



## TRUSTEE'S NON-OPPOSITION

Hank Spacone, Chapter 7 Trustee ("Trustee"), entered a statement of non-opposition on the docket on January 24, 2019.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$359,316.16 (The Movant's Deed of Trust securing a debt of \$216,448.17 and the \$142,867.99 secured by "Servicing Corporation's" Second Deed of Trust), as stated in the Chastity Wilson Declaration and Schedule D. Dckt. 1. The value of the Property is determined to be \$344,998.00, as stated in Schedules A and D.

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.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375-76 (1988); Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on December 11, 2018. Dckt. 26. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### **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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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) because Movant merely requested that the Order Granting Relief from the Automatic stay be deemed effective and enforceable immediately upon its entry with no stay pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) but provided no reasoning as to why they requested the waiver. This part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an 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 The Bank of New York Mellon F/K/A The Bank of New York as Trustee for First Horizon Alternative Mortgage Securities Trust 2005-AA1 (“Movant”) 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow The Bank of New York Mellon F/K/A The Bank of New York as Trustee for First Horizon Alternative Mortgage Securities Trust 2005-AA1, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as Travary Way, Antelope, California 95843 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement

provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. [18-28046-E-7](#)      **BERTHA FELIX**  
[VVF-1](#)                      **Paul Bains**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY**  
**1-8-19 [10]**

**MECHANICS BANK VS.**

**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.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) 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 7 Trustee, and Office of the United States Trustee on January 8, 2019. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Relief from the Automatic Stay is granted.**

Mechanics Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2013 Cadillac Escalade, VIN ending in 5033 (“Vehicle”). The Movant has provided the Declaration of Violina Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Bertha Teresa Felix (“Debtor”).

The Violina Brown Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$1,110.37 in post-petition payments past due. The Declaration also provides evidence that there are 3.81 pre-petition payments in default, with a pre-petition arrearage of \$4,234.64. The Brown Declaration states further that Debtor voluntarily surrendered the Vehicle to Movant.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

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 \$34,988.09, as stated in the Violina Brown Declaration. The value of the Vehicle is \$30,525. Exhibit 3, Dckt. 13.

## **DISCUSSION**

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 and Debtor’s intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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 nonbankruptcy 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 on the following grounds:

1. Eroding nature of the collateral due to the declining value of the Vehicle

2. The remaining delinquency on the loan secured by the Vehicle, and there being no indication that the Debtor will cure the delinquency.
3. The Vehicle has no equity.
4. There is a lack of evidence that the Vehicle is necessary for an effective rehabilitation.
5. Movant has possession of the Vehicle which was recovered pre-petition.

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 Mechanics Bank (“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 2013 Cadillac Escalade VIN ending in 5033 (“Vehicle”), and applicable nonbankruptcy 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 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.

3. [18-20173-E-7](#)      **GEORGE SLIGHT**  
[KSR-3](#)                      **Seth Hanson**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-17-19 [82]**

**STEVEN ROBINSON VS.**

**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.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 17, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Relief from the Automatic Stay is granted.**

Creditor Steven R. Robinson and Kate R. Schaffner, Trustee for the Robinson Schaffner Family Trust (“Movant”) seeks relief from the automatic stay with respect to George William Slight III’s (“Debtor”) real property commonly known as 8545 Palladay Road, Elverta California , California (“Property”).

**TRUSTEE’S NON-OPPOSITION**

Susan Smith, Chapter 7 Trustee (“Trustee”), entered a statement of non-opposition on the docket on January 24, 2019.



## **DISCUSSION**

### **Failure to Provide Supporting Evidence**

The Local Bankruptcy Rules provide “Every motion or other request for relief **shall** be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested.” LOCAL BANKR. R. 9014-1(d)(3)(D)(emphasis added). This rule is not permissive. Not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

Movant argues cause for relief exists Debtor has failed to attend numerous creditor's meetings, failed to file an amended plan, failed to make any payments to Creditor since August 2017, and there is no equity in the Property. Dckt. 83 at 3:6-8. However, no evidence of the aforementioned has been presented.

Notwithstanding the Local Bankruptcy Rules, Movant has not provided the court with any evidence on which it can make a determination as to cause for relief.

Movant further argues there is no equity here as Movant’s claim totals \$499,272.00. Dckt. 83 at 2:17. Movant does not estimate a value of the Property in its pleadings. However, in its RELIEF FROM STAY SUMMARY SHEET (which is not evidence), Movant asserts the value of the Property is \$499,000.00. Dckt. 84.

