UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 12, 2019 at 1:30 p.m.

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1. 18-27720-E-13 **DAVID RYNDA**
ASM-1 **Tracy Wood**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION TO COMPEL ABANDONMENT AND/OR MOTION FOR ADEQUATE PROTECTION
1-15-19 [25]

ELINA MACHADO 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).

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

Sufficient Not Notice Provided. The Proof of Service states that the Motion and supporting pleadings were only served on Debtor's Attorney on January 15, 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 13 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. The requested relief from abandonment of the property and prospective relief is denied without prejudice.

This Motion brings to the court a full plate of bankruptcy and non-bankruptcy issues. As

discussed below, while Debtor seeks relief to stop the foreclosure sale and the enforcement of several state court orders and judgments (not all of which have been provided to this court) concerning the ownership of real property commonly known as 9436 Windrunner Lane, Elk Grove, California.

It appears that there has been extensive state court litigation to this point in time, for which various orders and judgments are on appeal. The Third Amended Plan in this case appears to provide a vehicle to cure the default on the property and forestall the foreclosure while the parties litigate their dispute. However, it appears that there is a decision, for which Debtor has file an appeal in pro se, determining that Debtor has no interest in the Property and that Movant is to sell the Property.

REVIEW OF MOTION

Elina Machado ("Movant") seeks relief from the automatic stay with respect to David J Rynda's ("Debtor") real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property"). Movant has provided the Declaration of Armando S. Mendez, Movant's counsel, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mendez Declaration introduces the following evidence:

1. The Property is scheduled for a foreclosure sale February 15, 2019. Dckt. 27 at ¶¶ 1-2.

2. In state court ligation between Movant and her husband Gabriel Machado, *In Re The Marriage Of Machado*, Superior Court for the County of Sacramento, Case No. 17FL02730 (the "State Court Litigation"), Debtor was ordered to vacate the Property within 30 days of October 16, 2018. Id. at ¶¶ 3-4.

3. Debtor has appealed the State Court Litigation.

Id. at ¶ 5.

The Mendez Declaration also authenticates three exhibits: (1) Exhibit A, a Notice of Trustee's Sale; (2) Exhibit B, a copy of the Findings and Order After Hearing in the State Court Litigation; and (3) Exhibit C, a copy of the Notice of Filing/Notice of Appeal in the State Court Litigation. Dckt. 27.

Grounds Stated in Motion With Particularity

The Motion states with particularity the following grounds:

1. Debtor does not have equity in the Property because the State Court Litigation has already determined that he has no ownership interest. Dckt. 25 at p. 5:1-2, 6:9.5-13.

2. Debtor has appealed the State Court Litigation. *Id.* at 5:3-4.

3. Resolution of the pending State Court Litigation will determine Debtor's interest in the Property; this Chapter 13 case has no connection with the ownership disputes. *Id.* at 5:6.5-12.

4. The State Court Litigation determined Debtor's interest in the Property is merely possessory. Debtor is not obligated on the mortgage secured by the Property. *Id.* at 5:17-20.5

5. Movant is at risk of losing her the Property to foreclosure if the Automatic Stay is not lifted. *Id.* at 5:20.5-21.5. Movant's credit is being harmed by Debtor's failure to pay the mortgage which only Movant is obligated to pay. *Id.* at 5:21.5-6:2.

6. Debtor will be unable to demonstrate that the Property is necessary for an effective reorganization as the property is being used solely as a residence and Debtor is not attempting a reorganization. Debtor's bankruptcy petition seeks to re-litigate the issue of ownership in bankruptcy court not reorganize his debts. *Id.* at 6:20.5-7:4.

7. Debtor's only hope in establishing an ownership claim in The Real Property is successfully prosecuting the pending appeal. This can only be accomplished if the Court's lifts the automatic stay to allow the Parties to continue with the State court action. If Debtor is unsuccessful, Property will be of no consequence to the Bankruptcy Estate. *Id.* at 7:7.5-12.

8. If relief from the automatic stay is granted, the court should waive the 14-day stay of Bankruptcy Rule 4001(a)(3) to allow Movant to prevent foreclosure of the Property. *Id.* at 7:20.5-22.5.

In the Motion's request for relief, Movant requests an order "[g]ranting relief from the automatic stay to allow Movant to exercise all available rights and remedies with respect to the Property pursuant to the State court order and applicable nonbankruptcy law; including but not limited to proceeding with eviction proceedings, selling the Property and **allowing the State court to determine Debtor's monetary interest in the proceeds, if any**. Dckt. 25 at p. 8, ¶ a(emphasis added).

