

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 12, 2013 at 9:31 A.M.

1. [13-30811](#)-B-7 MIGUEL SAAVEDRA MOTION FOR RELIEF FROM
 APN-1 AUTOMATIC STAY
 10-11-13 [[12](#)]

 NISSAN - INFINITI, LT VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the subject vehicle, a leased 2012 Nissan Maxima (VIN 1N4AA5AP3CC835786) (the "Vehicle") at 12:01 a.m. on October 16, 2013 by operation of 11 U.S.C. § 365(p) (1), and the debtor's possessory interest in the Vehicle has from that date has no longer been property of the estate.

Debtor's petition was filed under chapter 7 on August 16, 2013. Pursuant to the applicable terms of 11 U.S.C. § 365(d) (1), the trustee may assume or reject an unexpired lease of personal property of the debtor within sixty (60) days after the order for relief. In this case, as of October 15, 2013, sixty days after the filing of debtor's petition, the chapter 7 trustee had not assumed or rejected the lease of the Vehicle. Pursuant to 11 U.S.C. § 365(p) (1), where a lease of personal property is rejected or not timely assumed by the trustee under section 362(d), the debtor's interest in the leased property is no longer property of the estate and the automatic stay under section 362(a) is automatically terminated. Thus, the automatic stay terminated with respect to the Vehicle at 12:01 a.m. on October 16, 2013, by operation of 11 U.S.C. § 365(p) (1), and the debtor's possessory interest in the Vehicle has from that date no longer been property of the estate. The movant already has the relief it seeks by this motion.

The court will issue a minute order.

2. [13-32317](#)-B-7 CHRISTY MARROQUIN MOTION FOR RELIEF FROM
 SW-1 AUTOMATIC STAY
 10-22-13 [[20](#)]

 WELLS FARGO BANK N.A. VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is dismissed as moot. The automatic stay terminated as to the collateral, a 2012 Honda Civic (VIN 2HGFB2F89CH310923) (the "Vehicle"), at 12:01 a.m. on October 21, 2013, by operation of 11 U.S.C. § 362(h),

and the Vehicle has from that date no longer been property of the estate.

In order to avoid an automatic termination of the automatic stay under Section 362(h)(1), the debtor must do three things. First, the debtor must timely file a statement of intention. Second, the debtor must indicate in the statement specific things - that the debtor will either surrender or retain the collateral, and if retaining, either redeem the collateral or reaffirm the debt secured by the collateral. Third, the debtor must timely perform the stated intention. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R. 481, 486 (B.A.P. 9th Cir. 2008). A statement of intention is timely filed if it is filed "within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier..." 11 U.S.C. § 521(a)(2)(A).

The debtor filed her voluntary chapter 7 petition on September 20, 2013. Pursuant to 11 U.S.C. § 521(a)(2)(A), the debtor was to file with the court her statement of intention regarding the Vehicle by October 20, 2013. The debtor failed to file her statement of intention regarding the Vehicle within the allowed time. Therefore, the automatic stay with respect to the Vehicle has already terminated by operation of 11 U.S.C. § 362(h)(1) and the movant has already received the relief it seeks.

The court will issue a minute order.

3. [12-33922](#)-B-7 LINDA EDWARDS MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
9-19-13 [[104](#)]
THE BANK OF NEW YORK MELLON
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 debtor 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 11094 Roanoke River Ct., Rancho Cordova, CA 95670 (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 thirty-seven (37) 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.

4. [13-31323](#)-B-7 STEVE/MICHELLE JORGENSEN MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
10-10-13 [[13](#)]
TD AUTO FINANCE, LLC VS.

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

The moving party withdrew this motion on November 4, 2013 (Dkt. 23), and it is dropped from the calendar.

The court will issue a minute order.

5. [08-22725](#)-B-11 BAYER PROTECTIVE MOTION FOR RELIEF FROM
JHK-1 SERVICES, INC. AUTOMATIC STAY
10-2-13 [[680](#)]
FORD MOTOR CREDIT COMPANY
LLC VS.

Tentative Ruling: The motion is dismissed without prejudice.

The motion was not properly served. Specifically, the motion was not served on the chapter 11 trustee and plan administrator for this case, Jonathan Tesar, or his counsel.

The motion is dismissed based on the movant's failure to serve the chapter 11 trustee and plan administrator. In addition, the court notes that the motion does not address the fact that a chapter 11 plan was confirmed in this case by order entered January 3, 2011 (Dkt. 652), which confirmed plan provides for the movant's secured claim in class 1.1. The court acknowledges that the confirmed plan treats the movant's secured claim as an unimpaired claim, but that the plan treatment also indicates that the debtor re-negotiated loans for vehicles financed by the movant. The motion does not address the impact of the confirmed plan on the movant's claim.

The court will issue a minute order.

6. [13-31429](#)-B-7 SALVADOR RIVAS MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-17-13 [[13](#)]
FIRST TECH 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.

7. [13-31741](#)-B-7 PATRICIA GRIEB MOTION FOR RELIEF FROM
MBB-1 AUTOMATIC STAY
10-9-13 [[14](#)]

BANK OF AMERICA, N.A. VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2012 Surveyor ORSPT230 (VIN 4X4TSVY23C2471105) (the "Collateral"), at 12:01 a.m. on October 8, 2013, 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).

The court will issue a minute order.

8. [13-29245](#)-B-7 NIKOLAY KACHAGIN AND MOTION FOR RELIEF FROM
RCO-1 NADEZHDA KACHAGINA AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-15-13 [[22](#)]

U.S. BANK NATIONAL
ASSOCIATION 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 November 5, 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 6528 Hitchcock Way, Sacramento, California (APN 117-0043-010-0000) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. 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 fourteen (14) 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 debtors have filed a statement of intention to surrender the Property.

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. [13-33162](#)-B-7 SCOTT/GENEVIEVE WREYFORD MOTION FOR RELIEF FROM
MMW-1 AUTOMATIC STAY
10-17-13 [[9](#)]
DFI FUNDING, INC. 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.

10. [13-31890](#)-B-7 LISA THORNTON MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
10-24-13 [[15](#)]
CENTRAL MORTGAGE COMPANY VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. 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 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 710 Circuit Drive, Roseville, California (APN 012-131-033) ("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 ten (10) 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 debtor has filed a statement of non-opposition to the motion. The trustee has filed a report of no distribution.

The court will issue a minute order.

11. [13-21893](#)-B-7 STANISLAV LAZUTKINE
MF-1

CONTINUED MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
AND/OR MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-1-13 [[50](#)]

CORRIGAN FINANCE LIMITED VS.

Tentative Ruling: None.