UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 28, 2020 at 1:30 p.m.

1.	**20-20046-E-13** **PGM-1**	**ANDRE HUDDLESTON** **Peter Macaluso**	**CONTINUED MOTION TO EXTEND AUTOMATIC STAY** **1-6-20 [11]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2020. By the court's calculation, 22 days' notice was provided.

The hearing was set pursuant to an order of the court shorting time (L.B.R. 9014-1(f)(3). Dckt. 16.

The Motion to Extend the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Extend the Automatic Stay is denied.

Andre Michael Huddleston ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-26167) was dismissed on December 5, 2019, after Debtor failed to pay fees. *See* Order, Bankr. E.D. Cal. No. 19-26267, Dckt. 44, December 5, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

CREDITOR'S OPPOSITION

Creditor HSBC Bank USA, National Association ("Creditor") filed an Opposition on January 17, 2020. Dckt. 24. Creditor opposes extension of the automatic stay on the basis that Debtor failed to show a change of circumstances and good cause (as required by 11 U.S.C. § 362(d)(4)) that warrants relief from the *In Rem* Order entered on December 6, 2019.

Further, Creditor contends that, although Debtor's reason for extending the stay is to save his home from foreclosure, Debtor has had numerous opportunities to make a good faith effort to reorganize his debts and prevent the foreclosure. Finally, Creditor argues that Debtor's current bankruptcy is part of a scheme to delay foreclosure, which has been scheduled for February 6, 2020.

TRUSTEE'S OPPOSITION

Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on January 22, 2020. Dckt. 29. Trustee opposes Debtor's motion on the basis that Debtor did not address the existence, effect, or ruling of an *In Rem* Order entered in Debtor's prior case.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

DISCUSSION

Here, Debtor argues that the instant case was filed in good faith and yet fails to explain why his previous cases were dismissed. Debtor testifies that his previous bankruptcy cases were filed because it was the advice provided by his previous legal counsel in order to continue working on a loan modification and settlement. Declaration, at 1. As to the case before the present bankruptcy, Debtor states he filed bankruptcy after a sale date was posted on his home. *Id.* at 2. Debtor then proceeds to simply state in passing that the bankruptcy case was dismissed. *Id.* No explanation as to why.

Regarding the present bankruptcy case, Debtor states that he is refiling due to financial hardship and that they "have home with equity" and they "don't want to loose (sic) our home." *Id.* Debtor states that since the previous dismissed case, his circumstances have changed: he has new counsel; he and co-debtor are fully employed and have no reason not to be able to make the payments to keep their home. *Id.* at 3.

Both Creditor's and Trustee's concerns are well taken. Debtor and Debtor's spouse have left behind a long trail of previously dismissed bankruptcy cases. This court's November 26, 2019 Order for Creditor's Motion for Relief from the Automatic Stay, filed in Debtor's latest dismissed case (Case No. 19-26167), stated the following:

> Debtor and Co-Debtor Vonetta LeAnn Huddleston combined have filed six bankruptcy cases and have had five dismissed. This current case is also likely to be dismissed as the Chapter 13 Trustee has brought a motion to dismiss it for failure to pay fees.
>
> A. Case No. 08-35589, Andre and Vonetta Huddleston
>
> 1. Filed: October 28, 2008
> 2. Chapter 13
> 3. Dismissal Date: January 8, 2010
> 4. Reason for Dismissal: Failure to make plan payments.
>
> B. Case No. 15-21714, Andre and Vonetta Huddleston
>
> 1. Filed: March 4, 2015
> 2. Chapter 13
> 3. Dismissal Date: November 24, 2015
> 4. Reason for Dismissal: The court granted the Trustee's Motion to Dismiss for failure to confirm a plan.
>
> C. Case No. 16-20077, Andre and Vonetta Huddleston
>
> 1. Filed: January 7, 2016
> 2. Chapter 13
> 3. Dismissal Date: May 24, 2016
> 4. Reason for Dismissal: The court granted the Trustee's Motion to

Dismiss for failure to make plan payments, Debtor paid $0.00 into the plan.