JANUARY 29, 2019 HEARING

At the January 29, 2019 hearing the parties addressed Movant's insufficient service (made only on Debtor's attorney), and agreed to continue the hearing with counsel for Debtor confirming that service was sufficient. Dckt. 62. The court continued the hearing on the Motion to February 12, 2019.

Furthermore, at the hearing the parties addressed with the court the underlying dispute and how that would be made part of this bankruptcy case. The Debtor making the current mortgage payments, current HOA payments, and cure payments through the plan pending completion of the litigation can be a form of adequate protection/protection from improperly being enjoined.

DISCUSSION

MOTION FOR RELIEF

All Movant's grounds share a common basis: that Debtor was determined in the State Court Litigation to have no interest in the Property.

From the evidence provided to the court, and contrary to the assertions of Movant, Debtor has some to be determined interest in the Property. Among the findings in the State Court Litigation are the following:

1. There was no valid contract for a sale of the real property to Mr. Rynda (joinder) because there is nothing in writing and there was inadequate consideration.

2. Mr. Rynda is ordered to vacate the property within 30 days.

3. That **Mr. Rynda made payments to Elina and Gabriel Machado in 2014 and made payments on the purchase mortgage to the bank. His interest is to be determined at a later time by the court**.

4. Wife may prepare the property for sale and list the property. The proceeds of the sale shall be placed in attorney, Armando Mendez's trust fund for later distribution.

Exhibit B, Dckt. 27(emphasis added).

What was determined during the State Court litigation was that there was no valid contract and no adequate consideration paid by Debtor for the Property. The court specifically reserved the issue of what interest Debtor has in the Property.

Review Fourth Amended Plan

The Debtor now has filed a Fourth Amended Plan filed on January 27, 2019. Dckt. 50. Under the terms of the Plan Debtor proposes:

Monthly Plan Payments.....$2,197.19
Term of Plan.....36 Months

Administrative Expenses

Debtor Counsel Fees.....($ 111.11) per Month
Chapter 13 Trustee Fees.....($ 175.78) per Month

Class 1 Claims

Windrunner Property Secured Claim

Current Monthly Payment.....($1,280.42) per Month

($14,500) Arrearage Payment.....($ 467.743) per Month

Class 2 Claims

Lakeside HOA

($4,731.00) Arrearage Payment.....($ 152.61) per Month

Class 3 Surrender Claims.....None

Class 4 Direct Payments

Erika Leyva.....($100)

Erika Leyva.....($100)

John Rynda.....($100)

U.S. HUD.....($- 0-)

Class 5 Priority.....None

Class 7 General Unsecured Claims

($98,358.09) Claims.....0.00% Dividend

Missing Plan Term

The Fourth Amended Plan (as was the Third Amended Plan as addressed in this court' tentative ruling for the January 29, 2019 prior hearing on this Motion) is silent on the pending litigation over the ownership of the Windrunner Property. As shown from the Motion, there is pending litigation over ownership.

On the Amended Statement of Financial Affairs filed on January 27, 2019, (Dckt. 51), the Debtor identifies the following pending litigation that is not provided for in the Chapter 13 Plan:

Marriage of Carolina C. Rynda and David J. Rynda. Creditor is David Hicks HF04 150159	Divorce	Sup. Court. California, Alameda County	Concluded

Marriage of Elina Machado and Gabriel Machado 17FL02730	Family law court lacked jurisdiction over debtor and his home. Family court ignored lack of jurisdiction, refused to look at quitclaim presented by debtor, ordered debtor vacate.	Sup. Court California, Sacramento County	On Appeal Appeals kick out order by family court for lack of subject matter and personal jurisdiction over debtor

David J Rynda v Elina Machado and Gabriel Machado	Quiet Title for debtor's home located at 9436 Windrunner Ln., Elk Grove, CA.	Superior Court, Sacramento County	On Appeal Debtor appeals kick out order by family court for lack of subject matter and personal jurisdiction over debtor.

The Fourth Amended Plan assumes that Debtor owns the Windrunner Property, Debtor will make the mortgage payments on the Windrunner Property, and Debtor makes no provision to litigate his asserted rights and interests. While the bankruptcy case appears to be holding the foreclosure at bay, it does not addressing the substantive dispute.

Absence of Motion
(as required under federal law and procedure)
to Confirm Chapter 13 Plan

On January 31, 2019, Debtor's counsel filed a pleading titled "Notion of Motion and Motion to Confirm Debtor's Fourth Amended Plan. Dckt. 65. The footer at the bottom of this Notice and Motion form is that for Best Case Software.

