

# Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**March 25, 2014 at 9:31 A.M.**

1. 13-33506-B-7 HAROLD/CATHERINE KAY MOTION FOR RELIEF FROM  
BHT-1 AUTOMATIC STAY  
2-26-14 [64]  
  
CARRINGTON MORTGAGE SERVICES  
LLC 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. [13-35718](#)-B-7 IRA/CYNTHIA SCHNEIDER MOTION FOR RELIEF FROM  
PD-1 AUTOMATIC STAY  
2-20-14 [[17](#)]  
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. 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 4534 Greenbrae Road, Rocklin, California (APN 046-490-005) (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 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 chapter 7 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.

3. [14-20518](#)-B-7 JAMES/SHERRY WALKER  
MBB-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-21-14 [[16](#)]

BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral, a 2005 Jayco 28 Grey Hawk (VIN 1FDXE45S55HA15115) (the "Collateral"), at 12:01 a.m. on March 16, 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.

4. [14-21019](#)-B-7 MICHAEL REEVES  
PD-1

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-26-14 [[21](#)]

VS. WELLS FARGO 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 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 2075 Mohawk Court, Ione, California (APN 003-540-005) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. Movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed plus costs of \$150, which may be enforced only against the movant's collateral. 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 nineteen (19) 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 intention to surrender the Property. The trustee has filed a report of no distribution and a statement of non-opposition to the motion.

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 \$150. These fees and costs may be enforced only against the movant's collateral.

The court will issue a minute order.

5. [13-35744](#)-B-7 ANTHONY/CHRISTINA MOTION FOR RELIEF FROM  
NLG-1 MERLONGHI AUTOMATIC STAY  
2-19-14 [[12](#)]  
SECRETARY OF VETERANS  
AFFAIRS 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 March 21, 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 1308 Lincoln Street, Fairfield, California (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 have failed to make thirty-four (34) 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.

In addition, the movant is advised that the court's Relief from Stay Information Sheet, Form EDC 3-468, was last revised in November 2010. The movant is utilizing a revision of EDC 3-468 from June 8, 2005 (Dkt. 16). The movant is advised to update its forms.

The court will issue a minute order.

6. [13-35749](#)-B-7 ALEXANDER HOWARD MOTION FOR RELIEF FROM  
TJS-2 AUTOMATIC STAY  
2-27-14 [[13](#)]  
PENNYMAC CORP. 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.

VS. KIA MOTORS FINANCE

**Tentative Ruling:** This motion has been continued twice, last from February 25, 2014. The court now issues the following tentative 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) in order to permit the movant to obtain possession of its collateral, a 2013 Kia Soul (VIN KNDJT2A55D7753618) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

This motion was continued to allow for compliance with Fed. R. Bankr. P. 4001(d) with respect to a stipulation (Dkt. 89) (the "Stipulation") between the movant and the debtor filed on February 11, 2014. Bankruptcy Rule 4001(d) requires, inter alia, the filing of a motion, which, inter alia, "begin(s) with a concise statement of the relief requested . . . that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. . . . The motion shall also describe the nature and extent of each such provision." Fed. R. Bankr. P. 4001(d)(1)(B).

There is no evidence of compliance with Fed. R. Bankr. P. 4001(d) on the docket. Rather than file the motion required by the rule, on February 26, 2014, the movant filed a "Notice of Stipulation regarding Secured Creditor, Kia Motors Finance's Motion for Relief from the Automatic Stay" (Dkt. 105) (the "Notice"). The Notice does not satisfy any of the requirements of Fed. R. Bankr. P. 4001(d)(1)(B).

In addition, the Stipulation contains provisions that the court would not approve even if the parties complied with Fed. R. Bankr. P. 4001(d). Specifically, the court will not approved stipulations which provide for immediate automatic relief from the automatic stay upon default, as set forth in paragraph 2 of the Stipulation on page 2. In addition, the court will not approve stipulations which provide blanket provisions for payments of all amounts in default prior to the time that the request for adequate protection is made, as set forth in paragraph 1 of the Stipulation on page 1. Where adequate protection is required, it is normally available only from the time the creditor requests it. Ahlers v. Norwest Bank Worthington (In re Ahlers), 794 F.2d 388, 395 (8th Cir. 1986) overruled on other grounds sub nom Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 108 S.Ct. 963, 99 L.Ed.2d 169 (1988).

In the absence of a court approved stipulation for adequate protection, the court finds cause for relief from the automatic stay based on the debtor's undisputed failure to obtain court approval to make adequate protection payments with respect to the Collateral, which is depreciating personal property. This constitutes cause for

relief from the automatic stay.

The court will issue a minute order.

8. [13-29374](#)-B-11 SUSAN GLINES-THOMPSON  
TJS-1

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
1-21-14 [[72](#)]

VS. JPMORGAN CHASE BANK,  
N.A.

**Tentative Ruling:** This motion continued from February 25, 2014. The court now issues the following tentative 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) in order to permit the movant to obtain possession of its collateral, a 2012 Acura MDX (VIN 2HNYD2H39CH526641) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

This motion was continued to allow for compliance with Fed. R. Bankr. P. 4001(d) with respect to a stipulation (Dkt. 99) (the "Stipulation") between the movant and the debtor filed on February 25, 2014. Bankruptcy Rule 4001(d) requires, inter alia, the filing of a motion, which, inter alia, "begin(s) with a concise statement of the relief requested . . . that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. . . . The motion shall also describe the nature and extent of each such provision." Fed. R. Bankr. P. 4001(d)(1)(B).

There is no evidence of compliance with Fed. R. Bankr. P. 4001(d) on the docket. Rather than file the motion required by the rule, on February 26, 2014, the movant filed a "Notice of Stipulation For Order for Adequate Protection With JPMorgan Chase Bank, N.A." (Dkt. 111) (the "Notice"). The Notice does not satisfy any of the requirements of Fed. R. Bankr. P. 4001(d)(1)(B).

In addition, the Stipulation contains a provision that the court would not approve even if the parties complied with Fed. R. Bankr. P. 4001(d). Specifically, the court will not approve blanket provisions for payments of all amounts in default prior to the time that a request for adequate protection is made, as provided for in paragraph 4 on page 2 of the Stipulation. Where adequate protection is required, it is normally available only from the time the creditor requests it. Ahlers v. Norwest Bank Worthington (In re Ahlers), 794 F.2d 388, 395 (8th Cir. 1986) overruled on other grounds sub nom Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 108 S.Ct. 963, 99 L.Ed.2d 169 (1988).

In the absence of a court approved stipulation for adequate protection, the court finds cause for relief from the automatic stay based on the debtor's undisputed failure to obtain court approval to make adequate protection payments with respect to the Collateral, which is depreciating

personal property. This constitutes cause for relief from the automatic stay.

The court will issue a minute order.