

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

November 26, 2013 at 9:31 A.M.

- 
1. [13-32908](#)-B-7 LEE ROTH MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
10-24-13 [[10](#)]  
TD AUTO FINANCE LLC VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the collateral, a 2013 Chevrolet Silverado (VIN 3GCPKE76DG376035) (the "Vehicle"), at 12:01 a.m. on November 2, 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. 9<sup>th</sup> 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 his voluntary chapter 7 petition on October 2, 2013. Pursuant to 11 U.S.C. § 521(a)(2)(A), the debtor was to file with the court his statement of intention regarding the Vehicle by November 1, 2013. The debtor failed to file his 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.

2. [13-25214](#)-B-11 ABF LIMITED PARTNERSHIP MOTION FOR RELIEF FROM  
MWP-1 AUTOMATIC STAY  
10-29-13 [[45](#)]  
HOMESTEAD MORTGAGE INCOME  
FUND, LLC VS.

**Tentative Ruling:** The motion is granted in part and denied in part. Relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) is

denied. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. §§ 362 (d) (2) in order to permit the movant to foreclose on the properties located at 8640 Auburn Folsom Road, Granite Bay, CA, and 777 Levy Road, Folsom, CA (collectively, the "Properties") and to obtain possession of the Properties following the sale, all in accordance with the applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bank. P. 4001(a) (3) is ordered waived. Except as so ordered, the motion is denied.

The motion does not show sufficient cause for relief from the automatic stay under 11 U.S.C. § 362(d) (1). The movant alleges that its interests in the Properties is not adequately protected because the debtor has failed to make any post-petition payments. However, a failure to make monthly payments is not cause for relief in a chapter 11 case. In re Air Beds, Inc., 92 B.R. 419, 422 (9<sup>th</sup> Cir. BAP 1988) ("The general rule is that a distribution on pre-petition debt in a Chapter 11 case should not take place except pursuant to a confirmed plan of reorganization, absent extraordinary circumstances."). The movant does have a right to protection from depreciation in the value of its collateral that would impair its secured claim. In re Mellor, 734 F.2d 1396, 1400 n.2 (9<sup>th</sup> Cir. 1984) ("Equity cushion" has been defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect." [emphasis added]). See, also, United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371, 98 L.Ed.2d 740, 108 S.Ct. 626, 629-630 (1988) ("It is common ground that the 'interest in property' referred to by § 362(d) (1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay." [emphasis added]). Here, the movant has provided no evidence that the Properties are depreciating in value.

The motion is granted pursuant to 11 U.S.C. § 362(d) (2). The movant alleges without dispute that the total value of its claim is \$1,388,575.23. The value of the property located at 8640 Auburn Folsom Road is approximately \$225,000.00. The value of the property located at 777 Levy Road, Folsom, CA is approximately \$2,200,000.00. The Levy Road property is encumbered by a senior deed of trust in favor of Zion's First National Bank with an approximately value of \$1,300,000.00. Considering these figures, the debtor does not have equity in the Properties. 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"). The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity.

Once a 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 debtor has not satisfied the foregoing standard. The debtor has not opposed this motion. Therefore, for purposes of this motion, the court finds that debtor has not carried its burden of showing that there is a reasonable possibility of a successful reorganization within a reasonable time.

The court will issue a minute order.

3. [13-32317](#)-B-7 CHRISTY MARROQUIN MOTION FOR RELIEF FROM  
TL-1 AUTOMATIC STAY  
10-15-13 [[14](#)]  
FIRST MORTGAGE CORPORATION  
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 3577 Della Lane, Cottonwood, CA 96022 (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 five (5) 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. [13-29737](#)-B-7 PADRINO/DEBRA LOPEZ MOTION FOR RELIEF FROM  
RMD-1 AUTOMATIC STAY  
10-29-13 [[15](#)]  
EVERBANK 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 9013 South Endow Road, French Camp, CA 95231 (APN 193-240-58) (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 or costs. 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 sixteen (16) 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.

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.

5. [13-26640](#)-B-7 DONNA/HARVEY BILLS CONTINUED MOTION FOR RELIEF  
CJO-1 FROM AUTOMATIC STAY  
8-23-13 [[48](#)]
- JPMORGAN CHASE 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. Therefore, the court issues no tentative ruling on the merits of the motion.

6. [13-33458](#)-B-7 ROY ARRIAGA MOTION FOR RELIEF FROM  
PKB-1 AUTOMATIC STAY  
10-22-13 [[12](#)]
- GREEN TREE 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 debtor pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 1979 60x24 Golden West Key West Manufactured Home, Ser. No. GW6CAL62373AB (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make three (3) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intention to surrender the Collateral.

The court will issue a minute order.

7. [13-30661](#)-B-7 CHRISTOPHER TAIJERON  
RMD-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-16-13 [[13](#)]

HSBC BANK USA, 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 debtor, the motion is dismissed as moot. The debtor received a discharge on November 25, 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 746 Newport Way, Vallejo, CA 94589 (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 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 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.

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.

8. [13-30683](#)-B-7 RUBEN NAVARRO  
MJA-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
10-23-13 [[26](#)]

FEDERAL HOME LOAN MORTGAGE  
CORPORATION VS.

**Tentative Ruling:** This is a properly filed motion under Local Bankruptcy Rule 9014-1(f)(1). Because the debtor is in pro se, the court issues the following abbreviated tentative 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). The court awards the movant no fees and costs. Except as so ordered, the motion is denied.

The debtor has had two (2) bankruptcy cases pending and dismissed within the past year. The first case, case no. 13-26297, was filed under chapter 7 on May 7, 2013. The first case was dismissed on July 23, 2013 because the debtor failed to appear at the section 341(a) meeting of creditors. The second case, case no. 13-29132, was filed under chapter 7 on July 9, 2013. The second case was dismissed on July 30, 2013 because the debtor failed to timely file required document(s). 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).

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. [13-28686](#)-B-7 KATHERINE SINDEL MOTION FOR RELIEF FROM  
KSW-1 AUTOMATIC STAY  
10-16-13 [[15](#)]  
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 and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on October 15, 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 1045 Rough and Ready Hill Road, Colfax, CA 95713 (APN 071-031-015) (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 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 debtor has failed to make seven (7) 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.

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. [13-33688](#)-B-7 VICTORIA/RICKY MCDANIEL MOTION FOR RELIEF FROM  
CW-1 AUTOMATIC STAY  
11-12-13 [[20](#)]  
CARL WHITESIDE 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.

11. [13-32990](#)-B-7 PATRICIA PENGELLY MOTION FOR RELIEF FROM  
RFM-1 AUTOMATIC STAY  
10-22-13 [[12](#)]  
CHARTER ONE 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 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 obtain possession of its collateral, a 2004 Concord 225 RK (VIN 1FDXE45S24HA07956) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make one (1) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intention to surrender the Collateral.

The court will issue a minute order.

12. [13-21893](#)-B-7 STANISLAV LAZUTKINE CONTINUED MOTION TO CONFIRM  
MF-1 TERMINATION OR ABSENCE OF STAY  
AND/OR MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
10-1-13 [[50](#)]  
CORRIGAN FINANCE LIMITED 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 pursuant to the terms of the stipulation filed by the parties on November 11, 2013 (Dkt. 80), which

stipulation was approved by court order signed November 22, 2013.

The court will issue a minute order.

13. [13-29994](#)-B-7 VAN/LAJUANA THOMPSON MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
10-23-13 [[15](#)]
- SETERUS, INC. 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 4, 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 2231 Drummond Drive, Yuba City, CA 95991 (APN 55-060-060) (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 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 sixteen (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.

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.