

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

June 2, 2020 at 1:30 p.m.

1.	<u>20-20920-E-13</u> <u>VVF-2</u>	MICHAEL MORRIS Peter Macaluso	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 4-21-20 <u>[62]</u>
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HONDA LEASE TRUST 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 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 April 21, 2020. By the court's calculation, 21 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.

Opposition was stated at the hearing. No written opposition was filed by the continued hearing.

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 2017 Acura MDX, VIN ending in 2670 (“Vehicle”). The moving party has provided the Declaration of Adrian Lopez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Lamonte Morris (“Debtor”). Debtor is a lessee of the Vehicle, a lease which matured as of October 7, 2019.

If the court does not terminate the stay, Movant in the alternative requests that the court order adequate protection payments and that the Creditor be allowed to amend its Proof of Claim to collect deficiency amount, if any, that may exist on Debtor’s account after the sale of the Vehicle.

Movant argues Debtor has not made 4.46 post-petition payments, with a total of \$4,083.17 in post-petition payments past due. Declaration, Dckt. 65. Movant also provides evidence that there are two (2) pre-petition payments in default, with a pre-petition arrearage of \$1,829.20. *Id.* According to Movant, instead of purchasing the Vehicle, Debtor is attempting to finance the “Purchase Option” through the Plan.

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).

DISCUSSION

The Vehicle is listed on Schedule A/B by the Debtor as having a value of \$22,000.00. Dckt. 12 at 4. The Vehicle is described as being in “Fair Condition” and having 92,383 miles on it. The Lease Agreement filed as Exhibit 2 (Dckt. 66) with the Motion is dated October 7, 2016. As of the February 19, 2020 filing of this bankruptcy case, three years and five months had passed from the date of the lease. Spreading the 92,383 over the three and 5/12th years, that would average 27,044 miles a year, which is more than twice the average mileage per year that this court sees consumers putting on vehicles.

Debtor lists Movant as having a secured claim in the amount of (\$28,816.91) on Schedule D. *Id.* at 11.

Schedule G is one in which a debtor lists executory contracts and unexpired leases. None are listed on Schedule G filed by Debtor (*Id.* at 19), which is consistent with Movant asserting that the lease expired in 2019. ^{FN. 1}

FN. 1. As noted in the Motion, the Ninth Circuit Court of Appeals has ruled that an option is not

automatically an “executory contract,” but it must be determined whether there is actually performance on both sides required if the option is exercised (and not merely the payment of the seller taking the money). *Unsecured Creditors’ Committee v. Southmark Corporation*, 139 F.3d 702, 706 (9th Cir. 1998), applying the classic Countryman definition.

The NADA valuation report provided by Movant states a “Clean Retail” value of \$26,750. However, the mileage for such valuation is stated to be only 47,500 miles, approximately half the actual miles stated by Debtor and in showroom floor retail sale ready, and not the “Fair” condition of a three and one-half year old vehicle with almost 100,000 miles on it. Using the NADA valuation guide by Movant, the clean retail for the Vehicle with the actual mileage would be \$21,400, indicating that Debtor’s valuation may indicate that the Vehicle is in near showroom ready condition, with no damage, deferred maintenance, or other repairs. ^{FN. 2}

FN. 2. <https://www.nadaguides.com/Cars/2017/Acura/MDX/Utility-4D-2WD-V6/Values>

The proposed Plan in this case merely provides for Movant in Class 2 as a creditor having a secured claim in the amount of \$29,816.91, which is to be amortized over 60 months with 7% interest, yielding a monthly payment of \$591.00. The Plan does not provide for Debtor exercising an option to purchase the Vehicle.

In paying \$30,000 for a vehicle worth \$20,000 (the court rounding the numbers), plus 7% interest, Debtor appears to be paying Movant a significantly better result than if Movant took possession of and sold the vehicle for maybe \$13,000 at auction.

With monthly payments of \$591.00, Movant would recover the present retail value of the vehicle in thirty-four (34) months and recover the projected auction value in twenty-two (22) months.

Movant has also filed an Objection to Confirmation of the Plan. Dckt. 39. A significant part of the Objection appears to be that Debtor has failed to make any arrangement to purchase the Vehicle, but has merely imposed a purchase in a plan.

Debtor’s Plan requires monthly plan payments of \$6,200. Dckt. 13 at 1. For the Debtor’s residence, the plan requires a \$770 a month cure payment for a (\$46,118.39) pre-petition arrearage and (\$2,639) for the post-petition monthly payment. Movant is the only other creditor to be paid through the plan, with a projected 0.00% dividend for creditors with unsecured claims. *Id.* at 5.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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).

Here, using the Debtor's statement of value of \$22,000.00, there is a significant lack of value for Creditor's claim, with the value of the Vehicle (at retail) being approximately 55% of the amount of Movant's claim (based on purchase obligation if the option is exercised).

