UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

April 8, 2014 at 1:30 p.m.

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1. 13-24939-C-13 TRENTON/BARBARA BAHR — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 Robert C. Duncan — 3-3-14 [80]

BANK OF AMERICA, N.A. VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 4, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 respondent and other parties in interest are entered.

The court's tentative decision is to deny the Motion for Relief from Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4880 Douglas Boulevard, Granite Bay, California.

The moving party has provided the Declaration of Paul Chea to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Debtors executed a promissory note in the original amount of $224,000.00 with Movant. Movant states that it is entitled to enforce the note.

The Movant has attached an authenticated copy of the recorded Assignments of the Deed of Trust that show the loan was originally held by New America Financial, Inc., and subsequently transferred to NationsBanc Mortgage Corporation, which eventually merged into BA Mortgage, LLC, a Delaware Liabiltiy Company. BA Mortgage, LL merged into and under the charter and title of Bank of America, National Association, which is now the actual secured creditor in interest on this loan. Dckt. No. 83. Bank of America identifies itself as the holder of the obligation on the loan, with a claim of which repayment is secured by an interest in the Debtors' proeprty.

This description of the chain of title listed on the Assignments Summary sheet shows Movant is the current owner of the note. The Motion states that Bank of America, N.A., services the loan on the property; the event that the automatic stay is modified, the case is dismissed, or the Debtors obtain a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of the Movant and the Movant will have psosession of the Note. Bank of America, N.A. filed Proof of Claim No. 11 on August 6, 2013, asserting a secured claim of $146,452.96 for money loaned to Debtors. The Claim states that Movant's security interest in the property commonly known as 43380 Douglas Boulevard, Granite Bay, has been perfected by a deed of trust/mortgage, with a pre-petition arrearage of $30.00.

The Chea Declaration states that the Debtor has not made 5 post-petition payments, with a total of $7,735.55 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be 190,745.17 (including $143,146,83 secured by movant's first trust deed), as stated in the Chea Declaration, while the value of the property is determined to be $265,000.00, as stated in Schedules A and D filed by Debtor.

The Declaration calculates the outstanding obligations to Movant as consisting of an unpaid principal balance of $143,146.93, in addition to the unpaid, accrued interest of $4,572.34 and costs of $330.00. The Declaration asserts that the Minimum Outstanding Obligation that Debtors owe to Movant is $148,049.17. The Declaration correctly excludes the Motion for Relief attorney fees, listed as $1,026.00 in Exhibit "A" filed in support of the Motion. Dckt. No. 83 at 1. The Motion also states that Movant incurred these costs, specifically $850 in legal fees and $176 in costs. The Movant also provides a "Bankruptcy Plan Leder" showing the five post-petition payments missed by the Debtors from October 1, 2013 to February 1, 2014. Exhibit E, Post-petition Payment History, Dckt. No. 83.

The court maintains the right to grant relief from stay for cause when the 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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Here, Debtors have not made five post-petition payments on the property, totaling $7,735,55 in delinquent payments. Cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

However, the existence of missed payments by itself does not guarantee relief from stay. Debtor's valuation of the property is

$265,00.00. Movant does not dispute this valuation of the property. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). For the purposes of this Motion, the total amount of liens encumbering the property totals $190.745,17. Movant acknowledges that Debtor still has a substantial equity cusion of $74,254.83, subtracting the total amount of debt owed to the property, from the fair market value of the property.

Since the equity cushion provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause." Thus, the Motion for Relief from Automatic Stay is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion for Relief From the Automatic Stay filed by the creditor 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 Motion for Relief from Automatic Stay is denied.

2. 14-20866-C-13 GRIGOR MOVSESYAN
WAJ-1 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-14 [22]

SABAH FRANCIS VS.

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, Creditors, the 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 offers 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

MARCH 11, 2014 HEARING

The hearing on this matter was continued from March 11, 2014. At the previous hearing, the Debtor appeared and stated that he sought to oppose the Motion. Debtor informed the court that he planned to proceed with a plan to provide for a sale of the business and payment of the claim of Sabah Francis ("Movant"). Civil Minutes, Dckt. No. 33. Debtor stated that he intended to proceed with a plan in good faith.