As provided under the Local Bankruptcy Rules, the notice, the motion, each declaration, and the exhibits (which may be combined into a unified exhibit document) must be filed as separate pleadings. L.B.R. 9004(c), (d); 9014(d)(4).

A motion filed in federal court must state with particularity the grounds upon which the requested relief is based, as well as the relief itself. FED. R. BANKR. P. 9013. Here, the Motion, which is a combined notice and motion, states the following grounds with particularity:

A. Debtor has filed papers with the court to confirm the Fourth Amended Plan.

B. Your rights may be affected.

C. If you do not want the Fourth Amended Plan to be confirmed, you must file a written opposition at least fourteen days before the March 12, 2019 hearing on the

motion to confirm.

D. If you do not take such steps to oppose, the court may grant the relief sought in the motion.

Notice of Motion and Motion, Dckt. 65.

The "grounds" stated in the Motion are insufficient to grant the relief requested - Confirmation of the Fourth Amended Plan. The pleading filed is not a motion, but merely a notice. A review of the docket discloses that:

- No motion stating grounds requesting relief has been filed;
- No declaration or documentary evidence has been filed in support of confirming the Fourth Amended Plan;
- No points and authorities has been filed in support of confirming the Fourth Amended Plan.

Nothing more has been done other than filing a document with a title that includes the word "Motion" in it.

Debtor is not prosecuting a Chapter 13 Plan to be confirmed in this case. Rather, it appears that Debtor is seeking to use a form of state court practice in which a mere notice is given and the parties are then forced to construct for the "movant" the motion and supporting pleadings. Though some may in some circumstances get away with such practices in state court, such is not permitted in federal court.

Absence of Provisions For Adequate Protection For Use of Bankruptcy Stay in Lieu of State or Federal Court Injunction

At the prior hearing the court had an extensive discussion with the respective counsel for the parties concerning the use of a bankruptcy stay in lieu of getting an injunction in a state or federal (Fed. R. Civ. P. 65/Fed. R. Bankr. P. 7065) lawsuit . Possibly, paying the current mortgage payments, curing the arrearage, paying the current HOA fees, and curing the HOA arrearage could be terms of a plan that would provide adequate protection while the automatic stay was used in lieu of the injunction (and required injunction bond). Such adequate protection provisions would be placed in the Additional Provisions - no such provisions are made by Debtor.

Additionally, the provisions would address what would happen in the event that the Debtor loses on appeal, the effect of any bankruptcy stay under the Plan, and termination of such stay under the Plan. No such provisions are made by Debtor.

The Plan, as discussed below, seeks to treat the Property in dispute as being the Debtor's property, ignoring the asserted rights and interests (which so far have been determined to exist by the State Court). The Plan could be misconstrued, and possibly misused in the State Court proceedings, to misrepresent that there is some sort of federal order that determines the rights and interests of the Property as being the Debtor's, and after the Plan is completed, there can be no dispute of such "rights."

Relief From Stay
as to the State Court Litigation

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, Movant is primarily seeking relief as to the Property. However, in its Motion Movant requests an order "Granting relief from automatic stay to allow . . . allowing the State court to determine Debtor's monetary interest in the proceeds, if any." Dckt. 25 at p. 8, ¶ a.

While hidden in a request for authorization to sell the Property, there is also here a request for relief as to the State Court Litigation which would allow the determination of Debtor's interest in the Property. As discussed, *infra*, without the court knowing what interest the Debtor has, relief cannot be granted as to the Property pursuant to 11 U.S.C. §§ 362(d)(1) or (d)(2).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been substantially litigated, with the remaining issue of Debtor's interest in the Property reserved for later determination. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick ("the Chapter 13 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

Relief for Cause
as to the Property

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).

Movant argues cause exists because Debtor has no interest in the Property and is not obligated on the mortgage. Movant argues further that failure to grant relief would risk of foreclosure, and that Movant's credit is being impacted every day Debtor fails to pay the mortgage (which only Movant is obligated on).

However, the ownership of the Property is still disputed, with Debtor asserting that the state court judgment is incorrect and will be reversed on appeal.

Relief Based on Equity
as to the Property

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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

As stated, *supra*, the ownership of the Property is disputed, with Debtor asserting that the state court judgment is incorrect and will be reversed on appeal.

Abandonment of Property of the Estate
as to the Property

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000). In a Chapter 13 case, Debtor has the rights and powers of a trustee. 11 U.S.C. § 1303.

