

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

September 3, 2013 at 9:31 A.M.

-
1. [11-43501](#)-B-7 DONALD/PAMELA MORSE MOTION FOR RELIEF FROM
KMR-1 AUTOMATIC STAY
8-5-13 [[105](#)]
NATIONSTAR MORTGAGE LLC 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 debtors, the motion is dismissed as moot. The debtors received a discharge on December 19, 2012, and the automatic stay as to the debtors 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 7990 Orabelle Court, Sacramento, CA 95828 ("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 twenty-three (23) 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.

2. [13-27804](#)-B-7 SARA PACE-DUNN MOTION FOR RELIEF FROM
MBB-1 AUTOMATIC STAY
8-2-13 [[13](#)]
BANK OF AMERICA, N.A. VS.

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral, a 2011 Ford Edge (VIN 2FMDK3KCXBBA77427) (the "Collateral"), at 12:01 a.m. on August 16, 2013, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

There is no evidence that the debtor performed her stated intention (surrender) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The court will issue a minute order.

3. [13-22906](#)-B-7 REZA KASHIKAR MOTION FOR RELIEF FROM
KO-1 AUTOMATIC STAY
8-2-13 [[28](#)]
- OLYMPIA MORTGAGE FUND, LLC
VS.

Tentative Ruling: The motion is unopposed. The court issues the following tentative 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 June 17, 2013, 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 complete its judicial foreclosure on the following properties: Oregon House, CA (APN 060-170-022), Browns Valley, CA (APN 005-250-060), Browns Valley, CA (APN 005-410-016), and Browns Valley, CA (APN 005-250-049), and to obtain possession of the these properties following their sales, all in accordance with applicable non-bankruptcy law. Additionally, the automatic stay is modified as to the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to allow the movant to perfect its pre-petition attachment liens through recordation of an abstract of judgment on the following properties: 5549 Marysville Road, Browns Valley, CA (APN 005-250-011-0-00), 5541 Marysville Road, Browns Valley, CA (APN 005-250-016), 5543 Marysville Road, Browns Valley, CA (APN 005-250-015), and Unscheduled Yuba County Property (APN 005-250-065-0-00). The automatic stay is not modified to allow movant to enforce any resulting liens against the estate. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Relief is granted in this instance because the motion is unopposed, the trustee has filed a report of no distribution and the case would likely have been closed but for the pendency of this motion.

The court will issue a minute order.

4. [13-29606](#)-B-7 MARIA AVINA AND GUILLERMO MOTION FOR RELIEF FROM
JHW-1 AVINA-SEGURA AUTOMATIC STAY
8-5-13 [[9](#)]
- TD AUTO FINANCE LLC 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. Movant's request for relief from the automatic stay is dismissed as moot. Movant's request for an order confirming that no automatic stay is in effect in this case is granted pursuant to 11 U.S.C. § 362(c)(4)(A)(ii). No automatic stay went into effect upon the filing of the instant bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A)(i), and no request for an order that the stay take effect in the case was made within the time allowed by 11 U.S.C. § 362(c)(4)(B). Except as so ordered, the motion is denied.

The debtors have had two bankruptcy cases pending and dismissed within the past year. The first case, case no. 12-39652, was filed under Chapter 13 on November 7, 2012. The first case was dismissed on January 9, 2013 for ineligibility (debtors received credit counseling two weeks after the date of the petition in violation of § 362(h)). The second case, case no. 13-21558, was filed under Chapter 13 on February 5, 2013. The second case was dismissed on July 8, 2013 because the debtors failed to obtain confirmation of an amended Chapter 13 plan within the time allowed by court order dated April 16, 2013. Based on these filings and dismissals, the automatic stay did not go into effect upon the filing of the instant case by operation of 11 U.S.C. § 362(c)(4)(A)(i).

The court will issue a minute order.

5. [13-26221](#)-B-7 MICHAEL/TRACY WILSON MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
8-6-13 [[14](#)]
GREENTREE SERVICING, LLC 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 debtors, the motion is dismissed as moot. The debtors received a discharge on August 16, 2013, and the automatic stay as to the debtors 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 2209 Athens River Court, Rancho Cordova, CA 95670 ("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 three (3) 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 statement of non-opposition to the motion and a report of no distribution.

The court will issue a minute order.

6. [13-25827](#)-B-7 THOMAS PUGLIESE
PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-23-13 [[26](#)]

WELLS FARGO BANK, N.A. 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 August 22, 2013, 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 7736 Auburn Woods Drive, Citrus Heights, CA 95610 ("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. The court awards no fees and costs. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make twenty (20) 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 statement of non-opposition to the motion and a report of no distribution.

The court will issue a minute order.

7. [13-27539](#)-B-7 NATHAN/CATHLEEN BOLLONG
RCO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-2-13 [[16](#)]

OCWEN LOAN SERVICING LLC 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 foreclose on the real property located at 11137 Gay Road, Wilton, CA 95693 ("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 ordered waived. The court awards no fees and costs. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make twelve (12) 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 statement of non-opposition to the motion and a report of no distribution.

The court will issue a minute order.

8. [13-26744](#)-B-7 WILLIAM STOM MOTION FOR RELIEF FROM
RVP-1 AUTOMATIC STAY
7-26-13 [[13](#)]
BANK OF AMERICA, N.A. VS.

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative 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) in order to permit the movant to foreclose on the real property located at 3592 Granby Drive, Sacramento, CA 95827-3523 ("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 ordered waived. The court awards fees and costs. Except as so ordered, the motion is denied.

As it pertains to relief pursuant to 11 U.S.C. § 362 (d)(2), the motion is denied. According to the movant's own calculations, the fair market value of the Property is \$167,000.00. The total of all liens on the Property is \$144,874.51. Therefore, the debtor's equity in the Property is \$22,125.49.

Movant alleges without dispute that the debtor has failed to make eight (8) mortgage payments. Movant incorrectly alleges 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.

9. [12-40365](#)-B-11 SARAH GARLICK MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
8-1-13 [[173](#)]
DEUTSCHE BANK NATIONAL TRUST
CO. VS.

Tentative Ruling: The debtor's opposition is overruled and 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) in order to permit the movant to enforce its pre-petition unlawful detainer judgment on the real property located at 2664 14th Street, Sacramento, CA 95818 ("Property"), and to enforce all its other remedies in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. The court awards no fees and costs. Except as so ordered, the motion is denied.

The debtor's opposition is not persuasive. The debtor essentially argues that the movant never had legal authority to enter into the foreclosure sale of the Property and that the foreclosure sale should be declared void *ab initio*. Furthermore, the debtor alleges that the movant lacks an

"interest" in the Property due to defects in the chain of title to the Property. The debtor overlooks the fact, however, 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 unlawful detainer judgment of the Superior Court of California, County of Sacramento, Case Number 12UD06688 (Dkt. 179 at 54) and the writ of possession it currently holds (Dkt. 179 at 55-56).

The court will issue a minute order.

10. [13-25673](#)-B-7 JAMES/STEPHANIE THOMPSON MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
7-29-13 [[22](#)]

WELLS FARGO BANK, N.A. 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 debtors, the motion is dismissed as moot. The debtors received a discharge on August 13, 2013, and the automatic stay as to the debtors 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 3620 Stingy Lane, Anderson, CA 96007 ("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. The court awards no fees and costs. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make