On its Schedules, Debtor values the Property at \$850,000.00. Schedule A, Dckt. 1.

Shockingly, Movant in its Proof of Claim values the Property at \$600,000.00. Proof of Claim, No. 1. Given the significant equity cushion in this case (Movant’s claim being the only one secured by the Property), it is unclear how the arguments of Movant comport with Federal Rule of Bankruptcy Procedure 9011.

In light of the foregoing, the Motion is denied without prejudice to afford Movant the opportunity to assemble its arguments, and file supporting evidence in conformity with the Local Bankruptcy Rules.

### **Pleadings Filed As Single Document**

Movant filed the Motion for Relief from Stay and Notice of Motion in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and

other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

On review of the Memorandum of Points and Authorities, it could reasonably be argued that the Memo is actually both a Motion and Memorandum of Points and Authorities, or a “mothorities.” This would have actually been permitted here. *See* Local Bankruptcy Rule 9014-1(d)(4).

Movant’s failure to follow the Local Bankruptcy Rules as to filing of separate documents forms a separate ground to deny the Motion.

### **Review of the Motion**

On its face, the Motion states with particularity (required by Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

- A. “Robinson Schaffner Family Trust dated May 29, 1997 ("Movant") will move this Court for relief of stay to foreclose on real property commonly known as 8545 Palladay Road, Elverta California, 95626 ("the Property").”

*Motion*, p. 2:1-3.

- B. “Debtor filed a petition for relief on January 11, 2018 (Docket No. 1) pursuant to 11 U.S.C. §1301 et. seq. . . . the case was converted to a Chapter 7 petition on May 14, 2018 (Docket No. 43). The discharge of the Debtor was entered on September 4, 2018 (Docket No. 76).”

*Id.*, p. 2:7-9.

- C. “This motion for relief from the automatic stay is made pursuant to 11 U.S. C. §§362(c)(2)(c) and (d)(1) and (2) in that a discharge has been granted to the Debtor, there is no automatic stay in favor of the Debtor, there is cause for relief of stay because of the Debtor's repeated failures to attend the creditor's meetings, there is no equity in the Property and there cannot be any effective reorganization as this is a Chapter 7 case with a discharge granted.”

*Id.*, p. 2:10-14. This allegation appears to state that there is no stay, as to the Debtor, for which relief can be granted.

- D. “Movant understands that the appointed Chapter 7 Trustee Susan Smith will file a statement of non-opposition to this Motion.”

*Id.*, p. 2:15-16. In the forgoing quotation it appears a backhanded allegation against the Trustee and estate that: (1) there is no equity and (2) there can be no effective reorganization in a Chapter 7 case. However, it appears that with respect to the Trustee and the Estate, it is asserted that the Trustee will consent to the requested relief.

E. This Motion is based on this notice of motion and motion, and the concurrently filed memorandum of points and authorities and Movant's information sheet.

*Id.*, p. 2:17-18. To the extent that Movant would contend that such a reference is an instruction to the court to canvas the other pleadings, distill from the pleadings the “grounds” which the court believes would be proper for Movant to use in advocating his position, and then assemble, state, and so advocate for Movant, the court declines the assignment of such work. It is the “Motion” in which the grounds are stated with particularity by the Movant.

There being no automatic stay as to the Debtor, 11 U.S.C. § 362(c)(2)(C), there is no relief to be granted as to the Debtor.

For the Estate, it is alleged that the Trustee will consent, and the Trustee has so consented, making her Statement of Non-Opposition in her January 24, 2019, Docket Entry Statement.

The Trustee having consented as stated in the Motion and the stay having already terminated as to the Debtor, the Motion is granted to compete the relief from the stay necessary for Movant to exercise its rights to foreclose on the collateral.

No other or additional relief is granted by the court.

The court shall issue an 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 Steven R. Robinson and Kate R. Schaffner (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and no good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Steven R. Robinson and Kate R. Schaffner, and each of them, their agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 8545 Palladay Road, Elverta California (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

The automatic stay having terminated as to the Debtor by operation of law pursuant to 11 U.S.C. § 362(c)(2)(C), the Debtor’s discharge having been entered on September 4, 2018, no further relief is required as to the Debtor.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement

provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.