

# Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

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

1. 14-26240-B-11 FOLSOM LEARNING CENTER MOTION FOR RELIEF FROM  
BJD-1 ASSOCIATES AUTOMATIC STAY  
8-5-14 [20]  
  
BEST CHOICE MANAGEMENT, LP  
VS.

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

The motion is dismissed without prejudice.

The motion was not properly served. Pursuant to Fed. R. Bankr. P. 4001(a)(1), a motion for relief from the automatic stay in a chapter 11 case in which no committee of unsecured creditors has been appointed shall be made in accordance with Fed. R. Bankr. P. 9014 and shall be served on the creditors listed on the List of Creditors Holding 20 Largest Unsecured Claims filed pursuant to 11 U.S.C. § 1102. The movant's certificate of service (Dkt. 22) shows that the motion was not served on all of the creditors listed on the List of Creditors Holding 20 Largest Unsecured Claims. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

2. [14-22315](#)-B-11 BARRY JOHNSON MOTION FOR RELIEF FROM  
DJD-1 AUTOMATIC STAY  
8-13-14 [[75](#)]  
  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION 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.

3. [14-21034](#)-B-7 RICHARD FECTEAU  
MDE-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-31-14 [[92](#)]

ONEWEST BANK, N.A. VS.

**Tentative Ruling:** 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). To the extent it applies, the automatic stay is modified as to 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 1449 Marclair Drive, #A, B, C, D, Concord, California (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The movant's request for a finding pursuant to 11 U.S.C. § 362(d)(4) that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors is denied. 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 is not the borrower on the loan secured by the Property. Movant alleges without dispute that the loan is 71 months in default. 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 statement of non-opposition to the motion.

Movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied because the movant has not shown sufficient evidence that this bankruptcy case was part of a scheme to delay, hinder and defraud the movant. Movant alleges that the debtor, as a co-trustee of the Majiman Hafiz Revocable Trust, is an owner of record of the Property by way of a Grant Deed - Trust Transfer" executed and recorded on February 1, 2012, in the official records of Contra Costa County. Movant also alleges that the Property or an interest therein was subsequently transferred to other individuals on July 9, 2012, but the movant has not filed any copy of the Trust Transfer Grant Deed effecting that transfer and purportedly filed as Exhibit 6 to the motion. Due to this failure, the court cannot determine the nature of the interest in the Property transferred and whether or not the debtor continues to have any interest in the Property (hence the court's modification of the automatic stay as to the estate "to the extent it applies"). As a result, the movant has not presented sufficient evidence that this bankruptcy case, filed two years after an interest in the Property was transferred to the debtor, is part of a scheme to delay, hinder or defraud the movant.

The court will issue a minute order.

4. [14-26611](#)-B-7 STEVEN/SHANON NELSON MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
8-18-14 [[12](#)]  
CHRISTIANA TRUST 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.

5. [14-24821](#)-B-7 DAVID/LINDSAY SCOTT MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY  
7-16-14 [[13](#)]

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii), the court confirms that no automatic stay went into effect upon the commencement of this case, and that no automatic stay has been ordered into effect in this case as to either the debtor or the bankruptcy estate.

The movant alleges without dispute that the debtors have had two previous bankruptcy cases pending within the prior year, both of which were dismissed. No party in interest has made a timely motion under 11 U.S.C. § 362(c)(4)(B) for an order that the automatic stay take effect in this case. Accordingly, the automatic stay did not go into effect on the filing of this case pursuant to 11 U.S.C. § 362(c)(4)(A)(i).

The court will issue a minute order.

6. [14-25922](#)-B-7 MARTHA HERNANDEZ MOTION FOR RELIEF FROM  
PPR-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-30-14 [[22](#)]  
U.S. 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. 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 2025 East Weber Avenue, Stockton, California (APN 153-112-06) (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 thirty-eight (38) 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 at a statement of non-opposition to the motion. The debtor has filed a statement of intention to surrender the Property.

The court will issue a minute order.

7. [14-27528](#)-B-7 KARA SKLAR MOTION FOR RELIEF FROM  
JDM-1 AUTOMATIC STAY  
8-19-14 [[19](#)]  
  
STANFORD FEDERAL CREDIT  
UNION 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.

