

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

April 8, 2014 at 9:31 A.M.

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1. [13-26304](#)-B-7 JOHN MUSHOLT MOTION FOR RELIEF FROM
 JKB-1 AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
 3-3-14 [[16](#)]
- KONDAUR CAPITAL 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 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 6747 Ridgeway Drive, Pollock Pines, California (APN 009-202-20-100) (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 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 intention to surrender the Property. The chapter 7 trustee has filed a report of no distribution and a statement of non-opposition to the motion.

The court will issue a minute order.

2. [14-21911](#)-B-7 DAVID/ALLISON MEREDITH MOTION FOR RELIEF FROM
 VVF-1 AUTOMATIC STAY AND/OR MOTION
 FOR ADEQUATE PROTECTION
 3-20-14 [[10](#)]
- AMERICAN HONDA FINANCE
CORPORATION VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Because the debtors have filed a statement of intention to surrender the Collateral

(as that term is defined herein), the court issues the following tentative ruling.

The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2011 Honda CRZ (VIN JHMZF1C68BS001320) (the "Collateral"), at 12:01 a.m. on April 1, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors 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.

3. [13-36016](#)-B-7 ANTHONY/SHANNON MASSA MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
2-28-14 [[16](#)]
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The movant's request for retroactive relief or "annulment" of the automatic stay is granted. Pursuant to 11 U.S.C. § 362(d)(1) and (d)(2), the automatic stay is modified as to the debtors and the estate effective as of January 30, 2014, for the purpose of validating the short sale of the real property located at 3641 Farnham Court, Tracy, California (the "Property") and to permit the movant to exercise its rights with respect to the Property in accordance with applicable nonbankruptcy 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 movant alleges without dispute that on or about January 30, 2014, the Property was sold in a "short sale" to CV Property Holdings, LP and that the movant received approximately \$196,000.00 from the sale. The movant alleges without dispute that it accepted funds from the short sale without realizing that the debtors had not sought to have the property deemed abandoned by the bankruptcy estate. 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 report of no distribution. These facts constitute cause for retroactive relief from the automatic stay.

The court will issue a minute order.

4. [13-34129](#)-B-7 JORGE MALDONADO
MTB-2

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-11-14 [[20](#)]

PRIDE INDUSTRIES 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 pursuant to 11 U.S.C. § 362(d)(1) to permit movant to proceed in Winkelman, et al. v. PRIDE Industries, et al., Sacramento County Superior Court case no. 34-2012-00125498 (the "State Court Action") to judgment or settlement and to recover any judgment or settlement solely from available insurance proceeds. Nothing in this ruling constitutes a finding of fact or conclusion of law on any fact or issue in the State Court Action. Except as so ordered, the motion is denied.

The court will issue a minute order.

5. [09-48233](#)-B-7 NARENDRA SHARMA
KAM-3

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CLARIFY STAY RELIEF ORDER
2-28-14 [[454](#)]

JACKSON COUNTY DIRECTOR OF
COLLECTIONS VS.

Tentative Ruling: The motion is denied in part and granted in part. The movant's request for an order "clarifying" the court's order entered November 21, 2012 (Dkt. 385) (the "RAS Order") is denied. To the extent it applies, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to initiate and prosecute foreclosure proceedings to judgment or settlement, to conduct a foreclosure sale of the real property located at 6006 East 31st Street, Kansas City, Missouri, and to otherwise proceed to enforce its rights and remedies pursuant to 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 Order, by its language that the movant was authorized to sell the Property at tax sale "in accordance with applicable non-bankruptcy law" gave the movant authority to commence a judicial action, which is a prerequisite to a tax foreclosure sale under the state law applicable to the Property. See Mo. Rev. Stat. § 141.040.

However, at the time the Order was entered the movant had already commenced a judicial proceeding. Since the judicial proceeding was commenced in violation of the automatic stay, it was void. The Order did not grant the movant retroactive relief to validate the commencement of the void judicial proceeding. The court never considered such relief because the movant neither requested nor supported such relief in its initial motion for relief from stay filed on October 23, 2012. The court

is not persuaded that any time it grants relief to commence foreclosure proceedings it is thereby validating any actions taken by the creditor prior to obtaining relief from the automatic stay.

