

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

June 3, 2014 at 9:31 A.M.

1. [14-23714](#)-B-7 JAY LANE
VVF-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
5-13-14 [[11](#)]

HONDA LEASE TRUST 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 debtor has filed a statement of intent to reject the lease that is the subject of this motion, the trustee has filed a report of no distribution and the debtor has already surrendered the Property (as that term is defined herein), the court issues the following tentative ruling.

The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to obtain possession of the leased property, a 2013 Honda Accord (VIN 1HGCR2F37DA232130) (the "Property"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. 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 without dispute that the debtor is one payment in post-petition default. The movant alleges without dispute that the debtor does not have an equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intent to reject lease of the Property. The chapter 7 trustee has filed a report of no distribution. The movant alleges without dispute that the debtor has surrendered possession of the Property to the movant.

The court will issue a minute order.

2. [14-23122](#)-B-7 JENNY WOOD
BHT-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-2-14 [[14](#)]

PROVIDENT FUNDING
ASSOCIATES, L.P. VS.

Tentative Ruling: This motion continued from May 20, 2014. It remains in a preliminary posture 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.

3. [14-21034](#)-B-7 RICHARD FECTEAU CONTINUED MOTION FOR RELIEF
TJS-1 FROM AUTOMATIC STAY
4-29-14 [[38](#)]
- PENNYMAC HOLDINGS, LLC VS.

Tentative Ruling: This motion continued from May 20, 2014. The court established a briefing schedule. Both the debtor and the movant timely filed supplemental briefing. The court now issues the following tentative ruling.

The debtor's opposition filed on May 20, 2014, is overruled. The "Response to Notice of Continued Hearing," "Amend Constitutional Question" and the "Required Verification of Credentials and Identification," (collectively, the May 30, 2014 Documents") filed by the debtor on May 30, 2014 (Dkt 71) are stricken. The motion is granted in part and dismissed in part. As to the debtor, the motion is dismissed as moot because the automatic stay as to the debtor expired at 12:01 a.m. on March 6, 2014 by operation of 11 U.S.C. § 362(c)(3)(A). As to the bankruptcy 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 9761 Roedell Way, Elk Grove, California (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. Pursuant to 11 U.S.C. § 362(d)(4), the court finds that the filing of the petition commencing this case was part of a scheme to delay, hinder or defraud creditors that involved (a) a transfer of all or part ownership of, or other interest in, the Property without the movant's consent or court approval, and (b) multiple bankruptcy filings affecting the Property. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The May 30, 2014 Documents are stricken because they are untimely. This motion was initially heard on May 20, 2014. Counsel for the movant and the debtor appeared. The court established a briefing schedule which required the debtor to file opposition on or before May 20, 2014, and the movant to file a reply on or before May 27, 2014. The evidentiary record and briefing closed upon expiration of the time for the filing of the reply. LBR 9014-1(f)(1)(C). The debtor filed opposition papers timely on May 20, 2014; the debtor was not given leave to file any other papers thereafter, including without limitation the May 30, 2014 Documents.

The movant alleges without dispute that the debtor is not the obligor on the loan is secured by the Property. The movant alleges without dispute that the debtor acquired an interest in the property via a Trust Transfer Grant Deed (Dkt. 41 at 45) which conveyed an interest in the property to the debtor. The movant alleges without dispute that this bankruptcy case is the twenty-sixth bankruptcy case affecting the property within the past eight years, three of which have been cases filed by the debtor. The movant alleges without dispute that the loan secured by the property is in default in the amount of approximately \$337,000.00. The movant

also alleges without dispute that the debtor does not have in equity in the property and the property is not necessary to an effective reorganization in this chapter 7 case. The foregoing constitutes cause for relief from the automatic stay under 11 U.S.C. § 362(d) (1) and (d) (2), and further justifies a finding that the filing of the present case was part of a scheme to delay, hinder and defraud the movant that involved (a) a transfer of all or part ownership of, or other interest in, the Property without the movant's consent or court approval, and (b) multiple bankruptcy filings affecting the Property.

To the extent that the movant requests injunctive relief, including an order enjoining transfers of any interest in the Property until the movant can complete foreclosure or that any future transfer of any interest in the Property be deemed null and void, those requests are denied. Such relief can only be obtained, if at all, via adversary proceeding. Fed. R. Bankr. P. 7001(7), (9).

The debtor's opposition is not persuasive. The papers filed by the debtor on May 20, 2014 (Dkt. 47-57), do not respond to the substantive allegations of the motion and are irrelevant to the court's analysis as set forth above.

The court will issue a minute order.

4. [14-24043](#)-B-7 MILLARD/DONNA HASLAM MOTION FOR RELIEF FROM
MET-1 AUTOMATIC STAY
5-9-14 [[11](#)]
BANK OF THE WEST VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2007 Centurion Cyclone Boat (VIN FICN6506A707), 2007 Mercruiser Motor (No. W693162) and 2007 VM Tandem Trailer (VIN 1VMBG222971031532) (collectively, the "Collateral"), at 12:01 a.m. on May 22, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors 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).

The court will issue a minute order.

5. [14-24744](#)-B-7 PEDRO NAVARRO MOTION FOR RELIEF FROM
FWK-1 AUTOMATIC STAY
5-9-14 [[12](#)]
WELLS FARGO BANK, N.A. VS.

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

The motion is removed from the calendar. The movant withdrew the motion

on May 29, 2014 (Dkt. 23).

6. [14-20547](#)-B-7 TERESA OWENS MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-24-14 [[14](#)]
- THE BANK OF NEW YORK MELLON
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 April 30, 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 736 Arkansas Street, Vallejo, CA 94590 (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.

Movant alleges without dispute that the debtor has failed to make forty-nine (49) 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 court will issue a minute order.

7. [14-22669](#)-B-7 MICHAEL ABALOS AND MOTION FOR RELIEF FROM
NLG-1 KIMBERLY HOPNER AUTOMATIC STAY
5-5-14 [[12](#)]
- FEDERAL NATIONAL MORTGAGE
ASSOCIATION 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 debtors 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 2315 Native Oak Lane, Sacramento, CA 95825 (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.

Movant alleges without dispute that the debtors have failed to make thirteen (13) 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 chapter 7 trustee has filed a report of no distribution and a statement of non-opposition to the motion.

The court will issue a minute order.

8. [14-21070](#)-B-7 MELFORD HICKS MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
4-28-14 [[19](#)]
CITIMORTGAGE, INC. 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 8956 Coan Lane, Orangevale, CA 95662 (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 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.

The court will issue a minute order.

9. [14-23379](#)-B-7 ANITA MORRISON MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
5-13-14 [[13](#)]
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. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2010 Honda Civic Hybrid (VIN JHMFA3F26AS004558) (the "Collateral"), at 12:01 a.m. on May 2, 2014, 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).

The court will issue a minute order.

10. [14-23285](#)-B-7 STEVEN/GUADALUPE MOTION FOR RELIEF FROM
TJP-1 HERNANDEZ AUTOMATIC STAY
4-30-14 [[15](#)]
CALIFORNIA REPUBLIC BANK 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 against the estate and the debtors pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2002 BMW 7 745 Li (VIN WBAGN63482DR04592) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make three (3) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

The court will issue a minute order.