The Chapter 13 Trustee has also filed an Objection to Debtor's Plan, asserting that Debtor was \$12,699.46 in default on Plan payments as of May 6, 2020. Objection, Dckt. 86 and Declaration, Dckt. 88. The Trustee also notes that the court has modified the stay to allow the landlord for the property at which the Debtor (or his limited liability company) operates a business from which Debtor derives his income proceed in state court to obtain possession of that commercial property.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

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.

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 Honda Lease Trust ("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 lease documents, title documents, security agreement, documents granting it a lien in the asset identified as a 2017 Honda Acura MDX ("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.

PATRICIA BOLANOS 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 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 May 19, 2020. 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, -----.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Patricia Bolanos ("Movant") seeks relief from the automatic stay to allow Movant to proceed with a state court personal injury lawsuit against Debtor so that Movant can collect applicable insurance coverage from Debtor's insurance (the "State Court Litigation"). Movant has provided the Declaration of Patricia Bolanos to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Darrell Lee Peebles ("Debtor").

On February 8, 2020, Debtor and Movant were involved in a multi-vehicle collision on US Highway 50 in Sacramento County, California. Movant is seeking compensation for damages sustained by way of a claim against insurance held by the Debtor with Mid-Century Insurance Company. Declaration, Dckt. 25.

Movant argues that modification of the stay would allow her to move forward with state court litigation after Debtor's insurance, on May 11, 2020, stated in writing that they were refusing to respond to and pay a policy-limits claim that her attorneys submitted on the basis that the automatic stay in

Debtor's bankruptcy prevented any and all collection actions against Debtor, to include claims against Debtor's applicable insurance coverage. *Id.*, ¶ 5.

DISCUSSION

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).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. 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.

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 Patricia Bolanos (“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 Darrell Lee Peebles (“Debtor”) 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 to proceed with state court personal injury and property damage litigation.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From the 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).

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.

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, and Chapter 13 Trustee on April 27, 2020. By the court's calculation, 36 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Wells Fargo Bank N.A. ("Movant") seeks relief from the automatic stay with respect to Scott David Desper's ("Debtor") real property commonly known as 1207 Norfolk Avenue, West Sacramento, California ("Property"). Movant has provided the Declaration of Tameka S. Green to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made five (5) post-petition payments, with a total of \$5,155.23 in post-petition payments past due. Declaration, Dckt. 61.

CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick (“the Chapter 13 Trustee”) filed a Response on May 18, 2020. Dckt. 66.^{FN.1.} Trustee asserts that Debtor is delinquent \$7,774.68 in plan payments with a last payment to the Trustee posted on March 9, 2020 in the amount of \$1,385.00. Debtor included Movant in Class 1 of the confirmed Plan with post-petition monthly payments of \$995.84 and prepetition mortgage arrears in the amount of \$12,739.26 with a monthly dividend of \$137.00. Trustee also points out that Debtor includes the Property in Schedules A and D and has valued the Property at \$361,000 and a total claim amount of \$132,277.00. Lastly, Trustee notes that Movant’s Amended Proof of Claim is for \$134,058.46, with an arrearage in the amount of \$13,118.41; and indicates that he has disbursed \$1,540.84 toward the pre-petition arrearage.

FN.1. The court notes that an additional Response from Trustee was filed on May 20, 2020. After careful review, the May 20, 2020 response is identical to the one filed on May 18, 2020. The court takes this as a clerical error.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$120,613.99 (Declaration, Dckt. 61), while the value of the Property is determined to be \$361,500.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1)

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.

Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY

¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

The Motion, while making reference to "lack of adequate protection," does not address whether there is an equity cushion.

While opining (under penalty of perjury on Schedule A/B) that the Property has a value of \$361,500, and showing an apparent equity in the property for Debtor, of which \$75,000 is claimed as exempt, Debtor has taken no action to oppose this Motion.

The Chapter 13 Trustee reports that the Debtor is \$7,774.68 in default in plan payments, slightly less than six months of plan payments.

While it could be argued (but hasn't been) that there is an equity cushion to protect Movant if the Debtor was diligently moving forward to sell the Property (Debtor being unable to make the current mortgage and arrearage payments), no such action has been taken by Debtor.

There being some asserted equity in collateral is not a basis for a debtor to not make payments on the claim, not administer the asset, but merely maintain ownership of the property without regard to the obligations secured by it, consuming the equity cushion for debtor's own benefit.

Co-Debtor Stay

Additionally, as if an after thought, buried in the prayer for relief is a request for relief from the co-debtor stay under 11 U.S.C. § 1301(a). However, Movant fails to state what grounds for relief from the co-debtor are asserted. The Motion expressly states that Movant "moves this Court for an Order Terminating the Automatic Stay of 11 U.S.C. § 362 as to moving party. . . ." Motion, p. 1:28-29. No reference is made to the stay arising pursuant to 11 U.S.C. § 1301. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer. ^{FN. 1}

Further, no "co-debtor" who as vested co-debtor stay rights is identified in the Motion, relief requested against such a person, or provided with Due Process of being told that Movant seeks to terminate the vested rights of the unidentified co-debtor.

