

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

**October 7, 2014 at 9:31 A.M.**

1. [14-22809](#)-B-7 PETER/JUANITA ROONEY  
MJ-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-12-14 [[39](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

**Tentative Ruling:** The debtors' opposition is overruled. 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 August 11, 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) in order to permit the movant to foreclose on the real property located at 7687 Conquistador Court, Granite Bay, California 95746 (APN 047-110-019-000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The movant's request for relief under 11 U.S.C. § 362(d)(2) is denied. 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, and the debtors do not dispute or even address in their opposition, that the debtors have failed to make nineteen (19) mortgage payments and are in default in the total amount of \$47,965.68 as of the date of the filing of the motion. The chapter 7 trustee has filed a statement of non-opposition to the motion. The foregoing constitutes cause to grant the movant 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. According to the movant's own calculations, there is \$12,350.62 in equity in the Property.

The debtors' opposition is unpersuasive. The court agrees that there is an equity cushion in this instance, which is why the movant's request for relief under 11 U.S.C. § 362(d)(2) has been denied. However, the court is confused by the balance of the debtors' opposition. First, the debtors assert that the Property is necessary to an effective reorganization because "the Property and the exempt equity are assets which will be listed in the Chapter 13 petition due to be filed prior to the hearing date on this motion. The debtors' plan will include the current monthly mortgage payment, as well as a partial payment on any mortgage payments in arrears" (Dkt. 46, p.2, para.3, lines 15-20). The court does not understand this argument as this case was filed under chapter 7 on March 20, 2014 (Dkt. 1) and the debtors received a discharge

under 11 U.S.C. § 727 by order entered August 11, 2014 (Dkt. 30). There is no indication that the case has ever been pending under chapter 13, nor is there any evidence that the debtors intend on converting the case to chapter 13.

Second, the debtors argue that cause does not exist to grant relief from the automatic stay because the Property "is adequately insured for an amount in excess of movant's mortgage debt; the Property is occupied and maintained by debtors, and there is no property tax delinquency" (Dkt. 46, p.2, para.4, lines 21-25). Even if the court were to accept these unsworn assertions, it does not address the movant's allegation that it is not receiving regular monthly mortgage payments. This is cause to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). Accordingly, the debtors' opposition is overruled.

The court will issue a minute order.

2. [14-26911](#)-B-7 JENNIFER NANNIE  
PD-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-28-14 [[13](#)]

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(1). Because the debtor is pro se and has filed a statement of intention to surrender the Property (as that term is defined herein), the court issues the following 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 30, 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 800 Bauer Road, Laytonville, California 95454 (APN 014-190-44-00) (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. The movant's request for attorneys' fees and costs is denied. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make thirty-two (32) 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.

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. [11-47614](#)-B-7 MARVIN/GENA LEBLANC  
JHW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-4-14 [[76](#)]

AMERICREDIT FINANCIAL  
SERVICES VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2002 Mercedes Benz E320 (VIN WDBJF65J62B489971) (the "Collateral"), at 12:01 a.m. on October 5, 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. [14-29114](#)-B-7 FRANK ANDERSON  
JWC-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
9-16-14 [[15](#)]

COUNTRY SQUIRE INVESTORS,  
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.

5. [14-22315](#)-B-11 BARRY JOHNSON  
DJD-1

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
8-13-14 [[75](#)]

FEDERAL NATIONAL MORTGAGE  
ASSOC. 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. [14-27733](#)-B-7 S.R. TRUCKING, MOVING & MOTION FOR RELIEF FROM  
HRH-1 STORAGE, INC., A AUTOMATIC STAY  
9-19-14 [[48](#)]  
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. Therefore, the court issues no tentative ruling on the merits of the motion.

7. [14-26240](#)-B-11 FOLSOM LEARNING CENTER MOTION FOR RELIEF FROM  
MWP-1 ASSOCIATES AUTOMATIC STAY  
9-9-14 [[34](#)]  
HOMESTEAD MORTGAGE INCOME  
FUND, LLC VS.

**Tentative Ruling:** None.

8. [14-24379](#)-B-11 ABF ASSOCIATES MOTION FOR RELIEF FROM  
MWP-1 AUTOMATIC STAY  
9-9-14 [[44](#)]  
HOMESTEAD MORTGAGE INCOME  
FUND, LLC VS.

**Tentative Ruling:** None.

9. [14-27554](#)-B-7 JOSEPH RAPP MOTION FOR RELIEF FROM  
APN-1 AUTOMATIC STAY  
9-9-14 [[13](#)]  
WELLS FARGO BANK, N.A. VS.

**Tentative Ruling:** he motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2008 Kia Sportage (VIN KNDJF724587539793) (the "Collateral"), at 12:01 a.m. on October 2, 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 his stated intention (retain and reaffirm) 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.

10. [11-26173](#)-B-7      MARCUS NIETO AND HILDY      MOTION FOR RELIEF FROM  
MJ-1                      ORTIZ                      AUTOMATIC STAY  
9-10-14 [[118](#)]  
BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtor received a discharge on September 19, 2011, 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 8724 Cullen Court, Elk Grove, California (APN 125-0370-037) (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 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 court will issue a minute order.

11. [13-30482](#)-B-7      CRAIG/CINDY COCKERELL      MOTION FOR RELIEF FROM  
APN-1                                           AUTOMATIC STAY  
9-3-14 [[69](#)]  
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 and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtor received a discharge on November 19, 2013, 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 892 Maria Vista Way, Placerville, California (APN 001-282-06-100) (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 waived. Except as so

ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make ten (10) mortgage payments. This constitutes a lack of adequate protection and cause for relief from the automatic stay. The trustee has filed a statement of non-opposition to the motion.

The court will issue a minute order.

12. [13-30482](#)-B-7 CRAIG/CINDY COCKERELL MOTION FOR RELIEF FROM  
APN-2 AUTOMATIC STAY  
9-3-14 [[75](#)]  
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 and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on November 19, 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) in order to permit the movant to foreclose on the real property located at 892 Maria Vista Way, Placerville, California (APN 001-282-06-100) (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 waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make nine (9) mortgage payments. This constitutes a lack of adequate protection and cause for relief from the automatic stay.

The court will issue a minute order.