

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

June 17, 2014 at 9:31 A.M.

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1. [14-24141](#)-B-7 JAMES BLOMQUEST MOTION FOR RELIEF FROM  
JMA-3 AUTOMATIC STAY  
5-15-14 [[11](#)]  
  
FAOF OAK CREEK, LLC VS.  
WITHDRAWAN BY M.P.

**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 27, 2014 (Dkt. 17).

2. [14-22642](#)-B-7 QUENTIN HAMPTON MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
5-13-14 [[16](#)]  
  
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 2008 Land Rover Range Rover (VIN SALS25468A133497) (the "Collateral"), at 12:01 a.m. on April 16, 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.

3. [13-33349](#)-B-7 ILIYA PEYCHEV MOTION FOR RELIEF FROM  
MRG-2 AUTOMATIC STAY  
5-14-14 [[80](#)]  
  
CAPITAL ONE AUTO FINANCE 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 debtor 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 2007 Ford Escape (VIN 1FMYU031X7KB06252) (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 debtor has failed to make fifty-three (53) 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 debtor has filed a statement of intention to surrender the Collateral.

The court will issue a minute order.

4. [14-22470](#)-B-11 DESMOND REYNOSO MOTION FOR RELIEF FROM  
AWM-1 AUTOMATIC STAY  
5-15-14 [[25](#)]  
ATTORNEYS FUNDING GROUP,  
INC. VS.

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

The debtor's opposition is sustained. The motion is dismissed without prejudice.

The motion is dismissed for the reasons set forth in the debtor's opposition. In a Chapter 11 case, a motion for relief from the automatic stay must be served on, inter alia, the list of 20 largest unsecured creditors filed pursuant to Fed. R. Bankr. P. 1007(d), if no committee of unsecured creditors has been appointed in the case. The movant's proof of service (Dkt. 30) does not show service on the creditors listed on the List of Creditors Holding 20 Largest Unsecured Claims filed by the debtor with the voluntary petition on March 12, 2014 (Dkt. 1 at 8).

In addition, a motion for relief from the automatic stay is a contested matter pursuant to Fed. R. Bankr. P. 9014 and are therefore must be served consistent with the requirements of Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 7004(g) states that if the debtor is represented by an attorney, "whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney." Fed. R. Bankr. P. 7004(g) (emphasis added). Service on the debtor's bankruptcy attorney alone is insufficient. The debtor must be served with the motion consistent with the requirements of Fed. R. Bankr. P. 7004(b)(9). The movant's proof of service does not show that the debtor was served with the motion. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

5. [14-22974](#)-B-7 SERENA MILLER MOTION FOR RELIEF FROM  
CJO-1 AUTOMATIC STAY  
5-30-14 [[24](#)]  
GREEN TREE SERVICING, LLC  
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.

6. [14-23183](#)-B-7 ALLYSON WRIGHT MOTION FOR RELIEF FROM  
ASW-1 AUTOMATIC STAY  
5-8-14 [[12](#)]  
BANK OF AMERICA, 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.

7. [14-22890](#)-B-7 ANGELINA/MIGUEL PEINADO MOTION FOR RELIEF FROM  
SMK-1 AUTOMATIC STAY  
5-12-14 [[27](#)]  
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. 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 611 Cathedral Way, Tracy, 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. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make two (2) 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.

8. [14-21093](#)-B-7 THOMAS/IRIS ODEN  
JHW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-7-14 [[13](#)]

CAB WEST, LLC VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the subject vehicle, a leased 2011 Ford Fusion (VIN 3FAHPOHAXBR250303) (the "Vehicle") at 12:01 a.m. on April 7, 2014, by operation of 11 U.S.C. § 365(p)(1), and the debtors' possessory interest in the Vehicle has from that date has no longer been property of the estate.

The debtors' petition was filed under chapter 7 on February 5, 2014. Pursuant to the applicable terms of 11 U.S.C. § 365(d)(1), the trustee may assume or reject an unexpired lease of personal property of the debtor within sixty (60) days after the order for relief. In this case, as of April 6, 2014, sixty days after the filing of the debtor's petition, the chapter 7 trustee had not assumed or rejected the lease of the Vehicle. Pursuant to 11 U.S.C. § 365(p)(1), where a lease of personal property is rejected or not timely assumed by the trustee under section 362(d), the debtors' interest in the leased property is no longer property of the estate and the automatic stay under section 362(a) is automatically terminated. Thus, the automatic stay terminated with respect to the Vehicle at 12:01 a.m. on April 7, 2014, by operation of 11 U.S.C. § 365(p)(1), and the debtors' possessory interest in the Vehicle has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

9. [14-24397](#)-B-7 RALPH/JOVANA ALTAMIRANO  
RVL-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
5-21-14 [[11](#)]

CALPINE PROPERTIES LTD. VS.

**Tentative Ruling:** The motion is dismissed without prejudice.

The movant did not give sufficient notice of the motion. The movant's notice of hearing (Dkt. 12) requires the written opposition to the motion be filed, invoking the court's procedures under LBR 9014-1(f)(1). Motions filed under LBR 9014-1(f)(1) must be filed and served no less than 28 days before the date of the hearing (31 days of service is made by a first class mail, Fed. R. Bankr. P. 9006(f)). Here, the movant's certificate of service (Dkt. 15) shows that the motion was served by United States mail on May 21, 2014, only 27 days before the date of the hearing. The motion does not request shortened time to allow the motion to be heard on this calendar under LBR 904-1(f)(1). Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.