

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

October 14, 2014 at 9:31 A.M.

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1. [14-20226](#)-B-13 NEERAJ/KALYANI KUMAR CONTINUED MOTION FOR RELIEF  
JCW-1 FROM AUTOMATIC STAY  
8-27-14 [[133](#)]  
U.S. BANK, N.A. VS.  
CASE DISMISSED 9/22/14

**Tentative Ruling:** None.

2. [14-25632](#)-B-13 CASEY/LACEY HUDSON MOTION FOR RELIEF FROM  
EAT-1 AUTOMATIC STAY  
9-5-14 [[30](#)]  
MIDFIRST BANK VS.

**Tentative Ruling:** The motion is dismissed as moot. The plan, filed July 30, 2014 (Dkt. 25), confirmed by order entered October 10, 2014 (Dkt. 38), already provides relief from the automatic stay for this Class 3 claim regarding real property located at 710-340 Lake Avenue, Susanville, California. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

3. [14-29264](#)-B-13 JOANN SPRINGER MOTION FOR RELIEF FROM  
PRK-1 AUTOMATIC STAY  
9-26-14 [[13](#)]  
CAMPANILE TRUST #6547  
VS.

**Tentative Ruling:** The motion is dismissed as moot, due to the dismissal of the bankruptcy case by order entered October 10, 2014 (Dkt. 29). The movant already has the relief it seeks with respect to the real property located at 6547 Campanile Street, Rio Linda, California (APN 214-0272-002).

The court will issue a minute order.

4. [14-22472](#)-B-13 TIMOTHY KRUSE  
SW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-16-14 [[100](#)]

ALLY FINANCIAL, INC. VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, because the debtor has filed a statement of non-opposition to the motion, the court issues the following 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 permit the movant to obtain possession of its collateral, a 2009 Chevrolet Silverado (VIN 1GCHK53609F180486) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

The debtor's proposed amended plan provides for the movant's claim secured by the Collateral in class 4, pursuant to which the debtor is to make payments directly to the movant. The movant alleges without dispute that the debtor has failed to make four post-petition payments. This constitutes a lack of adequate protection and cause for relief from the automatic stay. The debtor has filed a statement of non-opposition to the motion.

The court will issue a minute order.

5. [12-20182](#)-B-13 ROBERT MITCHELL  
ASW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
9-3-14 [[51](#)]

BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** The motion is granted in part and dismissed in part. The movant's request for relief from the automatic stay of 11 U.S.C. § 362(a) is dismissed as moot. Confirmation of the debtor's chapter 13 plan (Dkt. 25) by order entered April 23, 2012 (Dkt. 43) already provides for modification of the automatic stay with respect to movant's collateral consisting of real property located at 12884 Chatsworth Lane, Grass Valley, California (the "Property"). The movant's request for relief from the co-debtor stay of 11 U.S.C. § 1301(a) is granted, and the co-debtor stay is modified as to co-debtor Kathleen Mitchell to allow the movant foreclose on the Property and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law.

The court finds that continuation of the co-debtor stay would irreparably harm the movant's interest in the Property. 11 U.S.C. § 1301(c) (3).

The court will issue a minute order.

6. [14-27099](#)-B-13 JOHN/CYNTHIA MOORE  
FWK-2

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-9-14 [[67](#)]

BARBARA MARCOTTE VS.

**Tentative Ruling:** The debtors' opposition is overruled. 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 5137 Marysville Boulevard, Sacramento, California (APN 226-0131-012-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees and costs. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The debtors' proposed first amended plan (Dkt. 62) provides for the movant's claim as a class 1 claim, to be paid to the movant by the chapter 13 trustee from the debtors' chapter 13 plan payments. The first amended plan proposes payments of \$2,321.86 per month. The movant has shown evidence in the form of a printout from the chapter 13 trustee's case management web site showing that as of October 6, 2014, the debtors have not made any payment to the chapter 13 trustee since the July 9, 2014, petition date, despite two payments having been due. The foregoing constitutes a lack of adequate protection and cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The statement in the debtors' opposition that joint debtor John Moore informed the debtors' counsel that he had the payment due August 25, 2014, on September 26, 2014, is an unsworn statement that is hearsay to which the movant has objected in its reply and is not admissible evidence that the debtors made any payment to the chapter 13 trustee.

In addition, the debtors do not dispute that the value of the Property is \$60,000.00 and that the Property is encumbered by a lien for delinquent real property taxes in the amount of approximately \$30,671.00 as well as the deed of trust obligation in favor of the movant with a balance of \$64,580.00. The debtors do not have an equity in the Property. See Stewart v. Gurley, 745 F.2d 1194, 1195 (9<sup>th</sup> Cir. 1984) ("equity" refers to the difference between the value of the property and all encumbrances upon it") (emphasis added). The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity.

Once lack of equity is established, the burden is on the debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization

within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988). The debtors have not satisfied the foregoing standard. Considering the evidence of the debtors' failure to make any plan payment since the commencement of the bankruptcy case, they have not shown that they will be able to confirm a chapter 13 plan within a reasonable time. This constitutes grounds for relief from the automatic stay under 11 U.S.C. § 362(d)(2).

The court will issue a minute order.