

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Sacramento, California

August 12, 2014 at 9:31 A.M.

1. [14-26204](#)-B-7 RALPH CROSBY
HLC-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
DISMISS CASE
7-2-14 [[23](#)]

BUTTE COUNTY TREASURER/TAX
COLLECTOR VS.

Tentative Ruling: The debtor's opposition is overruled. 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 720 West 8th Avenue, Chico, California (APN 043-080-113) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. Pursuant to 11 U.S.C. § 362(d)(4), the court finds that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors that included multiple bankruptcy filings affecting the Property. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. The movant's request for dismissal of the bankruptcy case with a bar to refiling is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor is in default of payment of property taxes secured by the Property for the tax years 2005-2013. The chapter 7 trustee has filed a report of no distribution.

The court also finds that the filing of this case was part of a scheme to delay hinder and defraud creditors that involved multiple bankruptcy filings affecting the Property. The movant alleges without dispute that this is the fifth bankruptcy case affecting the Property filed by either the debtor or his son, Scott William Crosby, since September, 2011. Each of those prior cases was a chapter 13 case that was dismissed within five months of the commencement of the case for failure to make plan payments, undue delay prejudicial to creditors, or failure to discharge other duties imposed on the debtor or his son by the Bankruptcy Code. No chapter 13 plan was confirmed in any of the prior cases. In each of the prior cases the debtor and his son have each claimed to own a 100% interest in the Property. In addition, two of the debtor's cases, case number 12-30633-A-13J, and the present case, were filed shortly before a scheduled tax sale of the Property. Based on the foregoing, the court finds that the present case and the prior cases cited by the movant constitute a scheme designed solely to prevent creditors, including the movant, from exercising their non-bankruptcy rights against either the debtors or the Property, as opposed to any good faith intention to rehabilitate the debt.

The movant's request for dismissal of the case is denied. The court presumes, based on the movant's assertion that it has shown "good cause" for dismissal, that the movant seeks dismissal of the case for cause under 11 U.S.C. § 707(a). The Ninth Circuit Court of Appeals has stated in In re Sherman, 491 F.3d 948 (9th Cir. 2007) that in evaluating such motions the court should consider whether the circumstances asserted to constitute "cause" are contemplated by any specific Code provision applicable to Chapter 7 petitions. If the asserted cause is contemplated by a specific Code provision, it does not constitute "cause" under § 707(a). Sherman, 491 F.3d at 970, citing In re Padilla, 222 F.3d 1184, 1194 (9th Cir. 2000). In this case, the asserted cause for dismissal (the alleged scheme described above) is directly contemplated by 11 U.S.C. § 362(d), and the remedies prescribed there - relief from the automatic stay and a finding pursuant to 11 U.S.C. § 362(d)(4) finding - are the appropriate relief rather than dismissal of the case in its entirety.

The court will issue a minute order.

2. [14-20707](#)-B-7 JOSEPH LANGI
PPR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-11-14 [[36](#)]

PLANET HOME LENDING, 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 debtor, the motion is dismissed as moot. The debtor received a discharge on May 20, 2014, and the automatic stay as to the debtor 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 2631 Tennessee Street, Vallejo, California (APN 0069171100) (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 four (4) 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 court will issue a minute order.

3. [14-25316](#)-B-7 BEVERLY DENNISTON
ERM-1

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

ALLIANT CREDIT UNION VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2005 Nissan Altima (VIN 1N4AL 11D75N495218) (the "Collateral"), at 12:01 a.m. on July 13, 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 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 court also reminds the movant's counsel that all motions for relief from the automatic stay filed in this district must be accompanied by a Relief from Stay Summary Sheet, Form EDC 3-468. Failure to comply with the court's local rules is grounds for imposition of sanctions, including, inter alia, dismissal of motions. LBR 1001-1(g).

The court will issue a minute order.

4. [13-30420](#)-B-7 STEPAN KIRCHU

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-7-14 [[13](#)]

LONNIE LEE VS.

