

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

December 16, 2014 at 9:31 a.m.

1. [14-22013](#)-B-13 FRANCISCO AGREDANO MOTION FOR RELIEF FROM
 APN-1 ESQUIVIAS AND ROSA GUZMAN AUTOMATIC STAY
 11-14-14 [[97](#)]

SANTANDER CONSUMER USA, 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 against the estate and the debtors pursuant to 11 U.S.C. § 362 (d) (1) in order to permit the movant to permit the movant to obtain possession of its collateral, a 2004 Chevrolet Silverado (VIN 2GCEC19V541379394) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a) (3) is ordered waived. Except as so ordered, the motion is denied.

The debtors' chapter 13 plan (Dkt. 84), confirmed by order signed December 12, 2014, does not provide for any treatment of the movant's claim. The movant alleges without dispute that the loan obligation secured by the Collateral matured on May 26, 2012, and that the debtors have not made any payments on the obligation since then and that they remain in possession of the Collateral. The movant alleges without dispute that the debtors have not provided the movant with evidence that the Collateral is insured, as required by the terms of the underlying agreement. The foregoing constitutes a lack of adequate protection and cause for relief from the automatic stay.

The court will issue a minute order.

2. [14-28028](#)-B-13 JEFFREY NELSON AND LURDES MOTION FOR RELIEF FROM
MDE-1 ROSALES AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-11-14 [[56](#)]
CAPITAL ONE AUTO FINANCE 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 debtors pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to permit the movant to obtain possession of its collateral, a 2012 Toyota Camry (VIN 4T1BF1FK8CU099200) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

The debtors' chapter 13 plan (Dkt. 7) provides for treatment of the movant's claim in class 4, pursuant to which the debtors are to make payments directly to the movant. The movant alleges without dispute that the debtors are three months in post-petition default of the obligation secured by the Collateral. The foregoing constitutes a lack of adequate protection and cause for relief from the automatic stay.

The court will issue a minute order.

3. [14-31270](#)-B-13 LEE RUSSELL MOTION FOR RELIEF FROM
CPG-1 AUTOMATIC STAY
12-2-14 [[15](#)]
R. CHAVEZ 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. [14-28075](#)-B-13 RICHARD TOGNOLI MOTION FOR RELIEF FROM
PJR-2 AUTOMATIC STAY
11-18-14 [[70](#)]
TRI COUNTIES BANK VS.

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The debtor's opposition is sustained in part. The motion is denied.

The movant, Tri Counties Bank ("TCB") seeks relief from the automatic stay to proceed to exercise its remedies under applicable nonbankruptcy

law against the real property located at 15933 Country Living Lane, Forest Ranch, California (APN 056-280-055-000) (the "Property").

TCB is the beneficiary of an obligation secured by a second priority deed of trust on the Property and is also the beneficiary of an obligation secured by a third priority deed of trust on the Property. The second amended plan filed by the debtor on November 25, 2014, provides the obligation secured by the second deed of trust in class 1, specifying payment of an ongoing contract installment in the amount of \$961.00 per month and a dividend of \$752.66 per month to cure prepetition arrears, both of which are to be paid to TCB by the chapter 13 trustee from the debtor's plan payments. The plan provides for the obligation secured by the third deed of trust in class 2C, as a secured claim reduced to \$0.00 (and the balance treated as a general unsecured claim), with no monthly dividend specified. By order entered November 3, 2014, the court fixed the amount of TCB's secured claim based on the third deed of trust obligation at \$0.00; the court notes that TCB filed a statement of non-opposition to the debtor's motion to value the Property.

Therefore, TCB may show that it is not adequately protected and entitled to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) by providing evidence that the debtor has failed to make plan payments to the chapter 13 trustee as required by the terms of his plan, thus hindering the ability of the chapter 13 trustee to pay TCB. Local Bankruptcy Rule 4001(b)(1) and (b)(2) specify the nature of the evidence required to show that either the chapter 13 trustee has failed to maintain post-petition payments to the movant, or that the debtor has failed to make plan payments to the chapter 13 trustee. TCB's motion is not accompanied by any such evidence; it appears the TCB is completely unaware of the requirements of LBR 4001(b). Rather, TCB's argument that it is not adequately protected appears to be based solely on its contention that the debtor is in prepetition default of the obligations and that "about October 31, 2014" TCB received \$1,922.00 from the chapter 13 trustee, but has not received payments since then; that is not sufficient cause for relief from stay in the absence of evidence that the debtor has defaulted in plan payments under the terms of his proposed plan. TCB's contention that it has not received further payments from the chapter 13 trustee since October 31, 2014, is not evidence that the debtor is not current under the plan, particularly in light of the evidence presented by the chapter 13 trustee in opposition showing that the debtor was current under the terms of the plan as of November 24, 2014.

Relief under 11 U.S.C. § 362(d)(2) is also not appropriate. The debtor does not have an equity in the Property, as the Property. Even if the Property has a value of \$245,000.00, as the debtor contends in his opposition, it is encumbered by approximately \$314,000.00 in secured debt. See Stewart v. Gurley, 745 F.2d 1194, 1195 (9th Cir. 1984) ("equity" refers to the difference between the value of the property and all encumbrances upon it"). The fact that the debtor valued the Property for the purpose of fixing the movant's secured claim based on a third deed of trust at \$0.00 does not affect the equity analysis, as the court's order valuing the Property merely sets the amount of the secured claim - it does not avoid the lien of the third deed of trust or reduce the amount of the debt secured thereby. See 11 U.S.C. § 1325(a)(5)(B)(i)(I). The court finds that movant has satisfied its burden under 11 U.S.C. § 362(g) to show absence of equity.

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 court finds that the debtor has satisfied his burden of showing that the Property is necessary for an effective reorganization for the purposes of 11 U.S.C. § 362(d)(2). There is no evidence that the debtor is not current under the terms of his chapter 13 plan and he has filed a motion to confirm his second amended chapter 13 plan, which motion will be heard in less than one month from the date of this hearing and which plan provides for an ongoing contract installment payment to the movant and a cure of prepetition arrears. Nothing in this ruling, however, shall be construed as a finding that the debtor will be able to confirm the second amended plan.

The court will issue a minute order.