D. Case No. 19-22370, Vonetta LeAnn Huddleston
   1. Filed: April 17, 2019
   2. Chapter 13
   3. Dismissal Date: May 16, 2019
   4. Reason for Dismissal: Incomplete filing.

E. Case No. 19-25377, Vonetta LeAnn Huddleston
   1. Filed: August 27, 2019
   2. Chapter 13
   3. Dismissal Date: September 16, 2019
   4. Reason for Dismissal: Incomplete filing.

Dckt. 39.

Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the fact that this is the seventh case Andre Huddleston and Co-Debtor Vonetta Huddleston (collectively "Debtors") have filed. Further, the six previous Chapter 13 cases were dismissed. The debtors have shown they are unable to file and execute a plan. In effect, this is a series of bankruptcy attempts by Debtor. In 2019 alone there had been three filings, none of which Debtors put forth a basic effort to complete.

***In Rem* Order For Relief From Stay**

Lastly, but not least, Debtor's omission of this court entering an order granting prospective relief from the stay pursuant to 11 U.S.C. § 362(d)(4) on December 5, 2019, in Debtor's immediate prior bankruptcy case, No. 19-26167, does not show good faith in this case.

Debtor's present Motion "merely" seeks to have this court "extend" the automatic stay that went into effect pursuant to 11 U.S.C. § 362(a) when this current case was commenced, but would terminate as to the Debtor thirty days after this current case was filed because Debtor had only one prior bankruptcy case pending and dismissed in the one year period prior to the commencement of the current case.

This statement of relief requested is grossly inaccurate.

First, there is no automatic stay in this case to be extended, the court having issued its order pursuant to 11 U.S.C. § 362(d)(4) that no stay would go into effect concerning the Property in any future case for a period of two years. The current case filed on January 6, 2020 is within two years of this court's December 5, 2019 Order granting the 11 U.S.C. § 362(d)(4) relief.

It is unfortunate that the court took the Motion and statements made therein at face value that relief was being requested pursuant to 11 U.S.C. § 362(c)(3)(B). No relief pursuant to that section is possible in this case. Also, the statement in the Motion that:

> Lastly, there is no indication that the Debtor engaged in any type of scheme or other operation to abuse the bankruptcy process.

is grossly inaccurate. Motion, p. 4:24-26; Dckt. 11. The findings of fact and conclusions of law by the court in granting the 11 U.S.C. § 362(d)(4) relief in Debtor's prior case include:

> The filing of the current Chapter 13 case **cannot have been for any bona fide, good faith reason** in light of the fact that this is the sixth case Andre Huddleston and Co-Debtor Vonetta Huddleston ("Co-Debtor") (collectively "Debtors") have filed. Further, the five previous Chapter 13 cases were dismissed. **The debtors have shown they are unable to file and execute a plan**. In effect, this is **a series of bankruptcy attempts by Debtor**. In 2019 alone there have been three filings, **none of which Debtors put forth a basic effort to complete**.

19-26167; Civil Minutes, Dckt. 39 at 4 (emphasis added).

In reviewing Debtor's bankruptcy cases filed in the last decade, he and Voneltta Huddleston started with being represented by known, experienced counsel, but then took it to represent themselves:

Case No.	Counsel
Case 15-21714 (Joint).....	Gary Ray Fraley and Dana R. Wares
Case 16-20077 (Joint).....	Gary Ray Fraley and Dana R. Wares
Case 19-22370 (Vonetta).....	Pro Se
	Filed: April 17, 2019
	Dismissed: May 16, 2019
Case 19-26167 (Debtor).....	Pro Se
	Filed: October 1, 2019
	Dismissed: December 5, 2019

Debtor's current case, with the assistance of new counsel, was filed on January 6, 2020.

Reviewing Debtor's declaration (Dckt. 14), it appears that the series of bankruptcy filings have little to do with reorganizing Debtor's and Vonetta Huddleston's finances, but to litigate a disputed loan modification. Debtor's testimony under penalty of perjury include:

> 1. I filed my previous Chapter 13 bankruptcy case because we had hired Olympia Law Firm, to file a law suit against Wells Fargo for failing to properly review our

loan modification. We paid Olympia a total fee $5,000, or which we paid $1,000.

