

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

February 9, 2016 at 1:30 p.m.

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1.     **13-31109**-E-13   RONALD DICKERSON AND MARY       MOTION FOR RELIEF FROM  
          DVW-1            SANER                           AUTOMATIC STAY  
  1-19-16 [[62](#)]  
  
          VANDERBILT MORTGAGE AND  
          FINANCE, INC. VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Borrowers, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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February 9, 2016 at 1:30 p.m.

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Ronald Neal Dickerson and Mary Ellen Saner("Debtor") commenced this bankruptcy case on August 23, 2013. Vanderbilt Mortgage and Finance, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California (the "Asset"). The moving party has provided the Declaration of Jessica Tenbroeck to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Movant asserts that on May 10, 2001, Patricia and William Vanheekhoven entered into a security agreement to purchase the Asset in the amount of \$69,162.00. The Movant asserts that the Debtors are not the obligors under the Note. However, the Movant asserts that the Debtor moved to the Asset in December 2014. The Movant argues that the Debtors are tenants on the property.

The Tenbroeck Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of \$2,902.30 in post-petition payments past due.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 27, 2016.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$55,990.14, as stated in the Tenbroeck Declaration.

However, neither the Movant nor the Debtor value the Asset. The Debtor failed to list the Asset on Schedule B.

#### **RULING**

Movant has provided a copy of the Department of Housing and Community Development Certificate of Title to substantiate its claim of ownership . Dckt. 67, Exhibit 3. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Vanderbilt Mortgage and Finance, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the property commonly known as 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California, including unlawful detainer or other appropriate judicial

proceedings and remedies to obtain possession thereof.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Vanderbilt Mortgage and Finance, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Vanderbilt Mortgage and Finance, Inc. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2002 Fleetwood/Anniversary manufactured home, Serial Numbers CAFL217A25348AV12 and CAFL217B25348AV12, Label Numbers PFS0743582 and PFS0743583, and Decal Number LBD8588 and located at 6207 Gettysburg Lane, Citrus Heights, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.