

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

December 9, 2014 at 9:31 A.M.

1. [14-27713](#)-B-7 KENNETH/MARIA CHAPMAN MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
10-23-14 [[13](#)]
BANK OF AMERICA, N.A. 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 October 29, 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 7850 Shellbrook Court, Sacramento, California (APN 1150560009) (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 eleven (11) 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 intention to surrender the Property. The chapter 7 trustee has filed a report of no distribution.

The court will issue a minute order.

2. [14-29414](#)-B-7 ANTHONY HASIAK, JR. AND MOTION FOR RELIEF FROM
PPR-1 BARBARA HASIAK AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-23-14 [[10](#)]
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 2002 Bounder (VIN 1FCNF53S110A20273) (the "Collateral"), at 12:01 a.m. on November 29, 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 court will issue a minute order.

3. [14-31341](#)-B-7 LAWRENCE GARRETT MOTION FOR RELIEF FROM
FWK-1 AUTOMATIC STAY
11-24-14 [[15](#)]
BARBARA MARCOTTE VS.

Tentative Ruling: The movant's request for relief from the automatic stay is dismissed as moot. The movant's request for a finding under 11 U.S.C. § 362(d)(4) is denied.

The movant's request for relief from the automatic stay is dismissed because the bankruptcy case was dismissed by order entered December 8, 2014 (Dkt. 22), due to the debtor's failure to file the documents described in the Notice of Incomplete Filing filed on November 18, 2014 (Dkt. 3).

The movant's request for a finding under 11 U.S.C. § 362(d)(4) that the bankruptcy case was filed as part of a scheme to delay, hinder and defraud the movant is denied because a finding under 11 U.S.C. § 362(d)(4) is made as part of a ruling granting relief from the automatic stay. Section 362(d) begins with the language "On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section," and it then continues with four numbered subparagraphs, the last of which deals with relief from a stay of an act against real property if the court makes certain findings. However, those findings are only made as a basis for granting relief from the stay imposed by 11 U.S.C. § 362(a). Here, as of the date of the hearing on this motion no such stay exists from which relief may be granted.

The court will issue a minute order.

4. [14-22544](#)-B-7 JASON FERREIRA MOTION FOR RELIEF FROM
MMS-1 AUTOMATIC STAY
10-30-14 [[29](#)]
MATTHEW GONSALVES 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 proceed with a small claims action in state court for the purpose of determining the nature and extent of the

attorney's charging lien (the "Lien") created pursuant to the terms of the Attorney's Fees and Costs Agreement filed as Exhibit "A" to the motion (Dkt. 31 at 3), and to enforce and judgment obtained therein only against the collateral for the lien and 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.

The court will issue a minute order.

5. [14-24824](#)-B-7 JOHN/JEANNETTE NOTMAN MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-23-14 [[116](#)]

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 to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose on the real property located at 3860 Angelina Drive, Stockton, California (APN 122-060-360-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$176, which fees and costs may be enforced only against the movant's collateral. 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 four (4) mortgage payments. This constitutes lack of adequate protection and cause for relief from the automatic stay.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$176. These fees and costs may be enforced only against the movant's collateral.

The court will issue a minute order.

6. [14-31428](#)-B-7 DARRION RAKESTRAW MOTION FOR RELIEF FROM
SMR-1 AUTOMATIC STAY
11-24-14 [[6](#)]
SHAUN HILTON 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. [14-21034](#)-B-7 RICHARD FECTION MOTION FOR RELIEF FROM
CJO-2 AUTOMATIC STAY
11-19-14 [[119](#)]
THE BANK OF NEW YORK MELLON
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. [14-21034](#)-B-7 RICHARD FECTION MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
10-30-14 [[111](#)]
ONEWEST BANK, N.A. VS.

Tentative Ruling: None.

9. [14-29445](#)-B-7 KATIE LOZANO MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-3-14 [[17](#)]
HONDA LEASE TRUST 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 dismissed as moot. The automatic stay terminated as to the subject vehicle, a leased 2012 Honda Accord (VIN 1HGCS1B37CA007614) (the "Vehicle") at 12:01 a.m. on November 22, 2014, 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 debtor commenced the above-captioned case by filing a voluntary

petition under chapter 7 on September 22, 2014 (Dkt. 1). Pursuant to the applicable provisions 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 November 21, 2014, sixty days after the filing of debtor's petition, the trustee had not assumed or rejected the lease of the Vehicle. Furthermore, the debtor indicated on her Statement of Intention (Dkt. 1, p.41) that she would not assume the lease pursuant to 11 U.S.C. § 365(p)(2). 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 November 22, 2014, 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.

