UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 27, 2018, at 1:30 p.m.

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1. **17-25403-E-13** **BYLLIE DEE** **MOTION FOR RELIEF FROM**
RHM-1 **Pro Se** **AUTOMATIC STAY**
2-26-18 [83]

MARY HENDERSON VS.

Final Ruling: No appearance at the March 27, 2018 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the bankruptcy case having been dismissed by prior order of the court.

2. **17-27751-E-13** **MISAEL/LUZ BAUTISTA** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
VVF-2 **Harry Roth** **2-27-18 [96]**

HONDA LEASE TRUST VS.

Final Ruling: No appearance at the March 27, 2018 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 February 27, 2018. By the court's calculation, 28 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.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Honda Civic, VIN ending in 3569 ("Vehicle"). The moving party has provided the Declaration of Lacreanna Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Misael Bautista and Luz Maria Bautista ("Debtor").

The Lacreanna Young Declaration provides testimony that Debtor has not made three post-petition payments, with a total of $896.07 in post-petition payments past due.

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 $11,999.28, as stated in the Young Declaration, while the value of

the Vehicle is determined to be $11,950.00, as stated in the NADA Valuation Report, which is more than the $9,896.00 value listed on Schedule A/B.

Movant also contends that the Vehicle is on lease to Debtor, but on Schedule A/B, Debtor lists owning $9,896.00 of Vehicle's value.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on March 13, 2018. Dckt. 107. The Chapter 13 Trustee states that he does not oppose the Motion, and he notes that the court has already denied a motion to value for the Vehicle because the Vehicle is subject to a lease agreement and that the court sustained Movant's objection to confirmation.

The Chapter 13 Trustee notes that his motion to dismiss this case because of Debtor's delinquency on plan payments is set for hearing on March 21, 2018.

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.

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.
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> The Motion for Relief from the Automatic Stay filed by Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **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 Honda Civic ("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.
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> **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.
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> No other or additional relief is granted.

3.	**13-30953-E-13 AP-1**	**TRAVIS GROSJEAN AND ANNETTE PICETTI-GROSJEAN** **Seth Hanson**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **2-12-18 [41]**

U.S. BANK NATIONAL ASSOCIATION 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.

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 February 12, 2018. By the court's calculation, 43 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 granted.

U.S. Bank National Association, as Trustee for Credit Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1 ("Movant") seeks relief from the automatic stay with respect to Travis Grosjean and Annette Picetti-Grosjean's ("Debtor") real property commonly known as 7767 Madison Avenue, Citrus Heights, California ("Property"). Movant has provided the Declaration of George Plowden to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The George Plowden Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of $5,036.22 in post-petition payments past due.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 13, 2018. Dckt. 48. The Chapter 13 Trustee states that he does not oppose the Motion, noting that the Plan calls for payments through Class 4. He states, however, that relief may not be needed because the Plan is confirmed, and its own terms provided the requested relief.

DISCUSSION

As the Chapter 13 Trustee notes, and as discussed by Movant in the Motion, there is a confirmed plan in this case that provides for Movant's claim in Class 4. Movant even acknowledges that the automatic stay was modified upon confirmation to allow it to exercise its nonbankruptcy rights in the event of a default. Dckt. 41 at 3:2–4. Movant pleads and has presented evidence that there is a default, which entitles Movant to exercise the rights afforded to it under the confirmed plan.

Debtor's plan was confirmed on November 5, 2013. Dckt. 29. That plan states that "[u]pon confirmation, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Dckt. 5 at 3.

While one might view Movant's request as a "comfort order," it is actually a motion seeking relief from the court to have an order that may be recorded for chain of title and title insurance purposes.

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 $261,048.45 (including $243,989.14 secured by Movant's first deed of trust), as stated on Schedule D and in the Proofs of Claim. The value of the Property is determined to be $217,040.00, 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); 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 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).

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, as Trustee for Credit Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank National Association, as Trustee for Credit Suisse First Boston Mortgage Securities Corp., CSMC Mortgage-Backed Pass-Through Certificates, Series 2006-1, 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 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 real property commonly known as 7767 Madison Avenue, Citrus Heights, California.
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> No other or additional relief is granted.

4. **18-20368-E-13 PP-2** **WILLIAM CARLISLE** **Ronald Holland** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **3-8-18 [56]**

CAROL CARLISLE VS.

Final Ruling: No appearance at the March 27, 2018 hearing is required.

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 13 Trustee, and Office of the United States Trustee on March 8, 2018. By the court's calculation, 19 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on April 17, 2018.

Carol Carlisle ("Movant") seeks relief from the automatic stay with respect to William Carlisle's ("Debtor") real properties commonly known as 1840 Coyote Creek Court, Cool, California; 3225 Paladin Drive, Garden Valley, California; 3681 Sudbury Road, Cameron Park, California; and 6433 Mother Lode Drive, Placerville, California ("Properties").

Movant argues that she presented the court's civil minutes (Dckt. 54) of February 27, 2018, on her Motion for Relief from the Automatic Stay to a state court clerk who transferred title to six properties, two that the court authorized and the four additional Properties. Movant argues that such extra transfer was a mistake, and she requests that the court annul the automatic stay as to the transfer of those Properties to validate the transfers.

Movant's Declaration states that there was a state court family law decision that granted transfer of two properties and required Movant to remove Debtor from title so she could complete refinancing. She testifies that the state court decision also transferred to her rights to the four additional Properties.

Movant states in her Declaration that on March 1, 2018, she spoke with her insurance agent and learned that Debtor wanted to cancel policies on two properties that the state court had transferred to

Movant. Debtor apparently threatened litigation against the insurance agent if the policies were not cancelled and refunded. Movant was worried about insurance because the properties are located in high fire danger areas and because if the policies lapse, then the insurance agent would apparently no longer insure the houses. Movant was also worried that Debtor would vandalize the properties.

Movant states that she needed to show her insurance carrier that Debtor was no longer on title to be able to prevent him from cancelling the policies. To that end, Movant brought a copy of the court's civil minutes from February 27, 2018, to the superior court clerk's office to effect deed transfers.

On March 3, 2018, Movant states that she visited the Peacock Way property to discover that the gate padlock had been cut, that a window screen and pane had been destroyed and removed, and that a garage had been broken into. Movant states that property was removed from the garage and that a camper was taken from the property. Upon talking to a sheriff's deputy, Movant learned that Debtor had admitted to breaking into and taking items from the Peacock Way property.

On March 4, 2018, Movant visited the Coyote Creek property and found no furniture, debris scattered about, and no running water.

Movant alleges that she did not discover her mistaken reliance upon the court's order granting relief from the automatic stay as to only two properties, not all six, until March 5, 2018.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 13, 2018. Dckt. 64. The Chapter 13 Trustee states that he does not oppose the Motion, but he is not certain that sufficient cause has been shown for an annulment.

The Chapter 13 Trustee notes that Movant has not explained why relief was not requested originally for the four additional properties, but instead for only two properties. He also notes that Movant (an attorney) appeared to identify the court's civil minutes as an order, but she does not explain why, especially when the minutes state that an order will be issued by the court.

Finally, the Chapter 13 Trustee notes that additional cause grounds exist outside of the Motion. He references the Memorandum of Points and Authorities and Movant's Declaration for providing information and argument about possible trespass and loss of personal property.

STIPULATION TO CONTINUE

The parties filed a Stipulation to continue the hearing on this matter to 1:30 p.m. on April 17, 2018. Dckt. 77. Based upon the parties agreeing to a briefing schedule without court assistance, the court continues the hearing to 1:30 p.m. on April 17, 2018.