As addressed below, however, the court has identified some serious issues relating to the Debtors conduct in this case and his prior case which issues put the Debtors credibility and good faith into question. The court afforded Debtor the opportunity to address such issues, as appropriate, in connection with the opposition he asserts to the present Motion. The court set a briefing schedule to allow additional time for Debtor to file and serve an opposition, and for Movant to file and serve any replies to Debtor's opposition.

REVIEW OF THE MOTION

Sabah Francis ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as **10144 Coloma Road, Rancho Cordova,** California. The moving party has provided the Declaration of Sabah Francis to introduce evidence which establishes that the Debtor is a tenant at the subject commercial real property.

Declarant asserts that the current monthly lease obligation is $2,742.74, plus a "CAM" assessment of $1,054.20, for a total of $3,796.94. Declarant states that prior to filing his voluntary petition, Debtor was in default regarding the rent payment back to March 2009. Debtor has not paid the post-petition lease payment for February 2014. Further, as of November 30, 2013, liability on the property was cancelled. Under the terms of the lease, Debtor is to provide liability insurance, insuring the landlord and tenant for injury or death in the amount of $1,000,000 and property damage in the amount of $500,000.

Movant requests relief from the automatic stay, pursuant to 11 U.S.C. § 362(d)(1) to obtain a judgment in state court for possession of the property and the right to execute on the state court judgment.

Chapter 13 Trustee Response, filed 02/27/14 (Dckt. 28)

Chapter 13 Trustee supports granting the Motion for Relief from the Automatic Stay and asserts that the Chapter 13 petition was filed solely to delay movant from pursuing an unlawful detainer action. Trustee makes this assertion based on the following:

1. Debtor's plan (Dckt. 13) provides for Movant as "PS Property Management" in Section 3.02 as an executory contract or unexpired lease. In Section 1.01 of the plan, Debtor proposes a plan payment of $150.00 and in section 1.02 states that Debtor will pay all proceeds from the sale of the business within 90 days.

   Section 6.01 provides the following treatment for Movant's claim: "Debtor is selling the business and will pay all claims in full from the proceeds within 90 days of confirmation." Section 6.02 states "Debtor to remit on-going lease payment until sale is funded and the arrears will be paid with the proceeds."

2. Debtors current plan provides for no unsecured creditors and all other claims are paid outside of the plan, except for attorneys' fees. Debtor has a prior Chapter 13 case with a discharge (10-30079) paying 3.76% on $357,309 in unsecured claims. The current plan includes property on San Juan Avenue in Class 4, it is a duplex that was to be surrendered in the previous case. Debtor has provided no information concerning rental income for the property in either case.

3. Debtor's Schedules I & J and Business Income and Expenses (Dckt. 12)reflect a monthly rental expense for their business of $1,873 and insurance of $150.00. Debtor's provide for their business on Schedule B as "Happy Laundry" and state that "Business has been listed for sale $84,900," "Value of asserts (wholesale/liquidation) $15,000, on-going entity value $45-65k."

DISCUSSION

Movant has provided a copy of the lease agreement evidencing that Movant is the landlord of 10144 Coloma Road, Rancho Cordova, California. (Exh. A, Dckt. 25, P. 11). The lease was originally entered into between Movant and Ira Lee. Evidence of assignment of the lease from the original tenant through to Debtor is provided. On Page 19 of Docket 25 (Exh. A), Movant provides a copy of lease assignment between Ira Lee and Michelle Lee, as lessees, and Bao Nguyen and Nhung Nguyen, as assignees. Assignment to Debtor is evidenced by Page 16 of Docket 25 (Exh. A), where Movant provides an "Assignment of Lease" from Bao Nguyen and Nhung Nguyen to Debtor. Movant's evidence establishes that at the time Debtor filed for bankruptcy, Debtor was the tenant at 10144 Coloma Road, Rancho Cordova, California and Movant was the landlord. The liability insurance modification was added into the lease when Debtor's predecessor was tenant. (Exh. A, Dckt. 25, P. 15).

