

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Sacramento, California

September 23, 2014 at 9:31 A.M.

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1. [14-27709](#)-B-7 AYYOUB MOHAMMADI AND MOTION FOR RELIEF FROM
 TB-1 ANASTASIA FRANSSEN AUTOMATIC STAY
 9-2-14 [[14](#)]

BANKUNITED, N.A. 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. [14-28113](#)-B-7 CARMEN MENDOZA MOTION FOR RELIEF FROM
 PD-1 AUTOMATIC STAY
 8-20-14 [[12](#)]

FIRST TECH FEDERAL CREDIT
UNION 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) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2014 Nissan Altima (VIN 1N4AL3AP4EC116791) (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 three (3) 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 statement of non-opposition to the motion and a report of no distribution. The debtor has filed a statement of intention to surrender the Collateral.

The court will issue a minute order.

3. [14-26517](#)-B-7 PAUL/SUSAN LEBOWSKY
ASW-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-20-14 [[15](#)]

THE BANK OF NEW YORK MELLON
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 1040 Farnham Avenue, Woodland, 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 debtors have failed to make three (3) 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 and a report of no distribution.

The court will issue a minute order.

4. [14-24824](#)-B-7 JOHN/JEANNETTE NOTMAN
DJE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-9-14 [[68](#)]

M&T BANK CORPORATION VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance the court issues the following tentative ruling on the merits of the motion.

The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2004 35.25' J 109 (Hull ID TSP191168A404) (the "Collateral"), at 12:01 a.m. on June 7, 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 statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2). Although they filed a statement of intention to surrender the Collateral on June 23, 2014, it was filed more than thirty days after the date of the filing of the petition, outside of the time allowed by 11 U.S.C. § 512(a)(2).

The court will issue a minute order.

5. [14-28328](#)-B-7 CATRINA WILLIAMS

MOTION FOR RELIEF FROM
AUTOMATIC STAY MOTION FOR
ADEQUATE PROTECTION
8-22-14 [[14](#)]

SAM OLIVER 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.

6. [14-21034](#)-B-7 RICHARD FECTEAU
MDE-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
7-31-14 [[92](#)]

ONEWEST BANK, N.A. VS.

Tentative Ruling: This motion continued from September 9, 2014, to allow the movant to file an exhibit that was referenced in the motion but inadvertently omitted from the motion when it was initially filed. The movant filed the missing exhibit on September 12, 2014. The court now issues the following tentative ruling.

The motion is granted in part and dismissed in part. As to the debtor the motion is dismissed as moot because the automatic stay as to the debtor expired at 12:01 a.m. on March 6, 2014, by operation of 11 U.S.C. § 362(c)(3)(A). To the extent it applies, the automatic stay is modified as to 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 1449 Marclair Drive, #A, B, C, D, Concord, California (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 present bankruptcy case was part of a scheme to delay, hinder and defraud the movant. 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 is not the borrower on the loan secured by the Property and that the borrower is Majiman Hafiz ("Hafiz"). Movant alleges without dispute that the loan is 71 months in default. 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.

Movant's request for a finding under 11 U.S.C. § 362(d)(4) is granted. Movant alleges that the debtor, as a co-trustee of the Majiman Hafiz Revocable Trust, is an owner of record of the Property by way of a Grant Deed - Trust Transfer" executed and recorded on February 1, 2012, in the official records of Contra Costa County. The movant also alleges without dispute that other individuals including Michelle Hall, Regina Rowe, Fabiola Hernandez, Danny Benz Stojakovic ("Stojakovic"), Akop Ayanyan ("Ayanyan") and Sou Chan are also owners of record of the Property by way of grant deeds transferring the Property into the Majiman Hafiz Revocable Trust, of which the foregoing individuals are all identified as co-trustees. The transfers of the Property occurred after Hafiz defaulted on the loan and occurred without the movant's consent. Between January 30, 2012, and February 3, 2014, four individual bankruptcy cases, filed by Stojakovic, Ayanyan and the debtor were filed, two of which were dismissed shortly after being filed. Based on the foregoing, the court finds that the filing of the petition in the present bankruptcy case was part of a scheme to delay, hinder and defraud the movant that involved both transfer of all or part ownership of the Property without the consent of the movant or court approval and multiple bankruptcy filings affecting the property. 11 U.S.C. § 362(d)(4).

The court will issue a minute order.

7. [12-39547](#)-B-7 BETTY ANDERSON
MDE-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
8-25-14 [[67](#)]

ONEWEST BANK, N.A. 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) and (d)(2) in order to permit the movant to foreclose on the real property located at 1593 London Circle, Benicia, California 94510 (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 eleven (11) 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 report of no distribution. The debtor has filed a statement of intention to surrender the Property.

The court will issue a minute order.

8. [14-28767](#)-B-7 MICHAEL BESOYAN MOTION FOR RELIEF FROM
GMS-1 AUTOMATIC STAY
9-4-14 [[11](#)]
GLORIA MARTINEZ-SENFERNER 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.

9. [13-30482](#)-B-7 CRAIG/CINDY COCKERELL MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
8-14-14 [[63](#)]
FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.

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

The motion is removed from the calendar. The movant withdrew the motion on September 18, 2014 (Dkt. 81).

10. [13-33289](#)-B-7 DANA STONE MOTION FOR RELIEF FROM
MJ-1 AUTOMATIC STAY
8-1-14 [[50](#)]
FIRST MORTGAGE CORPORATION
VS.

Tentative 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 September 3, 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) in order to permit the movant to foreclose on the real property located at 909 Bullion Lane, Folsom, California 95630 (APN 072-2930-157-0000) (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.

The movant alleges without dispute that the debtor has failed to make ten (10) mortgage payments. The chapter 7 trustee has filed a report of no distribution. The foregoing constitutes cause for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The movant's request for relief under 11 U.S.C. § 362(d)(2) is denied because, according to the movant's own calculations, there is \$26,304.29 in equity in the Property.

The court will issue a minute order.

11. [12-42190](#)-B-7 BRETT CURTIS AND VERONICA MOTION FOR RELIEF FROM
MJ-1 VEGA - CURTIS AUTOMATIC STAY
8-25-14 [[34](#)]
HSBC BANK USA, N.A. 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 April 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 1102 South East 4th Avenue, Cape Coral, Florida 33990 (APN 24-44-23-CI-01029-0340) (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 have failed to make thirty-one (31) 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 court will issue a minute order.

12. [14-27094](#)-B-7 MCCULLY JONES MOTION FOR RELIEF FROM
MBB-1 AUTOMATIC STAY
8-21-14 [[14](#)]
THE BANK OF NEW YORK MELLON
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) and (d)(2) in order to permit the movant to foreclose on the real property located at 19887 First Street, Cottonwood, California 96022 (APN 087-130-026) (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 three (3) 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 report of no distribution and a statement of non-opposition to the motion. The debtor has filed a statement of intention to surrender the Property.

The court will issue a minute order.