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 362(d)(1), the automatic stay is modified to permit the movant to proceed in state court to prosecute Sacramento County Superior Court Case No. 34-2010-00076817, Lee v. Kirchu, et al. (the "State Court Action"), to judgment or settlement. Nothing in this ruling permits the movant to enforce, against the debtor or against property of the estate, any judgment or settlement. Except as so ordered, the motion is denied.

The court will issue a minute order.

5. [14-26237](#)-B-7 GOLD LINE INVESTMENT MOTION FOR RELIEF FROM
HLC-1 GROUP, LLC AUTOMATIC STAY
7-7-14 [[12](#)]

BUTTE COUNTY TREASURER/TAX
COLLECTOR 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 conduct a tax sale of and foreclose on the real property consisting of 16.56 acres of vacant land at Monte Vista Avenue, Oroville, California (APN 078-170-043 and 078-170-064) (the "Property") and otherwise take all other action necessary to extinguish the right, title and interest of the debtor and the estate in the Property 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 movant alleges without dispute that the debtor is in default of property tax payment secured by the Property since April 5, 2007, more than seven years prior to the filing of the petition. 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.

6. [14-26039](#)-B-7 NEIL MATHIESEN MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
7-3-14 [[13](#)]

SANTANDER CONSUMER USA, INC.
VS.

Tentative Ruling: The debtor's "limited opposition and countermotion to redeem" filed on July 30, 2014 (Dkt. 22) is stricken. 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 2006 Mercedes Benz CLK500 (VIN WDBTK75G86T063858) (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.

Movant alleges without dispute that the debtor has failed to make thirteen (13) payments. Also, movant 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 trustee has filed a report of no distribution.

The debtor's limited opposition and counter motion is stricken because it was not timely filed or served. Pursuant to LBR 9014-1(f)(1), written opposition to the motion was required and the deadline for filing and serving written opposition was 14 days before the date of the hearing, or July 29, 2014. The debtor filed his limited opposition and counter motion on July 30, 2014, 13 days before the date of the hearing. The debtor's certificate of service of the limited opposition and counter motion (Dkt. 23) indicates that the debtor served the limited opposition and counter motion on July 31, 2014, only 12 days before the date of the hearing.

Furthermore, even if the limited opposition and the countermotion were timely filed and served, it is unsupported by any evidence demonstrating that the countermotion to redeem is ripe for adjudication. Specifically, the debtor has not submitted any evidence that he will be able to pay any redemption price for the Collateral such that if the court were to approve a redemption on the basis of the countermotion such a redemption would actually occur. The debtor's unsworn allegation that he "anticipates paying certified funds to Santander from non-bankruptcy estate sources," does not constitute such evidence.

The court will issue a minute order.

7. [13-31040](#)-B-11 JIMMY ALEXANDER
JJW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-15-14 [[184](#)]

SIERRA CENTRAL CREDIT UNION
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, which requires, inter alia, that the movant serve the motion on the debtor's 20 largest unsecured creditors on the list filed pursuant to Fed. R. Bankr. P. 1007(d). The movant's certificate of service (Dkt. 188) does not show service on the debtor's 20 largest unsecured creditors.

Should the movant wish to file the motion again, it is advised to review, at a minimum, LBR 9014-1(d)(5), 11 U.S.C. § 362(g) and United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

The debtor and/or his counsel are also advised to review, at a minimum, debtor's sworn Schedule D (Dkt. 1 at 19), Fed. R. Bankr. P. 3003(b)(1),

Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 783-84 (9th Cir. 2001) and In re Roberts, 241 Fed. Appx. 420 (9th Cir. 2007).

The court will issue a minute order.

8. [14-25145](#)-B-7 TERESA FRIEDRICHS MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
7-8-14 [[14](#)]
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 927 Campbell Circle, Woodland, California (APN 027-530-047) (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 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 trustee has filed a report of no distribution.

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.

9. [14-26147](#)-B-7 BRIAN/JAIME WATTS MOTION FOR RELIEF FROM
KRO-1 AUTOMATIC STAY
7-29-14 [[26](#)]
DOBBINS PROPERTIES, 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.