In support of Movant's assertion that the liability insurance was cancelled as of November 2013, Movant provides the court with renewal statement from American Economy Insurance Company, addressed to Debtor at the business address. (Exh. C, Dckt. 25). The renewal statement was prepared on October 16, 2012 and is for the policy period 11/30/2012 through 11/30/2013. It states that the total premium due for the policy term is $2,151.00. It states that Debtor will be billed through the customer account and that a billing statement will be sent shortly. It does not support Movant's assertion that the insurance was cancelled, but is merely a notice of payment due. In the Declaration of Sabah Francis, Sabah Francis declares that the insurance was cancelled as of November 30, 2013 and cites to the renewal statement in support of the testimony.

The court maintains the right to grant relief from stay for cause when the 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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). Here, Debtor has not made the post-petition rent payment (Exh. B, Dkt. 25) and the Francis Declaration provides that Debtor's pre-petition default reaches back to March 2009. The Francis Declaration included testimony that Debtor was in breach of the lease agreement for allowing liability insurance to lapse at the time of the filing of the Motion. Evidence was presented that the Debtor defaulted in the post-petition payments which would be due under the lease. The court shared the Trustee's concern that Debtor merely filed this bankruptcy to halt Movant from exercising state law remedies. Debtor's plan is shallow and is merely an effort to seek shelter in bankruptcy court to the detriment of its landlord.

Prior Bankruptcy Case

The Debtor was part of a prior bankruptcy case commenced on July 29, 2010. Grigor Movseyan and Anahit Movseyan, Bankr. E.D. Cal. 10-40079 ("First Case"). The debtors in the First Case completed their Chapter 13 Plan and received a discharge on December 10, 2013. Discharge Order, First Case Dckt. 93.

Current Proposed Chapter 13 Plan

The Chapter 13 Plan proposed by the Debtor with the assistance of his counsel has the following basic provisions:

A. Monthly Plan Payments.....$150.00

1. Additional Payments From Sale of Business Within 90 Days of Confirmation.

B. Term of Plan.....36 Months

C. Legal Fees to be Paid Counsel for Debtor

1. $4,500.00

2. Paid Prior to Filing.....$1,500.00

3. Paid Through Plan.....$3,000.00

D. Monthly Administrative Expenses.....($135.00)

E. Class 1 Secured

1. None

F. Class 2 Secured Claims

1. None

G. Class 3 Secured Claims

1. None

H. Class 4 Secured Claims

1. US Bank (Mcneely Way).....($1,176.35)

2. Bank of America (San Juan Ave)...($1,328.45)

I. Class 5 Priority Unsecured Claims

1. None

J. Class 6 Designated Unsecured Claims

1. None

K. Class 7 General Unsecured Claims

1. 100% for Projected $1.00 Total Claims

L. Additional Provisions

1. Debtor to Remit On-Going Lease Payments Until Sale is Funded and The Arrears Will be Paid With The Proceeds.

Plan, Dckt. 13.

On the Chapter 13 Statement of Current Monthly Income (Form 22C), the Debtor reports that in the six months prior to January 2014 (July - December 2013) the Debtor averaged $10,255.67 in gross income from his business. Dckt. 12. No income is stated for the Debtor's spouse. Though a substantial monthly gross income, after payment of business expenses and the 707(b) IRS allowed deductions, the Debtor reports a negative monthly disposable income of ($847.33).

On Schedule B Debtor lists personal property assets with a total value of $70,509.01. *Id.* at 12-14. All but the following three assets are of di minimus value:

A. Happy Laundry Business.....$65,000.00

1. Schedule B States That The Business Has Been Listed For Sale at $84,900.

2. The Liquidation Value of the Assets of the Business are.....$15,000.00

3. The On-Going Entity Value is.....$45-$65,000

B. 1997 F150 Pickup.....$ 1,500.00

C. 2002 Mercedes ML.....$ 3,000.00

While stating on the Chapter 13 Statement of Current Monthly Income that the average monthly gross income from the business for the six months prior to the commencement of the case was $10,255.67 (totaling $61,534.01), on Schedule I the Debtor states that the gross income from the business for the 12 months prior to filing was $61,000.00. *Id.* at 23. In response to Question 18 of the Statement of Financial Affairs the Debtor states that he has operated this business since 2007 to the present. *Id.* at 31.

