

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 14, 2014 at 9:31 a.m.

1. [14-29972](#)-B-7 PIEDMONT LUMBER & MILL MOTION FOR RELIEF FROM
 STS-1 COMPANY, INC. AUTOMATIC STAY
 10-20-14 [[17](#)]

KEN LUSBY CLERKS AND LUMBER
HANDLERS PENSION FUND 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.

2. [14-29972](#)-B-7 PIEDMONT LUMBER & MILL MOTION FOR RELIEF FROM
 EBD-2 COMPANY, INC. AUTOMATIC STAY O.S.T.
 10-24-14 [[27](#)]

GUY HOWE VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

3. [14-27733](#)-B-7 S.R. TRUCKING, MOVING & CONTINUED MOTION FOR RELIEF
 HRH-1 STORAGE, INC., A FROM AUTOMATIC STAY
 9-19-14 [[48](#)]

VS. WELLS FARGO BANK, N.A.

Disposition Without Oral Argument: This motion continued from October 7, 2014, at 9:31 a.m. The court established a briefing schedule. No party in interest having filed opposition pursuant to the briefing schedule, this motion is unopposed. The court now issues the following ruling on the merits of the motion.

The motion is granted in part, and the automatic stay is modified as against the debtor and the estate pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movant to apply the \$4,000.00 security deposit it currently has in its possession to set off the total balance the debtor owes on seven (7) individual credit cards in the amount of \$4,352.35. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3)

is waived. Except as so ordered, the motion is denied.

The movant alleges without dispute and provides evidence that on or about April 22, 2013, the debtor executed a "Business Direct Credit Application, Agreement & Personal Guarantee" (Dkt. 52, pp.3-4) (the "Application") pursuant to which it sought the use of the movant's credit facilities and the issuance of secured credit cards for use in its business operations. The Application was approved on or about May 13, 2013 (Dkt. 52, p.5). Pursuant to the "Business Secured MasterCard Credit Card Agreement" (Dkt. 52, pp.6-15) (the "Agreement"), the debtor was issued a total of nine (9) credit cards. However, only seven of the credit cards remain open as two were closed and set-off pre-petition. The movant further alleges without dispute that it currently possesses \$4,000.00 in security deposits pursuant to the Agreement and that it has performed each, every, and all of its obligations under the Agreement. However, the remaining seven credit cards are currently in default in the amount of \$4,352.35, and the debtor is not making post-petition payments. Furthermore, the debtor has no equity in the credit cards and they are not necessary to an effective reorganization in this chapter 7 case. The foregoing constitutes cause to grant the movant relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2).

The court will issue a minute order.

4. [14-28540](#)-B-7 AMBER DANIEL MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
10-3-14 [[32](#)]
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 2007 GMC Acadia (VIN 1GKER137X7J137045) (the "Collateral"), at 12:01 a.m. on October 23, 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 on the court's docket 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.

5. [14-28042](#)-B-7 CHARLES/KARNA-LISA AUCOIN MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
10-6-14 [[15](#)]
CITIMORTGAGE, INC. 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 debtors 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 1355 Johnson Avenue, Marysville, California (APN 008-382-019) (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 forty (40) 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. [14-28347](#)-B-7 CINDY KYTE
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-6-14 [[12](#)]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2006 Chrysler 300 (VIN 2C3LK63H46H107542) (the "Collateral"), at 12:01 a.m. on September 17, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2). A statement of intention that merely states that the debtor intends to retain the Collateral and stay current on payments is not a compliant statement of intention. 11 U.S.C. § 362(h)(1)(A). If retaining the collateral, the statement of intention must state that the debtor will either redeem the collateral or reaffirm the debt secured by the Collateral. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

The court will issue a minute order.

