderness Way, Placerville, California (the "Property") which occurred on July 22, 2013, the same day on which the present bankruptcy case was commenced.

In deciding whether to annul the stay, a bankruptcy court ordinarily should examine the circumstances of the specific case and balance the equities of the parties' respective positions. See [Nat'l Env'tl. Waste Corp. v. City of Riverside (In re Nat'l Env'tl. Waste Corp.), 129 F.3d 1052, 1055 (9th Cir.1997)]; Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24 (9th Cir. BAP 2003). In balancing the equities, the court may consider a number of different factors. In re Fjeldsted, 293 B.R. at 24-25. While any specific list of relevant factors is subject to modification depending on the circumstances of the particular case, In re Fjeldsted suggested that the following list of factors could be used as a general guideline or framework for assessing the equities:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Id. at 25 (citations omitted).

In re Gasprom, Inc., 500 B.R. 598, 607 (9th Cir. BAP 2013).

The motion is denied without prejudice based on a lack of evidentiary support for key allegations of fact made by the movant, including the movant's allegations that it was unaware that the automatic stay was in effect at the time that the foreclosure sale was conducted, that it only discovered that the foreclosure sale was conducted in violation of the automatic stay in or about February 2014 in connection with a review of a lawsuit filed by the debtor and that the movant will suffer significant prejudice if retroactive relief is not granted. The motion is not accompanied by any declaration or other evidence which substantiates the foregoing facts. The motion is also not accompanied by any declaration which authenticates the movant's documentary evidence, which includes a deed of trust, assignments of the deed of trust and foreclosure-related documents. Accordingly, the motion is denied without prejudice for lack of evidentiary support informing several of the factors identified above.

The court acknowledges that the movant filed a request for judicial notice (Dkt. 22) which asks that the court take judicial notice of the aforementioned documents, as well as the docket reports for prior bankruptcy cases affecting the Property. However, the court may only take judicial notice of facts "generally known within the trial court's jurisdiction," or which "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1), (2). Except for the fact of the date and location of the filing or recording of documents submitted as evidence in support of the motion or facts regarding prior bankruptcy cases which are readily ascertainable from the court's own records, the court cannot take judicial notice of the contents of movant's exhibits as support for the motion.

The court will issue a minute order.

2. [13-31325](#)-B-13 LANCE SMITH AND NICOLE MOTION FOR RELIEF FROM
JHW-1 CRIST-SMITH AUTOMATIC STAY
4-22-14 [[60](#)]
CAB WEST, LLC VS.

Tentative Ruling: The motion is dismissed as moot. The debtors' confirmed chapter 13 plan (Dkt. 57) already provides for relief from the automatic stay with respect to the movant's claim regarding a leased 2012 Ford Edge (VIN 2FMDK4KC2CBA82676) (the "Collateral"). The movant already has the relief it seeks by the motion.

The debtors' chapter 13 plan (Dkt. 35), confirmed by order entered February 7, 2014 (Dkt. 57) treats the movant's claim as an assumed lease pursuant to section 3.02 of the plan. The treatment of the lease under the plan provides that upon confirmation "all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of the leased property, to dispose of it under applicable law and to exercise its rights against any nondebtor in the event of a default under applicable law or contract." (Dkt. 35 at 4). The movant alleges without dispute that the debtors are three payments in default under the terms of the lease. The movant's evidence in support of the motion, specifically the Motor Vehicle Lease Agreement filed as Exhibit "A" to the motion (Dkt. 64 at 2) also identifies the movant as the "holder" of the lease, i.e. a non-debtor party to the lease. Under the terms of the confirmed plan, the automatic stay has already been modified to allow the movant to obtain possession of the Collateral, and to dispose of it under applicable law.

The court will issue a minute order.

3. [14-24660](#)-B-13 CARL RENOWITZKY MOTION FOR RELIEF FROM
CPG-1 AUTOMATIC STAY
5-13-14 [[12](#)]
RIVER CITY INVESTORS, LLC
VS.

Tentative Ruling: The motion is dismissed as moot. The bankruptcy case was dismissed by order entered May 20, 2014 (Dkt. 19), due to the debtor's failure to file required documents. Dismissal of the case terminated the automatic stay. 11 U.S.C. § 362(c)(2)(B). The movant already has the relief it seeks by this motion with respect to the real property located at 10360 Danichris Way, Elk Grove, California.

The court will issue a minute order.