FN. 1. The only reference to relief from the co-debtor stay, buried in the prayer, is merely:

6. The co-debtor stay of 11 U.S.C. §1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor.

Motion, Prayer for Relief ¶ 3, Dckt. 59.

It appears that Movant is admitting that this is a Chapter 12 case and that the Family Farmer debtor has caused there to be a stay under 11 U.S.C. § 1201(a). This is stated with the certifications of Movant and Movant's counsel arising under Federal Rule of Bankruptcy Procedure 9011. This greatly

complicates this case, as it appears to be a “Chapter 25 Case.”

A response may well be that “even a judge” could figure out that this is stock language and the judge should just ignore what is boilerplate (cost cutting) templates used to maximize profits for the lawyer. Further, that even a judge could take the time to assemble for Movant the grounds for which relief from a co-debtor stay under 11 U.S.C. § 1301(a) should be granted.

The court declines the opportunity to provide legal services for Movant. While “even a judge” should be able to connect the dots and state the grounds for Movant, it appears that Movant was unable to do so.

While this failure to follow the basic pleading rules required by the Supreme Court may be presented as only a small nibble into the Rules, the court is reminded of that “classic” line from the movie Air Force One, in which president Harrison Ford is discussing negotiating strategies with terrorist kidnappers with Vice President Glenn Close:

President James Marshall: Kathryn, if you give a mouse a cookie...

Vice President Kathryn Bennett: It's gonna want a glass of milk.”

What the court has noted is that if judges start waiving the Rules for “little things,” it is the green light that “bigger” little things can be waived, and soon the federal judicial pleading process would devolve into a common practice in state court in which the “motion” is nothing more than “Movant wants some relief, judge, go read the 25 page points and authorities, the six declarations, the 200 pages of exhibits, and everything else included in the 533 docket entries filed in this case, and tell me the relief I am requesting, the basis for it, and why you grant me the relief that you state I am requesting.”

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer. The court declines the opportunity to advocate for Movant why this court should “overrule” the Supreme Court.

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.

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 Wells Fargo Bank N.A. (“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 1207 Norfolk Avenue, West Sacramento, 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.

IT IS FURTHER ORDERED that the request to terminate the co-debtor stay held by unidentified persons in this bankruptcy case under 11 U.S.C. § 1301(a) is denied without prejudice.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

FINAL RULINGS

4. [20-21211](#)-E-13 **FELICIA HICKS**
[VVF-1](#) **Colby LaVelle**
- HONDA LEASE TRUST VS.**
- MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
MOTION FOR ADEQUATE
PROTECTION**
5-5-20 [23]

Final Ruling: No appearance at the June 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 5, 2020. By the court's calculation, 29 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda HR-V, VIN ending in 4076 ("Vehicle"). The moving party has provided the Declaration of Reba Espericueta to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Felicia Lynn Hicks ("Debtor"). Debtor is the lessee of the Vehicle.

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$932.94

in post-petition payments past due. Declaration, Dckt. 26. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of \$422.88. *Id.*

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).

TRUSTEE'S RESPONSE

Trustee filed a Response on May 18, 2020. Dckt. 31. Trustee asserts that debtor is current under the proposed plan, that Movant is included in the proposed Plan to be paid directly by Debtor, and since the proposed Plan has not been objected to, Debtor's Counsel should submit an order confirming to the Trustee. *Id.*, pp. 1-2.

Trustee points out that Movant's Proof of Claim indicates \$770.50 as the amount necessary to cure any default, while Movant's instant Motion indicates a pre-petition delinquency of \$422.88. *Id.*, p. 2.

Movant filed the Declaration of Vincent V. Frounjian and the Declaration of Reba Espericueta to address Trustee's points. Dckts. 33, 36. Both declarations testify that the Motion and Proof of Claim are consistent as they each have pre-petition amount due as \$770.50. The only difference is that the Proof Claim had one sum which included both the pre-petition payment and the late charges and fees (\$422.88 + \$347.62), where as the Motion shows the amounts separately. *Id.*

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$17,468.01 (Declaration, Dckt. 26) while the value of the Vehicle is determined to be \$17,075.00, as stated on the NADA Valuation Report. Exhibit 3, Dckt. 27.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Co-borrower has received the consideration for the claim held by Movant, the Chapter 13 Plan filed by the Debtor proposes for the Debtor to make direct payments outside the Plan, and the account is post-petition past due.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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 Honda Lease Trust (“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 2017 Honda HR-V (“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 request to terminate the co-debtor stay of Alice Hicks of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

IT IS FURTHER ORDERED that the fourteen-day stay of

enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.