

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

November 18, 2014 at 9:31 A.M.

1. [14-24379](#)-B-11 ABF ASSOCIATES
MWP-2

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-21-14 [[75](#)]

SECOND ANGEL FUND I, LLC VS.

Tentative Ruling: The debtor's opposition is overruled. The motion is granted in part and denied in part. As to the debtor-in-possession and the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(2) in order to permit the movant to foreclose on the real property located at 8544 Auburn Folsom Road, Granite Bay, California (APN 048-360-051) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

The movant seeks relief from the automatic stay both for cause under 11 U.S.C. § 362(d)(1) based on an alleged lack of adequate protection of its interest in the Property and under 11 U.S.C. § 362(d)(2), alleging that the debtor does not have an equity in the Property and it is not necessary for an effective reorganization in this chapter 11 case.

Relief under 11 U.S.C. § 362(d)(1) is not appropriate. The movant alleges that it is not adequately protected because the debtor is not making payments on the obligation secured by the Property and because the creditor is not protected by a cushion of equity in the Property. However, in a chapter 11 case, "the fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under section 362(d)(1)." In re Mellor, 734 F.2d 1396, 1440 (9th Cir. 1984). Nor is the debtor's failure to make payments on the obligation sufficient cause. In chapter 11 cases where the movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) in real property, this court is guided by United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365 (1988) ("It is common ground that the 'interest in property' referred to by § 362(d)(1) includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization; and that that interest is not adequately protected if the security is depreciating during the term of the stay." [emphasis added]). Here, the movant neither cites nor analyzes Timbers, and the movant presents no evidence that the subject property is depreciating in value.

However, the court finds that relief under 11 U.S.C. § 362(d)(2) is appropriate. The movant has shown evidence in the form of an appraisal of the Property which shows that the value of the Property is

\$2,680,000.00. The movant also alleges without dispute and has shown evidence that the Property is encumbered by a first priority deed of trust securing an obligation with a balance of \$1,918,382.78 and a second priority deed of trust in favor of the movant securing an obligation with a balance of \$945,691.02. Together, the secured obligations encumbering the Property total \$2,864,073.80, more than the value of the Property. Even if the court deducts the post-petition interest of \$45,201.72, to which the movant does not appear to be entitled in this bankruptcy case under 11 U.S.C. § 506(b), the secured obligations encumbering the Property are \$2,818,872.08. That figure still exceeds the appraised value of \$2,680,000.00. The debtor's assertion in its opposition that there "could be" equity in the Property for the debtor is unsupported by any evidence other than the belief of the debtor's principal R. Gregory Nichols, who does not establish a basis for his knowledge that the value of the Property could be in excess of the total amount of encumbrances. The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity for the debtor in the Property.

Once lack of equity is established, the burden is on the debtor to show that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g). "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means...that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.'" United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 375-376, 98 L.Ed.2d 740, 108 S.Ct. 626 (1988).

The debtor has not satisfied the foregoing standard. At most, the debtor's opposition establishes that it recently began the process of negotiating chapter 11 plan treatment with one of its secured creditors - the holder of the first deed of trust on the Property - on October 31, 2014, six months and two days after the date of the filing of the petition and seven days before the deadline established by the court for filing a disclosure statement in support of the chapter 11 plan filed July 7, 2014, or an amended plan. According to the debtor, negotiation of plan terms with the first deed of trust holder is contingent on an appraisal of the Property which had yet to occur at the time the debtor filed its opposition. The opposition does not show a reasonable possibility of a successful reorganization within a reasonable time. Accordingly, relief under 11 U.S.C. § 362(d) (2) is granted.

The court will issue a minute order.

2.	14-25909 -B-7 PD-1	VICTOR GARCIA AND GABRIELA JIMENEZ	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-9-14 [36]
	WELLS FARGO BANK, N.A. VS. CASE DISMISSED 10/15/14		

Tentative Ruling: The motion is dismissed as moot due to the dismissal of the bankruptcy case by order entered October 15, 2014 (Dkt. 44). The movant already has the relief it seeks with respect to real property

located at 593 E. Wigeon Way, Suisun City, California (APN 0173-132-100).

The court will issue a minute order.

3. [14-30642](#)-B-7 TREVONNE OWENS MOTION FOR RELIEF FROM
SG-1 AUTOMATIC STAY
11-3-14 [[12](#)]
TOM ROMEO 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.

4. [14-28474](#)-B-7 ANNETTE JONES MOTION FOR RELIEF FROM
JFL-1 AUTOMATIC STAY
10-16-14 [[11](#)]
SETERUS, 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 2122 Erickson Circle, Stockton, California (APN 166-390-11) (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 seven (7) 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.

5. [14-29576](#)-B-7 YOLANDA GAYLE
APN-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-16-14 [[13](#)]

SANTANDER CONSUMER USA, INC.
VS.

Tentative Ruling: The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of a 2007 Mercedes Benz C230 (VIN WDBRF52H47F928356) (the "Collateral"), at 12:01 a.m. on October 28, 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). The court acknowledges the movant's allegation that the debtor has filed a statement of intention to surrender the Collateral. However, the debtor's statement of intention (Dkt. 1, p.37) indicates an intention to surrender a 2007 Mercedes CL600, not the Collateral.

The court will issue a minute order.

6. [14-28277](#)-B-7 ELPIDIO/DELIA BLANCO
MJ-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-14 [[16](#)]

U.S. 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 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 96-3198 Pakalana Street, Pahala, Hawaii 96777 (APN (3) 9-6021-001) (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 forty-five (45) 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 non-opposition to the motion and a statement of intention to surrender the Property. The chapter 7 trustee has filed a report of no distribution.

The court will issue a minute order.

7. [14-29188](#)-B-7 ELIZABETH MARTIN
RCO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-10-14 [[11](#)]

WELLS FARGO 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) in order to permit the movant to foreclose on the real property located at 627 Duane's Court, Fairbanks, Alaska 99709 (APN 0428558) (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 pursuant to 11 U.S.C. § 362(d)(2) is denied. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. The movant is awarded attorney's fees equal to the lesser of \$675.00 or the amount actually billed plus costs of \$176.00. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make five (5) mortgage payments. The debtor has filed a statement of intention to surrender the Property. 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. According to the movant's own calculations, there is \$22,278.71 in equity in the Property. The costs of liquidation are not included in the calculation of the equity. Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984) (equity means "the difference between the property value and the total amount of liens against it").

Because the value of the collateral exceeds the movant's claim, the movant is awarded attorney's fees equal to the lesser of \$675.00 or the amount actually billed plus costs of \$176.00. These fees and costs may be enforced only against the movant's collateral.

The court will issue a minute order.

8. [14-20863](#)-B-7 SUNJESH/RESHMI NARAYAN
CJO-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-23-14 [[16](#)]

GREEN TREE SERVICING LLC VS.

Tentative Ruling: This matter is continued from November 12, 2014, at 9:31 a.m. because it was improperly set for hearing on a calendar reserved for motions for relief from the automatic stay in chapter 13 cases. The motion is properly filed under LBR 9014-1(f)(2) and remains in that preliminary posture. Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.