2. When Wells Fargo was setting the sale date Olympia told us to go file a chapter 13 to get them more time to settle the case.
. . .

4. The case got dismissed (Case #19-22370) and we had a continued sale date. At that time Olympia told us the papers did not get back yet, and that we should file a second bankruptcy, so we did (Case #19-25377).

5. Again, the case got dismissed and Sam Blanco, the paralegal told us that they just needed more time and that they were working on the lawsuit and loan modification, and that we needed to hold off the sale because a settlement check was close at hand.

6. We got a settlement, which provided $500.00 and a loan modification review. However, after the settlement was generated, Olympia never submitted the loan modification application to the lender, and another sale date was posted on our home.

7. Thereafter, I filed the case we personally sent in the application and the first bankruptcy in my name (Case #19-26167), and a week before Christmas, after sending in the application ourselves Wells Fargo said there was too much equity in the home to modify it, and the bankruptcy case dismissed again.
. . .
9. We have a home with equity and we don't want to loose our home. We thought we were doing the right things thru Olympia Law and followed what the law firm was telling us to do. The settlement merely paid the attorney's, gave us a review which we never qualified for, $500.00, and now allows them to foreclosure.

10. Since my previous case was dismissed, my circumstances have changed. I no longer am represented by Olympia, and I have found a new counsel. Both of us are fully employed and have no reason not to be able to make the payments to keep our home, which initially had a escrow analysis that was miscalculated. Instead of continuing the payments, we waited and had them fix it, however, I lost my job which I have now replaced and affords us enough income to repay the arrears on the house.

Declaration, Dckt. 14.

What Debtor has been pursuing has been a loan modification. In reading this Declaration, several different claims and rights that may be property of the bankruptcy estate jump out. It also appears that Debtor neglected to inform his current counsel of what was adjudicated in his prior case.

On Schedule A, Debtor states that the Agate Way Property (the property securing the loan to be modified) has a value of $480,000. Dckt. 1 at 12. On Schedule D Debtor lists three creditors with claims secured by the Agate Way Property: Wells Fargo Bank, N.A. for ($430,313.76), County of Sacramento for ($712.17), and Assessment Management Services for ($16,161.00).

Using Debtor's values and his statement that the current Chapter 13 Plan is to protect Debtor's equity in the property, the numbers compute as follows:

FMV	$480,000
Costs of Sale (Est. 8%)	($38,400)
Wells Fargo Bank, N.A.	($430,313)
County of Sacramento	($712)
Assessment Management Services	($16,161)
	==========
Total Equity Projection	($5,586)

Based on Debtor's calculation, it appears that there is no realizable equity for Debtor, or for Wells Fargo Bank, N.A. for that matter.

On Schedule I, Debtor lists now having $4,623 in income at his new employment and $3,138 for Vonetta. In additional, Debtor states having $1,332 a month in additional income working for County of Sacramento (second job) and Vonetta has $400 in net income from some other business or as rental income.

For this $9,493 in monthly gross income, on Schedule I Debtor lists there being only ($389) a month deducted for state and federal income taxes, Medicare, and Social Security. Dckt. 1 at 36-37. Debtor states having $8,341 in month take home income.

On Schedule J, Debtor lists having ($4,341) in monthly necessary expenses, which leaves exactly $4,000 of monthly net income to fund a plan. *Id.* at 38-39. Debtor lists having four dependants, for a family unit of six persons. Debtor, spouse, two ten year old children, a nineteen year old child, and a twenty-two year old child.

On Schedule J, Debtor lists ($90) for taxes on his second job, which is $1,332 a month in income. This does not appear reasonable. Nor does it appear reasonable that the state and federal income taxes, and Medicare and Social Security taxes for $9,493 in gross income are only ($389) a month.

Debtor's Chapter 13 Plan provides for a 0% dividend for creditors with general unsecured claims, with the $4,000 a month plan payment being consumed by curing the defaults and making the current payments for the claims secured by the Agate Property in which there is no equity and paying off the obligation secure by the 2014 Jeep.