10. [14-28757](#)-B-7 CHRISTINE CHRISMAN MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
11-10-14 [[19](#)]
FORD MOTOR CREDIT COMPANY,
LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2013 Ford Focus (VIN 1FADP3F24DL145401) (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 debtor's statement of intention (Dkt. 1, p.39) states that the Collateral was repossessed pre-filing but "debtor retains equitable interest in a right of redemption." That statement does not constitute a "surrender" of the Collateral because it does not state that the debtor relinquishes all rights in the Collateral.

The court will issue a minute order.

11. [14-30164](#)-B-7 MARTIN CHIPPAS MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
10-28-14 [[11](#)]
QUICKEN LOANS, 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

debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose on the real property located at 3529 Caballero Lane, Antelope, California 95843 (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 ten (10) mortgage payments. The debtor has filed a statement of intention to surrender the Property. The trustee has filed a report of no distribution and a statement of non-opposition to the motion. The foregoing constitutes cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The court will issue a minute order.

12. [14-27578](#)-B-7 WINSTON/EDNA JAMISON MOTION FOR RELIEF FROM
BHT-1 AUTOMATIC STAY
11-4-14 [[17](#)]
VENTURES TRUST 2013-I-H-R
VS.

Tentative 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, at its option, (A) to offer, provide and enter into any potential forbearance agreement, loan modification refinance agreement or other loss mitigation agreement as allowed by state law, or (B) to foreclose on the real property located at 213 Torrey Pines Court, Vallejo, California 94591 (APN 81-212-220) (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. To the extent the motion requests attorney's fees and costs, the request is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make thirty-six (36) 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.

Movant purports to "reserve" the right to seek an award of fees and costs. However, for purposes of this motion, 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.

13. [14-31181](#)-B-7 EUGENIA TORRES MOTION FOR RELIEF FROM
JBC-1 AUTOMATIC STAY
11-21-14 [[15](#)]
KIRPAL SINGH 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 tentative ruling.

The motion is dismissed as moot due to the dismissal of the bankruptcy case by order entered December 4, 2014 (Dkt. 21). The movant already has the relief it seeks with respect to real property located at 1922 Dawnelle Way, Sacramento, California 95835 and the associated unlawful detainer action against the debtor.

The court will issue a minute order.

14. [14-25888](#)-B-7 KEVIN WILLIAMS MOTION FOR RELIEF FROM
MJ-1 AUTOMATIC STAY
10-29-14 [[88](#)]
LAKEVIEW LOAN SERVICING, LLC
VS.

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) in order to permit the movant to foreclose on the real property located at 1439 Paddington Way, Plumas Lake, California 95961 (APN 016-540-008) (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 twenty-three (23) mortgage payments. The trustee has filed a report of no distribution. The foregoing constitutes cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Relief under 11 U.S.C. § 362(d)(2) is not warranted. According to the movant's own calculations, there is \$14,586.92 in equity in the Property.

The court will issue a minute order.

15. [14-30391](#)-B-7 MARGARET FOWLER MOTION FOR RELIEF FROM
RMW-1 AUTOMATIC STAY
11-21-14 [[20](#)]

VALLEJO REALTY MANAGEMENT,
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.

16. [14-28695](#)-B-7 DONALD HILDEBRAND AND MOTION FOR RELIEF FROM
RCO-1 ELLEN WHITE AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-24-14 [[12](#)]

GREEN TREE SERVICING, LLC
VS.

Tentative 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 120 Marble Canyon Drive, Folsom, California 95630 (APN 227-0390-078-0000) (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 is awarded attorney's fees equal to the lesser of \$675.00 or the amount actually billed plus costs of \$176.00. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make eleven (11) 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 value of the collateral exceeds the movant's claim, the movant is awarded attorney's fees equal to the lesser of \$675.00 or the amount actually billed plus costs of \$176.00. These fees and costs may be enforced only against the movant's collateral.

The court will issue a minute order.