

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 13, 2013 at 9:31 A.M.

-
1. [10-29623](#)-B-13 JASON/TAMMY PUTNAM MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
7-12-13 [[65](#)]
WELLS FARGO 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 pursuant to 11 U.S.C. § 362 (d) (1) in order to permit the movant to obtain possession of the leased vehicle, a 2009 Toyota Camry (VIN 4T1BK46K89U580330) (the "Vehicle"), to dispose of the Vehicle pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorney's 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 plan, filed June 12, 2010 (Dkt. 23) and confirmed by order entered September 30, 2010 (Dkt. 32) assumed the movant's lease. The movant alleges without dispute that the debtors failed to make two (2) post-petition lease payments. The debtors have breached the confirmed plan, which is cause for relief from the automatic stay.

The court will issue a minute order.

2. [11-30525](#)-B-7 LINDA BACA MOTION FOR RELIEF FROM
SAN-2 AUTOMATIC STAY
7-24-13 [[77](#)]
LESTER VAN PELT VS.

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

This matter is continued to August 20, 2013 at 9:32 a.m.

The case was converted to one under Chapter 7 on February 13, 2013. This matter is continued to the court's next Chapter 7 Law and Motion Calendar on August 20, 2013 at 9:32 a.m.

The court will issue a minute order.

U.S. BANK, N.A. VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is dismissed in part and denied in part. As to the debtor, the motion is dismissed as moot. The automatic stay terminated as to the debtor at 12:01 a.m. on July 5, 2013, by operation of 11 U.S.C. § 362(c)(3)(A). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit movant to obtain possession of the real property located at 6525 22nd Street, Rio Linda, CA 95673 (the "Property") in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. The request for retroactive relief from the automatic stay is denied without prejudice. Except as so ordered, the motion is denied.

As to the debtor, the motion is dismissed as moot. The court's records confirm that within the preceding one-year period of filing this chapter 13 petition the debtor had another chapter 13 petition dismissed. The debtor has not filed a motion to extend the automatic stay in this case. Therefore, the automatic stay terminated with respect to the debtor, at 12:01 a.m. on July 5, 2013, by operation of 11 U.S.C. § 362(c)(3)(A).

As to the estate, cause for modification of the automatic stay exists because movant acquired title to the Property at a pre-petition sale and neither the estate nor the debtor have any interest in the Property, other than a bare possessory interest.

The movant's request for retroactive relief from the automatic stay is denied without prejudice. The movant failed to cite or analyze the factors set forth in In re Fjeldsted, 293 B.R. 12, 24-25 (9th Cir. BAP 2003) (setting forth twelve factors to consider when deciding whether to annul the automatic stay) and submitted no evidence to support this extraordinary relief.

The movant's request for finding under 11 U.S.C. § 362(d)(4) is denied. The movant has failed to present evidence that the present bankruptcy petition was part of a "scheme" to delay, hinder, or defraud the movant that involved multiple bankruptcy filings affecting the Property. The movant merely alleges that this case is the fourth bankruptcy case filed since May 19, 2010 affecting the Property but failed to provide evidence connecting the first bankruptcy case filed by Alexander and Tatyana Markovich to the subsequent bankruptcy cases filed by the debtor. Without more, that is insufficient to support a finding under § 362(d)(4). See Downey Savings and Loan Ass'n. v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987) (Multiple filings by one debtor do not alone establish bad faith). Accordingly, the movant's request for finding under 11 U.S.C. § 362(d)(4) is denied.

The debtor's opposition is overruled. The debtor overlooks the fact that a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of claims. As stated by the Ninth Circuit Bankruptcy Appellate Panel in In re Luz Intern., Ltd., 219 B.R. 837, 842 (9th Cir. BAP 1998):

Given the limited grounds for obtaining a motion for relief from

stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. See In re Johnson, 756 F.2d 738, 740 (9th Cir.), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.") (citation omitted); In re Ellis, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985) ("In any case, stay litigation is not the proper vehicle for determination of the nature and extent of those rights."); Grella, 42 F.3d at 33 ("[W]e find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect, and ... a court hearing a motion for relief from stay should seek only to determine whether the party seeking relief has a colorable claim to property of the estate."); see also, 3 Collier on Bankruptcy ¶ 362.08 [6], 362-106 (15th ed. rev.1997).

In this case, the court finds that the movant has shown that it has a colorable claim to the Property, evidenced by the Trustee's Deed Upon Sale (Dkt. 31) (the "Deed"), which was timely recorded so as to vest title in the movant prior to the date of the filing of the petition in this case. The Deed is presumptive evidence of a regularly and fairly conducted foreclosure sale. 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal.App.4th 1279, 1284 (2001). Since the movant acquired title from a foreclosure sale held October 4, 2012, the movant presumptively held title to the Property prior to the filing of the petition, the Property did not become property of the debtor's estate and, for the purposes of this motion, they did not have an interest in the Property other than a bare possessory interest.

Furthermore, the debtor's arguments regarding "adequate notice" are not persuasive. Here, the Clerk's office re-noticed and continued the motion for hearing to which the debtor was properly served. Any perceived inadequacy of notice of the motion is now moot as function of the Clerk's office continuance of the motion for hearing on this calendar.

The court will issue a minute order.

4. [13-26082](#)-B-13 LINDA DIXON
WSS-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-15-13 [[33](#)]

AUBURN INVESTORS, LLC VS.

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

The motion is denied without prejudice.

The motion is denied without prejudice for procedural defects. The movant failed to serve the debtor as required by Fed. R. Bankr. P. 7004. As a contested matter under Fed. R. Bankr. P. 9014, the movant was required to serve the motion on the party against whom it seeks relief - in this case, the debtor - consistent with the requirements of Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 7004(g) states that if a debtor is

represented by an attorney, "whenever service is made upon the debtor . . . service shall also be made upon the debtor's attorney." Fed. R. Bankr. P. 7004(g) (emphasis added). Thus, service on the defendant's attorney alone is insufficient.

The court acknowledges that the movant served the defendant's attorney with the motion. The court further acknowledges the provisions of Fed. R. Bankr. P. 7005, incorporating Fed. R. Civ. P. 5(b)(1). However, even if the provisions of Fed. R. Bankr. P. 7005 arguably supersede the provisions of F. R. Bankr. P. 9014 for motions seeking relief from the automatic stay, this department requires the service of such motions on the party as well as the party's attorney. See Fed. R. Civ. P. 5(b)(1) ("...unless the court orders service on the party.").

The court will issue a minute order.

5. [12-40994](#)-B-13 MICHAEL LITTLE
JMW-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
7-2-13 [[117](#)]

RUSH FUNDING, LLC VS.

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

This matter is continued to September 10, 2013 at 9:31 a.m.

This matter is continued to permit resolution of the debtor's separate motion to value the movant's collateral. This motion depends on the outcome of the debtor's motion to value the movant's collateral

The court will issue a minute order.