8. [14-25056](#)-B-7 TRINIDAD/SHERI RIZO MOTION FOR RELIEF FROM  
ASW-1 AUTOMATIC STAY  
8-1-14 [[15](#)]  
  
BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(1). Because the debtors have filed a statement of intention to surrender the Property (as that term is defined herein) the court issues the following tentative 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 September 2, 2014, 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 9447 Courtney Court, Stockton, California 95210 (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 thirty-two (32) 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 debtors have filed a statement of non-opposition to the motion and a statement of intention to surrender the Property.

The court will issue a minute order.

9. [14-26858](#)-B-7      PAUL SEDANO AND JULIE      MOTION FOR RELIEF FROM  
APN-1      GALVAN-SEDANO      AUTOMATIC STAY  
8-11-14 [[10](#)]  
  
SANTANDER CONSUMER USA, INC.  
VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2008 Nissan Altima (VIN 1N4AL21E48N406725) (the "Collateral"), at 12:01 a.m. on August 30, 2014, 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 debtors performed their stated intention (surrender) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B). The movant alleges without dispute that the debtors remain in possession of the Collateral.

The court will issue a minute order.

10. [14-26361](#)-B-7      JASON/CATHLEEN WILLIAMS      MOTION FOR RELIEF FROM  
RFM-1      AUTOMATIC STAY  
8-6-14 [[13](#)]  
  
KEYBANK, N.A. VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated with respect to the 2004 Centurion Sport BWR (VIN FNEU0838G304) (the "Boat") at 12:01 a.m. on August 16, 2014, by operation of 11 U.S.C. § 362(h), and the Boat has from that date no longer been property of the estate. The automatic stay terminated with respect to the 2004 Mercury (VIN 3150M392413) (the "Motor") at 12:01 a.m. on July 16, 2014, by operation of 11 U.S.C. § 362(h), and the Motor has from that date no longer been property of the estate. The automatic stay terminated with respect to the 2004 V/M Tandem (VIN 1VMBG222341022496) (the "Trailer") at 12:01 a.m. on July 16, 2014, by operation of 11 U.S.C. § 362(h), and the Trailer has from that date no longer been property of the estate.

The automatic stay terminated with respect to the Boat because there is no evidence that the debtors performed their stated intention (surrender) with respect to the Boat within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The automatic stay terminated as to the Motor and the Trailer because the debtors did not file compliant statements of intention with respect to the Motor and the Trailer within the time allowed by 11 U.S.C. §

521(a)(2).

The court will issue a minute order.

11. [14-25966](#)-B-7 ROBERTO RAMIREZ MOTION FOR RELIEF FROM  
MJ-1 AUTOMATIC STAY  
7-15-14 [[18](#)]  
NATIONSTAR MORTGAGE, LLC VS.

**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 automatic stay as to the debtor expired at 12:01 a.m. on July 5, 2014, by operation of 11 U.S.C. § 362(c)(3)(A) because the debtor filed a previous case which was pending and dismissed within the one-year period preceding the filing of the instant case and he failed, within the time required by 11 U.S.C. § 362(c)(3)(B), to obtain a continuation of the automatic stay. 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 2440 Beaufort Drive, Fairfield, California 94533 (APN 0168-292-140) (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. The movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make twenty-five (25) 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. The foregoing constitutes cause for relief from the automatic stay.

The movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied. The mere fact that the debtor has had a previous case dismissed, without more, does not establish that he has engaged in a scheme to delay, hinder, or defraud creditors. The court notes that multiple filings alone do not establish bad faith. Downey Savings and Loan Ass'n. v. Metz (In re Metz), 820 F.2d 1495, 1497 (9<sup>th</sup> Cir. 1987).

The court will issue a minute order.

12. [14-21270](#)-B-7 PAUL/MELISSA KOCH MOTION FOR RELIEF FROM  
NLG-1 AUTOMATIC STAY  
8-6-14 [[31](#)]  
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 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 9400 Tonkin Drive, Orangevale, 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 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.

13. [14-23987](#)-B-7 PRUDENCIO RAMISCAL  
RCO-2

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-12-14 [[26](#)]

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.

The debtor's request for a continuance (Dkt. 37) will be considered at the hearing.