Colliers is an authority discussing the effect of abandonment pursuant to 11 U.S.C. § 554:

> **Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate.** Thus, abandonment constitutes a divesture of all of the estate's interests in the property. **Property abandoned under section 554 reverts to the debtor, and the debtor's rights to**

> **the property are treated as if no bankruptcy petition was filed**. Although section 554 does not specify to whom property is abandoned, **property may be abandoned by the trustee to any party with a possessory interest in it.** Normally, the debtor is the party with a possessory interest. However, in some cases, it may be some other party, such as a secured creditor who has possession of the property when the trustee abandons the estate's interest. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor.
>
> . . .

5 COLLIER ON BANKRUPTCY P 554.02 [3] (16th 2018)(emphasis added).

Movant here requests an order "that the Debtor and the Bankruptcy Trustee abandon The Real Property under 11USC 554." Dckt. 25 at p. 8, ¶ e. Movant argues this abandonment order is warranted because Debtor has no interest in the property and is not obligated on the mortgage.

From the plain language of the request for relief, it seems Movant misunderstands 11 U.S.C. § 554. That provision is not for the eviction of debtors and trustees. Rather, 11 U.S.C. § 554 permits the trustee to abandon Property of the Estate to any party with a possessory interest–generally the debtor. In effect, Movant here is requesting a federal ruling that Debtor is entitled to possession of the Property.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

Request for Waiver of Fourteen-Day Stay of Enforcement

as to the Property

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 "to preserve and protect The Real Property."

Movant's argument here is predicated on the court granting relief from stay. Without relief granted as to the Property, there is no risk of foreclosure.

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), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing

> law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Elina Machado and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Elina Machado and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

GRANTING OF MOTION

As addressed above, the court grants the Motion and modifies the automatic stay to allow the Parties to continue the litigate and enforce the orders and judgments entered therein, the state court proceedings relating to their respective rights and interests in the real property commonly known as 9436 Windrunner Lane, Elk Grove, California, including orders and judgments for possession thereof.

The requested relief in the form of abandonment, prospective relief in the event of a conversion of this case, or waiver of the fourteen day stay of enforcement are denied without prejudice.

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 Elina Machado ("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 modified as applicable to David J Rynda ("Debtor") to allow Elina Machado, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation *In Re The Marriage Of Machado*, in Superior Court for the County of Sacramento, Case No. 17FL02730, *Elina Machado v. David Rynda*, in Superior Court for the County of Sacramento, Case No. 18UD04149, *David Rynda v. Elina Machado and Gabriel Machado*, in Superior Court for the County of Sacramento, and now on appeal, and all appeals thereof, and enforcement of such orders and judgments, including for possession of the real property commonly known as 9436 Windrunner Lane, Elk Grove, California

IT IS FURTHER ORDERED that the requested abandonment of the Property and any other relief stated in the Motion are denied without prejudice.

No other or additional relief is granted.

2.	**17-21525-E-13 AP-1**	**CHERI GOETZ Eric Vandermey**	**MOTION FOR RELIEF FROM AUTOMATIC STAY 1-15-19 [94]**

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the February 12, 2019, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 15, 2019. By the court's calculation, 24 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.

U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT ("Movant") seeks relief from the automatic stay with respect to Cheri Lynn Goetz's ("Debtor") real property commonly known as 374 Aaron Circle, Vacaville, California ("Property"). Movant has provided the Declaration of Michael Ruiz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Michael Ruiz Declaration states that there are 4 post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,913.67 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 28, 2019. Dckt. 101. Trustee does not oppose the Motion and notes the plan was provided for as a Class 4 in the Confirmed Plan. *See* Dckt. 6.

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 $409, 268.11 (including $337,929.11 secured by Movant's first deed of trust), as stated in the Michael Ruiz Declaration and Schedule D. The value of the Property is determined to be $317,000.00, 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.

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.

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 U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT ("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 Movant, 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 374 Aaron Circle, Vacaville, 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.

No other or additional relief is granted.

3. **16-26568-E-13 RPZ-1** **ALICIA LOFTIN** **Ashley Amerio** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **1-4-19 [58]**

USB LEASING LT VS.

Final Ruling: No appearance at the February 12, 2019, 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, Chapter 13 Trustee, and Office of the United States Trustee on January 4, 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). 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.

USB Leasing LT ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Chevrolet Traverse, VIN ending in 3370 ("Vehicle"). The moving party has provided the Declaration of Tracy Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Alicia Marie Loftin ("Debtor").

The Tracy Wilson Declaration provides testimony that Debtor was leasing the Vehicle, that the lease fully matured June 1, 2018, and the Vehicle was surrendered by Debtor to Movant on June 12, 2018. Dckt. ¶¶ 3, 7-8.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 29, 2019. Dckt. 66. Trustee does not oppose the Motion, but notes that the Debtor's Modified Plan (Dckt. 57) assumed the lease. Trustee asserts relief may not be necessary.