7. [14-23552](#)-B-7 SANDRA VERA
PPR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-23-14 [[57](#)]

LEHMAN XS TRUST MORTGAGE
PASS-THROUGH CERTIFICATES
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 debtor received a discharge on October 2, 2014, 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 8861 Monterey Oaks Drive, Elk Grove, California 95758 (APN 116-1210-046) (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 debtor has failed to make seventeen (17) 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 report of no distribution and a statement of non-opposition to the motion.

The court will issue a minute order.

8. [14-27953](#)-B-7 CLAUDIA TENNIS MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-2-14 [[27](#)]
- BAYVIEW LOAN SERVICING, LLC
VS.

Tentative Ruling: This motion is unopposed. In this instance, because the debtor is pro se, the court issues the following tentative 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 4808 Dahlia Drive, Stockton, California 95212 (APN 086-060-18) (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 attorney's fees and costs is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make twenty-seven (27) 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.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

9. [14-24762](#)-B-7 ORVILLE/PEARL WACKER MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
10-1-14 [[22](#)]
- WELLS FARGO BANK, N.A. VS.

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 August 14, 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 2057 Sweet Valley Road, El Dorado Hills, California 95762 (APN 102-180-010) (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 attorney's fees and costs is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make nine (9) 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.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

10. [12-27767](#)-B-11 DOMINIQUE ENGEL
TF-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-7-14 [[296](#)]

GITTA VAUGHAN VS.

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

The motion is granted in part, and the automatic stay is modified as against the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to file and prosecute in state court an action for partition by sale of real property located at 12057 Fair Oaks Boulevard, Citrus Heights, California 95610 (APN 233-0430-002, -007, -041) (the "Property") and to sell the Property should a judgment be obtained, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that she is the trustee of the Christian Engel 2004 Revocable Trust (the "Trust"), which holds a 50% undivided interest in the Property. The debtor holds the other 50% interest. The movant further alleges without dispute that the Trust asserts an equitable lien for unreimbursed expenses of the Property against the debtor's 50% undivided interest in the Property. The movant further alleges without dispute that she has attempted to sell the Property but has failed to obtain the debtor's cooperation in the matter. The movant further alleges without dispute that sale of the Property and distribution of the proceeds to its beneficiaries (including two daughters of the debtor) is in the best interest of the Trust and allows the administration of the Trust to be finalized. In the absence of opposition, the court finds that the debtor's prevention of the orderly liquidation of an asset of the Trust constitutes cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The court will issue a minute order.

11. [14-25888](#)-B-7 KEVIN WILLIAMS
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-24-14 [[81](#)]

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 2009 Kia Spectra (VIN KNAFE222895667398) (the "Collateral"), at 12:01 a.m. on September 30, 2014, by operation of 11 U.S.C. § 362(h) (and allowing for the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1)), and the Collateral has from that date no longer been property of the estate.

The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2). A statement of intention that merely states that the debtor intends to "retain and pay" is not a compliant statement of intention. 11 U.S.C. § 362(h)(1)(A). If retaining the Collateral, the statement of intention must state that the debtor will either redeem the Collateral or reaffirm the debt secured by the Collateral. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008).

The court will issue a minute order.

12. [14-28311](#)-B-7 DONNA HOLLIDAY
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-29-14 [[9](#)]

TOYOTA MOTOR CREDIT
CORPORATION VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2013 Toyota Corolla (VIN 5YFBU4EE2DP111878) (the "Collateral"), at 12:01 a.m. on September 16, 2014, by operation of 11 U.S.C. § 362(h) (and allowing for the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1)), and the Collateral has from that date no longer been property of the estate.

The debtor did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2).

The court will issue a minute order.

13. [14-29129](#)-B-7 JIMMY/JENNAPHER BELL
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-1-14 [[10](#)]

GATEWAY ONE LENDING &
FINANCE, LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2007 Chevrolet

Silverado (VIN 1FTSX31568EB88666) (the "Collateral"), at 12:01 a.m. on October 14, 2014, by operation of 11 U.S.C. § 362(h) (and allowing for the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1)), and the Collateral has from that date no longer been property of the estate.

The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2).

The court will issue a minute order.