Without regard to whether the Plan makes economic sense, it appears that what Debtor proposes to do is not feasible if Debtor is actually obligated to pay state and federal taxes.

Relief From 11 U.S.C. § 362(d)(4) Order

Congress provides in 11 U.S.C. § 362(d)(4) that notwithstanding the issuance of an order thereunder, "a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing." *See also* 11 U.S.C. § 362(b)(20).

Reviewing the Motion as if it sought to impose the stay notwithstanding an 11 U.S.C. § 362(d)(4) letter, it appears that the changed circumstances are that Debtor now wants to cure the arrearage, now being convinced that he cannot get a modification. Debtor and his spouse have substantial monthly income to now fund a plan, having recovered from their prior unemployment. Debtor wants to save the equity in the Property.

In reverse order, Debtor's own Schedules demonstrate that there is not an equity in the property, Debtor's stated value being a wash with the liens against the property and costs of sale.

Debtor does show substantial income from his working two jobs, his non-debtor (in this case) spouse working and having a business, with this generating exactly enough to fund Debtor's plan. However, Debtor and Debtor's spouse are able to do that by stating that they do not have to pay state and federal income taxes, Medicare and Social Security Taxes, and self-employment taxes (for the non-debtor spouse's business).

Even looking it in the most favorable light for Debtor, the court does not find good cause or changed circumstances.

The Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Andre Michael Huddleston ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to extend the automatic stay, which terminates only as to Debtor pursuant to 11 U.S.C. § 362(c)(3)(A) thirty days after the commencement of this case, is denied. No determination is made by the court to the other provisions of 11 U.S.C. § 362(a) that apply to property of the bankruptcy estate.

2. **18-27651-E-13 AP-1** **VIVIAN TOLIVER** **Peter Macaluso** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 12-6-19 [41]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 6, 2019. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxx.

Wells Fargo, N.A. ("Movant") seeks relief from the automatic stay with respect to Vivian Toliver's ("Debtor") real property commonly known as 708 Los Lunas Way, Sacramento, California ("Property"). Movant has provided the Declaration of Tameka S. Green to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five (5) post-petition payments, with a total of $6,951.59 in post-petition payments past due. Declaration, Dckt. 44.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on December 17, 2019. Dckt. 48. Trustee asserts that Debtor is current under the confirmed plan where the last payments totaling $1,400.00 posted December 3, 2019. Debtor's confirmed plan classifies Movant as a Class 1 secured claim with actual treatment outlined in the Ensminger Provisions include under Section 7 of the Plan. Debtor's adequate protection payments are $1,200.00 against principal and interest only.

Movant's filed Proof of Claim (Claim 3-1) reflects an arrearage of $117,740.00 as of the date of the petition.

Trustee further asserts that Debtor's confirmed Plan provides Debtor have in process a HAMP Application under Section 7.03, and that where Creditor asserts Debtor has not submitted any loan modification application since the case was filed on December 10, 2018, the Creditor might be entitled to relief.

DEBTOR'S RESPONSE

Debtor filed a Response on December 31, 2019. Dckt. 51. Debtor's Counsel asserts that Debtor has been working with the mortgage lender on obtaining approval of a loan modification. However, due to the recent holidays, Debtor was unable to provide a declaration to counsel. Debtor will supplement the record before hearing on this matter.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $204,173.06 (Declaration, Dckt. 44), while the value of the Property is determined to be $300,000.00, as stated in Schedules B and D filed by Debtor.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Oral Argument

Debtor's opposition is that over the past year she has been responsible for pushing for a loan modification, but such has not occurred. Debtor's counsel made it clear that it was not his responsibility, but the Debtor's. It is argued that the Movant would not engage in such good faith modification discussions.

Though now arguing that Movant was not engaging in discussions, Debtor and Debtor's counsel have made no effort to "push the point," and press Movant on a modification, but Debtor has been content to live in the house making only a $1,200.00 a month adequate protection payment.