The court now finds cause to modify the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to permit the commencement of a new judicial action, based on the movant's undisputed allegations that the debtor is in default in real property taxes for the Property in excess of \$468,000.00 and that the hotel poses a serious health and safety risk to the surrounding community. The chapter 7 trustee has also abandoned any interest of the estate in the Property.

The court will issue a minute order.

6. [12-39243](#)-B-7 ARNULFO RODRIGUEZ AND MOTION FOR RELIEF FROM
EAT-1 MARIA RODRIGUEZ VASQUEZ AUTOMATIC STAY
2-25-14 [[27](#)]
NATIONSTAR MORTGAGE, LLC 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 February 15, 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 762 William Moss Boulevard, Stockton, 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 waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors 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 chapter 7 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

7. [14-20949](#)-B-7 NANCY BANKS MOTION FOR RELIEF FROM
SMK-1 AUTOMATIC STAY
3-11-14 [[14](#)]
CARRINGTON MORTGAGE
SERVICES, 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), (d) (2), and (d) (4) in order to permit the movant to obtain possession of the real property located at 14523 Mast Lane, Helendale, CA 92342 (APN 0467-612-19) (the "Property") and to exercise its rights under applicable non-bankruptcy law. Pursuant to 11 U.S.C. § 362(d) (4), the court finds that the filing of the petition commencing this case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. The 14-day period specified in Fed. R. Bankr. P. 4001(a) (3) is waived. The court awards the movant no attorney's fees and costs. Except as so ordered, the motion is denied.

The movant alleges without dispute that the debtor has failed to make eleven (11) mortgage payments. The 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 report of no distribution in this case. Finally, the movant alleges without dispute that this is the fourth bankruptcy affecting the Property, that the first bankruptcy case was filed shortly after the Notice of Default was initially recorded, that the present case was filed shortly before the scheduled foreclosure of the Property, that James Louis Campbell (who is listed as a joint tenant of the Property in the schedules of his case) also filed a case which affected the Property, and that all prior cases were dismissed for failure to make Chapter 13 plan payments.

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. [14-20458](#)-B-7 PATRICIA ALBRIGHT MOTION FOR RELIEF FROM
PPR-1 AUTOMATIC STAY
3-7-14 [[12](#)]

THE BANK OF NEW YORK MELLON
VS.

Tentative Ruling: The motion is dismissed as moot. The bankruptcy case was dismissed by order entered March 28, 2014 (Dkt. 24). The movant already has the relief it seeks by the motion.

The court will issue a minute order.

9. [14-20872](#)-B-7 LABRAYA THORNTON MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
3-17-14 [[13](#)]

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, in light of the statements of non-opposition filed by the

debtor on March 24, 2014 (Dkt. 19) and the trustee on March 27, 2014, the court issues the following abbreviated 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) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2013 Kia Optima (VIN 5XXGN4A71DG153445) (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.

The movant alleges without dispute that the debtor has failed to make three (3) payments. The movant further 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 and a response stating that she has no basis to object to the motion (Dkt. 19). The chapter 7 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

10. [13-34976](#)-B-11 CORINNE HUTTLINGER MOTION FOR RELIEF FROM
CLH-2 AUTOMATIC STAY
3-20-14 [[73](#)]
ENVIRONMENTAL CPR, 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.

11. [14-21698](#)-B-7 ROBERT/JACLYN RAY MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
3-6-14 [[10](#)]
TD AUTO FINANCE, LLC VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2011 Dodge Durango (VIN 1D4REGGXBC697605) (the "Collateral"), at 12:01 a.m. on March 25, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors 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). A statement of intention that merely states that the debtor intends to retain the Collateral and is "Unsure - may surrender" is not a compliant statement of intention. 11 U.S.C. § 362(h)(1)(A). If retaining the collateral, the statement of intention must state that the debtors will either redeem the collateral or reaffirm the debt secured by the Collateral. See Dumont v. Ford Motor Credit Co. (In re Dumont), 383 B.R.

481, 486 (B.A.P. 9th Cir. 2008).

The court will issue a minute order.