On the Income and Business Expense Statement included as part of Schedule I, the Debtor lists the $61,000.00 in income for the prior 12 months, which he then averages to be $6,000.00 a month. (Quite possibly the Debtor and counsel may have been confused with this form requiring a 12 month income total and monthly average as opposed to the 6 month period on Form 22C.) *Id.* at 23. The Debtor then continues to state under penalty of perjury that the only expenses for the business (a coin operated laundry) are the following:

A. Rent.....($1,873.00)

B. Insurance.....($ 100.00).

Id. It is hard to believe that a coin operated laundry, open to the public, has no other expenses than the two stated under penalty of perjury by the Debtor. There are not cleaning supplies to maintain the premises from the mass of humanity that comes in to was their clothes at a coin operated laundry. There are no trash expenses. There are no repairs. There are no utility expenses for running the washers, dryers, and lights. There are no expenses for water or sewer. The court does not find this statement under penalty of perjury credible or truthful. FN.1.

FN.1. It needs to be noted that this bankruptcy case was filed on January

31, 2014. The Schedules and Statement of Financial Affairs were not filed until February 13, 2014. The Debtor had sufficient time, wrapped in the protective cocoon of the automatic stay, to review and accurately complete the pleadings filed in this case under penalty of perjury.

On the Statement of Financial Affairs the Debtor States Under Penalty of Perjury that,

A. His Income From Employment or Operation of Business has been,

1. None for 2014 Year to Date

2. None for 2013

3. None for 2012

B. Income From Other Than Employment or Operation fo Business has been,

1. None for 2014 Year to Date

2. None for 2013

3. None for 2012

Id. at 28.

In reviewing the proposed Chapter 13 Plan the court notes that it includes Bank of America, N.A. as a creditor for a debt secured by the San Juan Ave. Property. This claim was provided for in the confirmed plan in the prior case. 10-40079 Dckt. 23. The Plan provided that the property was surrendered to the Bank and the automatic stay terminated.

The fact that a lender may not have foreclosed would not in and of itself warrant one raising their eyebrows, but there are more strange circumstances relating to this claim and the prior case. The Chapter 13 Plan in the First Case was confirmed based on the Debtor having only $450.00 a month of projected disposable income. The income from the business was stated under penalty of perjury to be only $30,660.00 a year as stated on the confirmed First Amended Plan confirmed in that case. First Case Dckt. 23. On Schedule I the debtors in the First Case stated that the monthly gross income from the business was $7,800.00 and on Schedule J the expenses were ($5,245.00). *Id.* at 32, 33. After deducting all of the reasonable expenses on Schedule J, the debtors in the First Case had only $450.00 a month in projected disposable income to fund a plan.

On August 8, 2011, six months after the court confirmed the Plan in the First Case, the debtors filed a motion for authorization to obtain post-petition secured credit in the form of a loan modification of the debt secured by the San Juan Ave. Property. Motion, First Case Dckt. 51. Though only having $450.00 of projected disposable income to fund the Amended Chapter 13 Plan, the debtors in the First Case sought authorization to take on an additional monthly payment of $1,358.41 rather than surrender the San Juan Ave. Property.

The motion makes no statement as to how the debtors in the First

Case could afford this additional amount, other than to state, "The agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, and/or any Discharge that the debtors may receive." *Id.*

Not surprisingly the motion to obtain post-petition credit caught the objection of the Chapter 13 Trustee. First Case Dckt. 57. It was based on there being no ability of the debtors in the First Case to pay the additional monthly expense based upon the financial information theretofore provided under penalty of perjury by the debtors.

The debtors in the First Case filed a Reply to the Trustee's Opposition. No declaration was provided as to the asserted facts, but the debtors in the First Case merely had their attorney advance an argument. First Case Dckt. 60. Counsel for the debtors argued that the debtors were planning on renting the property to other family members, projecting increased monthly rental income of $1,400 to $1,500 a month.