Debtor and Debtor's counsel assert that now, a year into the case under the plan requiring Debtor to prosecute a loan modification, that Debtor will move to sell the property pursuant to a modified plan. No action was taken by Debtor and the proposal of a modified plan was not taken until

Movant filed this Motion for Relief from the Stay.

It appears that there may be some exempt equity in the Property for Debtor, though Debtor's lack of action to protect it raises questions as to this assertion.

The court continues the hearing to afford Debtor, and her family members who are assisting in her saving her exempt equity, to prosecute such a sale plan in good faith. The first step is that Debtor must begin with the January 2020 adequate protection payment and in the following months if the court give time to prosecute such a modified plan, to make the regular monthly payment under the note of $1,635.93. The Debtor cannot make a discounted payment infinitum and enjoy the house putting the risk of value, insurance, and property taxes on Movant (all shown on Schedule J to be included in the monthly mortgage payment, Dckt. 12 at 20.

The Trustee reported that the Debtor was late in making the December 2019 payment, it not being made until January 2020, so the December adequate protection payment of $1,200.00 has not been disbursed. Debtor's counsel suggest that the $1,200.00 from December be used for the January 2020 adequate protection payment, with Debtor only having to come up with the additional $435.93. Such a suggest does not have it roots in good faith. Debtor being late on one payment does not get to waive it and then pay less.

JANUARY 28, 2020 HEARING

At the January 28, 2020 hearing the Trustee reported xxxxxxxxxx

Debtor's counsel then reported, xxxxxxxxxx

FINAL RULINGS

3. **19-27471-E-13 JHW-1** | **CAROLINE/KINGSLEY OBASEKI**
Peter Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
12-27-19 [16]

AMERICREDIT FINANCIAL SERVICES, INC VS.

Final Ruling: No appearance at the January 28, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Non-filing Co-Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 27, 2019. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

Americredit Financial Services, Inc. DBA GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Nissan Sentra, VIN ending in 0343 ("Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Caroline Amen Obaseki and Kingsley Uyi Obaseki ("Debtor") and Osasenaga Obaseki ("Non-Filing Co-debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $365.00

in post-petition payments past due. Declaration, Dckt. 19. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of $365.00. *Id*.

TRUSTEE'S RESPONSE

Chapter 13 Trustee, David Cusick ("Trustee") filed a Response on January 7, 2020. Dckt. 24. Trustee states that he does not oppose the motion and that Debtor provides for Movant on Schedule D and in Class 3 of the proposed Plan.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $13,159.20 (Declaration, Dckt. 19), while the value of the Vehicle is determined to be $10,000.00, as stated in Schedules B and D filed by Debtor.

Debtors' proposed Plan provides for the surrender of the Vehicle. Dckt. 3.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Co-Debtor Stay

With respect to the co-debtor stay, the Motion states with particularity the following grounds for such relief:

> 3. Debtors and non-filing co-Debtor, OSASENAGA OBASEKI, claim an interest in a 2016 NISSAN SENTRA, VIN: [Ending in 0343] (the "Vehicle") under the terms of a Retail Motor Vehicle Contract with Movant ("the Contract") dated December 20, 2016
>
> 7. Debtors' Chapter 13 Plan provides for surrender of the Vehicle. Attached as Exhibit "D" to the List of Exhibits is a true and correct copy of Debtor's Chapter 13 Plan on file herein.
>
> 8. Debtor is currently in default to Movant for the payments coming due

November 3, 2019 through December 3, 2019, each in the amount of $365.00 plus fees and costs for a total delinquency of $997 .25.

9. The account is two months past due, the Vehicle is a depreciating asset, and Debtors' Chapter 13 Plan provides for surrender of the Vehicle, therefore Movant requests that the Court grant the waiver of the 14-day stay as prescribed by Federal Rule of Bankruptcy Procedure 400l(a)(3).

WHEREFORE, Movant prays for an order:
. . .
2. Terminating the Non-filing Co-debtor stay as to Movant, its successors and assigns

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable non-bankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Americredit Financial Services, Inc. DBA GM Financial ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Nissan Sentra,

VIN ending in 0343 ("Vehicle"), and applicable non-bankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay of Osasenaga Obaseki of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.