

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

July 29, 2014 at 9:31 A.M.

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1. [12-23504](#)-B-7 NICHOLAS/DEBORAH JARRELL MOTION FOR RELIEF FROM
MJ-1 AUTOMATIC STAY
6-5-14 [[52](#)]
CITIMORTGAGE, 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 May 8, 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 7712 Laguna Beach Way, Antelope, CA 95843 (APN 203-2010-040-0000) (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. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make eighteen (18) 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. The debtors have filed a statement of intention to surrender the Property.

The court will issue a minute order.

2. [14-24710](#)-B-7 JASON VAN EGDON AND MOTION FOR RELIEF FROM
ASW-1 MELINDA VANEDGON AUTOMATIC STAY
6-27-14 [[16](#)]
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 6716 5th Street, Rio Linda, CA 95673 (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 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 trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

3. [14-25315](#)-B-7 SUSAN GELLMAN MOTION FOR RELIEF FROM
RCO-1 AUTOMATIC STAY
6-20-14 [[16](#)]
CITIMORTGAGE, 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) and (d)(2) in order to permit the movant to foreclose on the real property located at 3515 Fort Jim Road, Placerville, CA 95667 (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 (20) 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 court will issue a minute order.

4. [14-24919](#)-B-7 ROBERT/JAMIE CASSINGHAM MOTION FOR RELIEF FROM
SMK-1 AUTOMATIC STAY
6-24-14 [[14](#)]
PLANET HOME LENDING, LLC VS.

Tentative Ruling: The oppositions filed by the debtors (Dkt. 27, 28) are overruled. 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 22491 Keller Road, Smartsville, 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 twelve (12) 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.

The debtors' identical oppositions are not persuasive. The debtors do not dispute that they are in default under the terms of the obligation secured by the Property and that they do not have an equity in the Property. The court acknowledges that the debtors wish to attempt a modification of the obligation that will allow them to cure the default and retain the Property and that they represent that they have been pursuing such a modification. However, the court will not withhold relief to which the movant is legally entitled in order to create negotiating leverage for the debtors. The court notes that nothing in this ruling prevents the movant and the debtors from continuing to negotiate a modification or cure of the arrears even after relief from the stay is granted.

The court will issue a minute order.

5. [14-25720](#)-B-7 IRIS DAVIS BOWIER
SW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-15-14 [[16](#)]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2008 Chevrolet Impala (VIN 2G1WC583X81242204) (the "Collateral"), at 12:01 a.m. on July 2, 2014, by operation of 11 U.S.C. § 362(h) (and allowing for the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1), and the Collateral has from that date no longer been property of the estate.

The debtor 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 and pay" 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 debtor 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.

6. [14-25637](#)-B-7 KAIN CAMPOS AND LISA MOTION FOR RELIEF FROM
SW-1 CARTER-CAMPOS AUTOMATIC STAY
7-15-14 [[22](#)]
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2006 Acura RSX (VIN JH4DC53856S009425) (the "Collateral"), at 12:01 a.m. on July 2, 2014, by operation of 11 U.S.C. § 362(h) (and allowing for the automatic extension of time provided by Fed. R. Bankr. P. 9006(a)(1), 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 "continue to pay pursuant to contract" 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.

7. [13-20645](#)-B-7 ROBERT/TRISTINA KITAY MOTION TO MODIFY THE STAY TO
DEG-1 PERMIT STATE COURT ACTION TO
PROCEED AGAINST DEBTOR WITH
INSURER ONLY TO BE LIABLE
4-9-14 [[111](#)]

Tentative Ruling: This motion was re-set for hearing under LBR 9014-1(f)(2) by order entered July 3, 2014 (Dkt. 132). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

8. [13-20645](#)-B-7 ROBERT/TRISTINA KITAY MOTION TO MODIFY THE STAY TO
DEG-1 PERMIT STATE COURT ACTION TO
PROCEED AGAINST DEBTOR WITH
INSURER ONLY TO BE LIABLE
4-9-14 [[111](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is removed from the calendar. It is a duplicate of matter 7 on this calendar.

9. [14-26147](#)-B-7 BRIAN/JAIME WATTS
KRO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-8-14 [[18](#)]

DOBBINS PROPERTIES, LLC 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.

The motion was not properly served. This motion for relief from the automatic stay is governed by the requirements of Fed. R. Bankr. P. 4001(a), which requires that service of the motion be made in accordance with Fed. R. Bankr. P. 9014 as a contested matter. Fed. R. Bankr. P. 4001(a)(1). Fed. R. Bankr. P. 9014 requires that contested matters be noticed to the parties against whom relief is sought and served in the manner provided for service of a summons and complaint by Fed. R. Bankr. P. 7004.

In this case, the movant seeks relief against both the debtors and the bankruptcy estate for the purpose of proceeding with an unlawful detainer action in San Joaquin County Superior Court with respect to real property located at 14 S. School Street, Suite B, Lodi, California. However, there is no evidence on the court's docket that the movant properly served either the debtors or the chapter 7 trustee. The movant's certificate of service (Dkt. 24) does not indicate that the movant served the chapter 7 trustee. In addition, the certificate of service also indicates that the movant only served the debtors' bankruptcy attorney and not the debtors themselves. Fed. R. Bankr. P. 7004(g) the debtor is represented by an attorney, whenever service is made upon the debtor under Fed. R. Bankr. P. 7004, "service shall also be made upon the debtor's attorney." Fed. R. Bankr. P. 7004(g)(emphasis added). The debtors must be served with the motion, in addition to their bankruptcy attorney; service on their bankruptcy attorney alone is insufficient. Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

10. [13-34754](#)-B-11 CIELO VINEYARDS &
WSS-1 WINERY, LLC

MOTION TO MODIFY THE AUTOMATIC
STAY
7-15-14 [[151](#)]

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. [13-34754](#)-B-11 CIELO VINEYARDS & CONTINUED MOTION FOR RELIEF
WSS-1 WINERY, LLC FROM AUTOMATIC STAY
6-6-14 [[95](#)]
PALAKA HOLDINGS, LLC VS.

Tentative Ruling: This motion continued from July 15, 2014. The court did not establish a briefing schedule. 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.

12. [14-22470](#)-B-11 DESMOND REYNOSO MOTION FOR RELIEF FROM
AWM-2 AUTOMATIC STAY
6-17-14 [[39](#)]
ATTORNEYS FUNDING GROUP,
INC. VS.

Tentative Ruling: None.