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. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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, 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 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 USB Leasing LT ("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 2014 Chevrolet Traverse, VIN ending in 3370 ("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.

4. **18-26415-E-11** **MAXIMUS US, LLC** **CONTINUED STATUS CONFERENCE**
Steven Shumway **RE: VOLUNTARY PETITION10-11-18 [1]**

Debtor's Atty: W. Steven Shumay

The Status Conference is xxxxxxxxxx

Notes:
Continued from 11/14/18, Debtor in Possession reported that it is trying to communicate with the City of Colfax about the claims and that there are investors ready to invest to pay the fine.

Operating Reports filed: 12/13/18, 1/14/19

U.S. Trustee Report at 341 Meeting docketed 11/15/18

[BRL-1] Creditor Darrell Klotzbach et al.'s Motion for Order Terminating Automatic Stay or Requiring Adequate Protection filed 1/25/19 [Dckt 37], set for hearing 2/21/19 at 10:00 a.m.

FEBRUARY 12, 2019 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession. Since the November 14, 2018 Status Conference the November 2018 Monthly Operating Report (timely filed on December 13, 2018, Dckt. 35) and the December 2018 Monthly Operating Report (timely filed on January 14, 2019, Dckt. 36) have been filed.

For November 2018, the Debtor in Possession Reports having $0.00 in cash receipts and $0.00 in cash disbursements. Dckt. 35. For December 2018, the Debtor in Possession reports having received $100 in "Capital Contributions." Dckt. 36. The Monthly Operating Report does not state how a bankruptcy estate receives "capital contributions. The December Monthly Operating Report further discloses that the bankruptcy estate had not cash disbursements and that it's end of month cash balance was $100. *Id.*

On January 25, 2019, Creditors Darrell Klotzbach; Chan Klotzbach; Brian Nesse; and Ignatius Palerma, as Trustee; and Barbara Lloyd, as Trustee filed a Motion for Relief From the Automatic Stay. Dckt. 37. The deadline for the Debtor in Possession for filing a response or opposition to the Motion for Relief expired on February 7, 2019. As of the court's February 8, 2019 review of the Docket, no opposition or response had been filed.

The Motion seeks relief from the stay to foreclose on the real property commonly known as East Grass Valley Street, Colfax, California.

At the Status Conference, xxxxxxxxxx

NOVEMBER 14, 2018 STATUS CONFERENCE

Status Report

On November 2, 2018, the Debtor in Possession filed its Status Report. Dckt. 22. It is reported that the Debtor purchased the Colfax Hotel on May 15, 2013 from the bankruptcy estate of James Payne (Case No. 11-033534). The Debtor is stated to have been remodeling the building to be a mixed use retail and office building.

In 2017, the City of Colfax presented Debtor with a list of 27 items to be corrected in the commercial property. The Debtor in Possession reports that 26 were completed by Debtor. Due to a dispute with a City Inspector, the Debtor in Possession reports that the City shut down the project.

The Debtor in Possession is talking with investors who are interested in the project if the above dispute can be resolved.

The Debtor has filed a statement that this is a Single Asset Real Estate Case. Dckt. 30.

At the Status Conference it was reported that the Debtor in Possession is trying to communicate with the City of Colfax about the claims. There are investors ready to invest to pay the fine.

Review of Schedules and
Statement of Financial Affairs

This Chapter 11 case was commenced on October 11, 2018. On Schedule A/B Debtor has listed owning an 11,000 square foot commercial building with a value of $700,000. The only asset listed by Debtor is a checking account with a $100 balance.

The Debtor states that it has no other assets, including no: (1) deposits, (2) accounts receivables, (3) investments, (4) inventory, (5) office furniture, equipment or fixtures, or (6) machinery or equipment. Schedule A/B, Dckt. 15. Debtor further states that it has no executory contracts or unexpired leases. Schedule G, *Id.*

For Creditors, Debtor states in the Schedules the following:

1. Secured claims, Schedule D

Creditor	Amt. of Claim	Collateral
City of Colfax	($50,000)	Commercial Bldg
PMC Lender Services	($471.824.95)	Commercial Bldg

2. Priority Unsecured Claims

None

3. General Unsecured Claims

None

Id.

In the Statement of Financial Affairs the only gross income reported by Debtor is: $20,000 in capital contributions in 2018, $60,000 in capital contributions in 2017, and $150,000 in loan proceeds in 2016. Debtor does not report any other income.