10. [14-26258](#)-B-7 SABINA CRISTA
EJS-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-2-14 [[12](#)]

ARLINGTON ANTELOPE, LP 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) to permit the movant to proceed, in accordance with applicable non-bankruptcy law, to obtain possession of the real property located at 8131 Walerga Road #624, Antelope, California 95843 (the "Property"). The 14-day period specified in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that the debtor is in default of a lease of the Property, and that the movant served a three day notice to pay rent or quit the Property on the debtor on June 6, 2014, prior to the date of the filing of the bankruptcy petition. The movant further alleges without dispute that the debtor has not cured the default and remains in possession of the Property. Service of a three day notice and expiration of the time to cure prior to the date of the filing of the petition terminated the lease. Cal. Civ. Code § 1951.2; 7 Miller & Starr, California Real Estate § 19:201 (3d Ed. 2004). Neither the debtor nor the estate have any remaining leasehold interest. The pre-petition termination of the lease, statements of non-opposition filed by the trustee on July 24, 2014, and August 6, 2014, and report of no distribution filed July 23, 2014, all show that the trustee cannot administer the Property for the benefit of creditors. The foregoing constitutes cause for relief from the automatic stay.

The court will issue a minute order.

11. [14-27465](#)-B-7 ESMERALDA GUZMAN
FWK-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-28-14 [[19](#)]

U.S. 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, the court issues the following tentative ruling.

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered August 11, 2014 (Dkt. 27), and the automatic stay as to the debtor and the bankruptcy estate with respect to the real property located at 3363 Neighbor Lane, Lincoln, California 95648 (the "Property") terminated on that date. The movant already has the relief that it seeks by this motion.

If the motion were not dismissed, the movant's request for relief from

the automatic stay would be granted, but the movant's request for a finding under 11 U.S.C. § 362(d)(4) would be denied. A finding under 11 U.S.C. § 362(d)(4) is made as part of an order granting relief from the automatic stay. It is thus inappropriate when the underlying bankruptcy case has been dismissed and the automatic stay has therefore terminated. More importantly here, the movant has provided no evidence that the filing of the instant case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. The movant alleges that this is the fourth bankruptcy filing affecting the Property since January 15, 2014, and cites to three prior cases filed by either Teresa Navarro or Pedro Navarro (collectively, the "Navarros"). However, the only connection between the Navarros and the debtor is the movant's unsupported claim, based on information and belief, that the debtor "may be the adult daughter" of the Navarros (Dkt. 19, p.2, lines 9-10). The complaint for unlawful detainer after trust deed foreclosure attached as Exhibit "B" to the motion (Dkt. 23, p.6) shows that the Navarros and a series of unnamed/unknown defendants were sued in Placer County Superior Court, but the debtor is not a specifically named party to the complaint. Additionally, the movant asserts that it obtained a judgment for possession on July 9, 2014, and that "a writ of possession was issued and served at the [P]roperty..." (Dkt. 19, p.3, lines 13-14). However, the judgment of possession which the movant obtained against the Navarros is not a judgment of possession against the whole world, including the debtor. The movant fails to allege that the debtor was even served with the writ of possession, stating only that it was served at the Property. Based on the foregoing, the court finds that the movant failed to establish that the filing of the instant case was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property.

The court will issue a minute order.

12. [14-22583](#)-B-7 JAMIE ERVIN
MDE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-24-14 [[12](#)]

THE BANK OF NEW YORK MELLON
VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part and dismissed as moot in part. As to the debtor, the motion is dismissed as moot. The debtor received a discharge on July 1, 2014, and the automatic stay as to the debtor 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 8013 Ravendale Drive, Elk Grove, California 95758 (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.