The court denied the motion for post-petition credit, citing that the debtors in the first case provided no evidence as to any change in their income or their current finances which was generating sufficient additional income to undertake this obligation. The court noted that if the debtors in the First Case intended to proceed with the modification, then they would have to amend their plan. Civil Minutes, First Case Dckt. 63.

No further motion to obtain post-petition financing was filed with the court in the First Case and no provision was made for payment of any monies to Bank of America, N.A. on its claim in that case.

The proposed Plan in the Debtor's current case provides for claim of Bank of America, N.A. which is secured by the San Juan Ave. Property as a Class 4 claim for which there is no pre-petition arrearage. The monthly payment to be made by the Debtor to Bank of America, N.A. on this claim is $1,328.45. Proposed Plan, Dckt. 13. This is almost exactly the same amount as stated in the proposed loan modification in the First Case which was denied by the court. (Some minor difference for property tax and insurance escrow impounds is reasonably expected.)

This all may be innocent, or it may that the debtors in the First Case willfully and intentionally obtained the post-petition creditor without obtaining authorization from the court. Further, it may be that they did not seek authorization in order to hide their true finances. In light of the inconsistent statements under penalty of perjury concerning the Debtor's finances in this case, the court cannot merely reject the latter alternative.

The Chapter 13 Trustee is directed to bring this matter to the attention of the U.S. Trustee. To the extent that the U.S. Trustee or the Chapter 13 Trustee determine any action is warranted, such will be their independent exercise of discretion. To the extent that they determine no action is warranted, it will be based on the information they deem appropriate to make such determination.

OPPOSITION BY DEBTOR

Debtor opposes the Motion for Relief from Automatic Stay for several reasons. First, Debtor states that he has the "necessary insurance," and

offers the "Renewal Declarations" of American Economy Insurance Company, Exhibit 1, Dckt. No. 40, to provide proof of Debtor's newly obtained insurance with the Mulholland Insurance Agency and American Economy Insurance Company. Debtor does not provide any explanation of why the liability insurance was allegedly canceled in November of 2013. The Movant, Sabah Francis, testified that Debtor had canceled his liability insurance, in breach of the lease agreement with Movant, on November 20, 2013. It now appears that Debtor renewed his insurance with the American Economy Insurance Company from November 30, 2013 to November 30, 2014, renewing his coverage for an additional year-long term.

Second, Debtor states that he has a business listing agreement dated March 17, 2014, and ending on September 30, 2014, to to sell the "inventory, machinery, furniture, fixtures, and other equipment, leasehold improvements, fictitious business name statement, trade names and trademarks, logos, signs and advertising materials, telephone and fax numbers, vendor lists and catalogs, goodwill, agreements no to compete," if applicable. The Debtor provides no additional details about this agreement, forcing the court to canvas Debtor's supplemental pleadings and evidence to determine what "listing agreement" Debtor can possibly be referring to. Upon the court's review of Exhibit "B" filed in support of the Opposition, on Dckt. No. 40, the court notes that Debtor has submitted a Business Listing Agreement, ostensibly entered between Debtor and "Capitol Commercial R.E. & Business Sales." The Agreement appears to authorize Capitol Commercial R.E. and Business Sales the exclusive and irrevocable right to sell the business of Happy Laundry, located in Rancho Cordova, located at 10144 Colma Road., Rancho Cordova, California. Capitol Commercial R.E. & Business Sales is listed as a "Broker."

The agreement appears to be a listing contract between a real estate brokerage and Debtor, the seller of his sole proprietorship and the attendant real property, to give the broker the right to offer the property for sale for the period of March 17, 2014 to September 30, 2014. The list price at which the property will be offered for sale is $64,000.00, $10,000.00 of which will be distributed as compensation to the Broker after consummation of the sale. This agreement shows Debtor's intent to sell the property, but not that the sale has been effected to pay for the amount of Movant's claim. Debtor does not specify whether the proceeds of a potential sale will be used to satisfy Movant's claim. Movant has not yet filed a Proof of Claim, but states that it will do so soon; the claim will include the post-petition lease payment and related charges for the month of February, 2014, which Debtor has not paid, in the amount of $3,769.94.

