

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 2, 2014 at 9:31 A.M.

1. [13-31901](#)-B-13 ELIZABETH ANDRADE
RMD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
7-23-14 [[32](#)]

SAFE CREDIT UNION VS.

Tentative Ruling: The stipulation to continue the hearing on this motion submitted to the court by the parties on August 26, 2014, is not approved. The motion is dismissed as moot. The debtor's confirmed chapter 13 plan (Dkt. 5), confirmed by order entered November 18, 2013 (Dkt. 23) already provides for relief from the automatic stay with respect to the movant's claim secured by real property located at 1629 Crowle Court, Folsom, California (APN 071-1640-020) (the "Property").

The debtor's plan provides for the movant's secured claim as a class 4 claim. Pursuant to section 2.11 of the plan, treatment in class 4 of the plan provides that upon confirmation, "all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." The parties do not dispute that the debtor is in default on the obligation underlying the movant's claim.

The court does not subscribe to the movant's alternative argument that the automatic stay may apply in this case because the movant's claim may have been "reclassified" as a class 1 or class 3 claim by virtue of the filing of a claim by the movant asserting pre-petition arrears. Such a theory confuses the reference to "classification" in section 2.04 which states that the proof of claim "shall determine the amount and classification of a claim," with the plan's structure of grouping claims into various classes. "Classification" in section 2.04 refers to whether or not a particular claim is secured, non-priority unsecured, or priority unsecured, and not to the specific class in which the claim is treated in the plan.

The court acknowledges that the debtor in her response and the parties in their stipulation have represented that they are negotiating an order for adequate protection. However, the court will not approve a stipulation for adequate protection where the automatic stay has already terminated pursuant to the terms of the confirmed plan. Adequate protection orders state conditions under which the automatic stay will remain in effect. Here, there is no automatic stay affecting the movant's claim. Nothing in this ruling prevents the debtor and the movant from negotiating and stipulating to a modification of the treatment of the movant's claim

under the plan for the purpose of curing a default; any such modification, however, will also have to be noticed to the chapter 13 trustee and all other creditors pursuant to a motion to modify the plan.

The court will issue a minute order.

2. [14-27047](#)-B-13 PAULETTE SYLVESTER
TRM-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-24-14 [[15](#)]

LOGAN PARK APARTMENTS, LLC
VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay of 11 U.S.C. § 362(a) does not apply to the continuation of the movant's proceedings to evict the debtor from real property located at 4141 Palm Avenue, #394, Sacramento, California (the "Property") and has not applied since the commencement of the bankruptcy case on July 7, 2014. The movant has the relief it seeks by the motion.

The movant alleges without dispute that it leased the Property to the debtor pursuant to a rental agreement. The court also takes judicial notice that the debtor listed the address of the Property on her petition as her street address, indicating that the Property is her residence. The movant alleges without dispute that it obtained a judgment for possession of the Property on June 30, 2014, prior the date of the filing of the petition on July 7, 2014. The debtor did not complete or serve on the movant the certification required by 11 U.S.C. § 362(l)(1), as she did not certify on her voluntary petition that she deposited with the clerk of the court rent that would become due during the 30-day period after the filing of the bankruptcy petition, and there is no evidence of service of the certifications contained in the petition on the movant. 11 U.S.C. § 362(b)(22) provides that, subject to 11 U.S.C. § 362(l), the automatic stay does not stay the continuation of any eviction, unlawful detainer action or similar proceeding in circumstances such as those presented here. The debtor does not comply with all of the requirements of § 362(l). Accordingly, section 362(l)'s limited exception to § 362(b)(22) never took effect. 11 U.S.C. § 362(l)(4).

The court will issue a minute order.

3. [14-26376](#)-B-13 CANDIDA HANSELL
ADR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-5-14 [[28](#)]

FRIENDLY ACRES MOBILE HOME
PARK VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay as to the debtor and the bankruptcy estate terminated with respect to real property located at 12055 Hwy 99 West Sp. #16, Red Bluff, California upon dismissal of the bankruptcy case by order entered August 25, 2014 (Dkt. 43). The movant has the relief that it seeks by this motion.

The court will issue a minute order.

4. [14-27895](#)-B-13 JACOB LARSON
LJC-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-14-14 [[12](#)]

MATHIAS REED VS.

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. This motion for relief from the automatic stay is governed by the requirements of Fed. R. Bankr. P. 4001(a), including the requirement that service of the motion be made in accordance with Fed. R. Bankr. P. 9014 as a contested matter. Fed. R. Bankr. P. 4001(a)(1). Fed. R. Bankr. P. 9014 requires that contested matters be noticed to the parties against whom relief is sought and served in the manner provided for service of a summons and complaint by Fed. R. Bankr. P. 7004.

In this case, the movant seeks relief against both the debtor and the bankruptcy estate for the purpose of proceeding with a personal injury action in El Dorado County Superior Court. However, there is no evidence on the court's docket that the movant properly served the debtor. The certificate of service (Dkt. 17) indicates that the movant only served the debtor's bankruptcy attorney and not the debtor himself. Fed. R. Bankr. P. 7004(g) states that if the debtor is represented by an attorney, whenever service is made upon the debtor under Fed. R. Bankr. P. 7004, "service shall also be made upon the debtor's attorney." Fed. R. Bankr. P. 7004(g) (emphasis added). The debtor must be served with the motion, in addition to his bankruptcy attorney; service on the bankruptcy attorney alone is insufficient. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.