The debtor's opposition is unpersuasive. To start, the debtor's assertion that the matter is moot is misguided. The debtor apparently fails to recognize that, upon commencement of a bankruptcy case, several

things occur. First, a "bankruptcy estate" is created which consists of all legal or equitable interests of the debtor in property, wherever located and by whomever held, as of the commencement of the case. 11 U.S.C. § 541(a)(1). Such interests in property are commonly referred to (collectively) as "property of the estate." Property of the estate is administered by the bankruptcy trustee. Second, the commencement of a bankruptcy case automatically stays certain actions of creditors against property of the estate, property of the debtor, or the debtor personally, as set forth in 11 U.S.C. §§ 362(a)(1)-(8). The automatic stay of an act against property of the estate continues until such property is no longer property of the estate. 11 U.S.C. § 362(c)(1). Additionally, the stay of "any other act" under 11 U.S.C. § 362(a) continues until the earliest of "(a) the time the case is closed; (b) the time the case is dismissed; or (c) if the case is a case under chapter 7 of this title concerning an individual...the time a discharge is granted or denied." 11 U.S.C. § 362(c)(2)(A)-(C).

Based on the foregoing, the debtor is only partially correct. The matter is moot as to her because she has received a discharge. However, the matter is not moot as to the estate because the Property remains property of the estate. Due to the administrative requirements the chapter 7 trustee is required to complete before the case can be deemed fully administered, the case does not close simultaneously with the discharge of the debtor. The debtor's assertion that the "case was discharging on July 1, 2014" is incorrect. Furthermore, the time to object to the debtor's discharge or to challenge the dischargeability of certain debts pursuant to Federal Rules of Bankruptcy Procedure 4004 and 4007 has no bearing on the movant's ability to file a motion for relief from the automatic stay.

Importantly, the debtor's opposition provides no persuasive argument as to why no grounds exist to grant the movant relief from the automatic stay as to the estate pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). The movant alleges, and the debtor does not dispute or even address in her opposition, that the debtor has failed to make seventy-three (73) mortgage payments and is contractually delinquent in the amount of \$164,178.60. 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. Additionally, the chapter 7 trustee filed a statement of non-opposition to the motion on July 9, 2014, and a report of no distribution on April 24, 2014. The foregoing constitutes cause for relief from the automatic stay as to the estate under 11 U.S.C. § 362(d)(1) and (d)(2).

The court declines to impose any sanctions, monetary or otherwise, on the movant's attorney or his law firm because the filing of the motion is not frivolous as the debtor contends in her opposition. The motion does nothing more than seek relief to which the movant is legally entitled.

The court will issue a minute order.

13. [14-23987](#)-B-7 PRUDENCIO RAMISCAL
RCO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-16-14 [[20](#)]

BANK OF AMERICA, N.A. VS.

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

The motion is denied without prejudice.

The motion is denied without prejudice because it provides insufficient notice to interested parties. Pursuant to Local Bankruptcy Rule 9014-1(f)(2), "when fewer than twenty-eight (28) days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs." LBR 9014-1(f)(2)(C). Here, the motion was filed and served on July 16, 2014, or twenty-seven (27) days prior to today's hearing date. However, the notice of hearing (Dkt. 21) instructs parties that written opposition to the motion was due at least fourteen (14) days prior to the hearing date. This would have given interested parties no more than thirteen (13) days' notice to file an opposition to this motion. Accordingly, the motion is denied without prejudice.

The court will issue a minute order.

14. [14-24397](#)-B-7 RALPH/JOVANA ALTAMIRANO
ADR-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-9-14 [[28](#)]

CALPINE PROPERTIES LTD VS.

Tentative Ruling: This motion is unopposed. In this instance, because the debtors are pro se, 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 debtors pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movant to exercise its rights under applicable non-bankruptcy law to obtain possession of the real property located at 2327 Flatboat Street, Stockton, California 95206 (the "Property"). The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that the debtors are in default of a lease of the Property from the movant. The debtors have failed to make three (3) post-petition lease payments to the movant. The movant further alleges without dispute that there is no equity in the Property and that

the Property is not necessary for an effective reorganization in this chapter 7 case. The time for the trustee to assume the lease expired at 12:01 a.m. on June 29, 2014, and the lease is deemed rejected by operation of 11 U.S.C. § 365(d)(1). The foregoing constitutes cause for relief from the automatic stay.

The court will issue a minute order.

15. [14-25999](#)-B-7 DANIEL/ANTOINETTE GARCIA MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-24-14 [[24](#)]
- CAM VII TRUST 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.