The third reason for Debtor's opposition to the Motion for Relief is that Debtor is now current on the $3,796.94 payment as required by the court, and intends to be current on or before the 10th of each month until the sale pays Movant in full.

Fourth, Debtor states that he will file a Motion to sell after receiving offers on the property. Debtor states that he does not desire to prolong the sale of the business and is actively seeking offers. Upon receiving "any viable offer," Debtor pledges to file the appropriate motion to approve such a sale.

Fifth, Debtor states that his plan is to assume and cure the lease. Debtor states that his Chapter 13 Plan reflects his intention to pay the arrears of the lease through the chapter 13 plan, in a lump-sum sale of the

business. Debtor states that he is actively seeking to make this sale and end the plan with payoff to the creditor.

RESPONSE BY MOVANT

Movant acknowledges that the Debtor paid the March 2014 post-petition lease payment in the amount of $3,769.94 has been paid. The next post-petition lease payment is due on April 1, 2014, in the amount of $3,769.94. Having filed this reply to the Opposition on March 27, 2014, Movant does not state whether the April 2014 post-petition payment has been made.

Movant points out that under the terms of the lease, the respondent is to provide liability insurance insuring the landlord and the tenant for injury or death in the amount of $1,000,000.00 and insuring the landlord and tenant for property damages in the amount of $500,000.00. Debtor has provided what he purports to be proof of insurance; Movant argues, however, that the form conditions the provision of insurance on the Debtor's payment of a premium. Movant states that it is unaware whether or not the premium has been paid, and that the information provided does not indicate the amounts of coverage and is not signed by an authorized representative of the insurance company.

RULING

Movant's request for relief was predicated on Debtor's non-payment of the post-petition lease payments, and that it appeared that Debtor had breached the lease agreement for allowing the liability insurance on the rental property lapse. As Movant acknowledges, however, Debtor is now current on the post-petition lease payments, and Debtor is no longer delinquent in the payments called for by the lease agreement executed by Debtor and Movant. Dckt. No. 49.

The question of whether or not Debtor has obtained liability insurance for another year remains unclear. Debtor has provided a document which he claims to be proof of insurance for his business. Movant argues that the "Renewal Declaration" shows that the Debtor, doing business as Happy Laundry Company, is not insured for an extended term, from November 30, 2013 to November 30, 2014. Movant correctly points out that the Declaration conditions the provision of insurance in exchange for Debtor's payment of the premium, listed ($2,181.00) in the Declaration. Debtor has not provided any proof showing that the premium has been paid, and that the Debtor has filled out all the necessary forms and made the required payments to obtain coverage for the period stated.

The "Declaration" supplied is not the equivalent of a proof of insurance document, which shows that an individual or entity has valid insurance coverage with an insurance company. Rather, the Declaration provides basic information about the proposed policy, stating what will be insured, for how much, and for how long. The Declaration is not definitive proof that Debtor has in fact, obtained insurance for the property and that coverage with the Mulholland Insurance Agency has been finalized at this time. If Debtor has not obtained coverage on the property for another year, then Debtor is breach of his lease agreement. Debtor will not making all required post-petition payments as called for by the lease agreement. Therefore cause would exist for terminating the automatic stay, since the Debtor has not made all post-petition payments. 11 U.S.C. § 362(d)(1); *In re*

Ellis, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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 the creditor 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 Sabah Francis and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 10144 Coloma Road, Rancho Cordova, California.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee is directed to bring this matter to the attention of the U.S. Trustee. To the extent that the U.S. Trustee or the Chapter 13 Trustee determine any action is warranted, such will be their independent exercise of discretion. To the extent that they determine no action is warranted, it will be based on the information they deem appropriate to make such determination. No action, other than the Chapter 13 Trustee to bring this matter to the attention of the U.S. Trustee is ordered by the court.
>
> No other or additional relief is granted.