

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

August 18, 2015 at 1:30 p.m.

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1. 15-25410-E-13 FELICIA HOWARD MOTION FOR RELIEF FROM  
VVF-4 Seth L. Hanson AUTOMATIC STAY  
7-28-15 [[14](#)]  
**FLAGSHIP CREDIT ACCEPTANCE,  
LLC VS.**

**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.

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)(iii).

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

Correct 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 July 28, 2015. 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). 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. At the hearing -----.

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

Felicia D. Howard ("Debtor") commenced this bankruptcy case on July 7, 2015. Flagship Credit Acceptance, LLC ("Movant") seeks relief from the

automatic stay with respect to an asset identified as a 2009 Toyota Highlander, VIN ending in 75430 (the "Vehicle"). The moving party has provided the Declaration of Jonathan B. Counts to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Counts Declaration provides testimony that Debtor has there is 1 pre-petition payments in default, with a pre-petition arrearage of \$523.60.

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 \$21,325.63, as stated in the Counts Declaration, while the value of the Vehicle is determined to be \$18,000.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the Manheim Auction Valuation Report for the Vehicle. However, the Movant does not provide evidence or justification as to how the Report represents the "market value" of the Vehicle nor provides much detail as to what the price represents.

#### **RULING**

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. *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). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments as well as the Debtor surrendering the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate, especially in light of the Debtor voluntarily surrendering the Vehicle. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Flagship Credit Acceptance, LLC, 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.

The Counts Declaration states that Movant has possession of the subject Vehicle, which was voluntarily surrendered by the Debtor on July 22, 2015. Movant has plead adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 Flagship Credit Acceptance, LLC ("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 2009 Toyota Highlander, VIN ending in 75430 ("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 (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

2. [15-25615-E-13](#) ANA HENRIQUEZ  
SPS-1 Timothy McCandless

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-4-15 [[21](#)]

LINDEN RIVER FINANCIAL, LLC  
VS.

**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.

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)(iii).**

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

Correct 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 August 4, 2015. 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). 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. At the hearing -----.

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

Linden River Financial, LLC, its assignees and/or successors ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1018 Gateway Drive, Vallejo, California (the "Property"). The moving party has provided the Declaration of Warren Blesofsky to introduce evidence as a basis for Movant's contention that Ana V. Henriquez ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a non-judicial foreclosure sale on April 23, 2015. Based on the evidence presented, Debtor would be at best

tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano. and received a judgment for possession, with a Writ of Possession having been issued by that court on July 9, 2015. Exhibit 6, Dckt. 26.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and the Judgment. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Linden River Financial, LLC and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1018 Gateway Drive, Vallejo, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Though requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Movant is not awarded any attorneys' fees.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 Linden River Financial, LLC, its assignees and/or successors ("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.

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§ 362(a) are vacated to allow Linden River Financial, LLC, its assignees and/or successors and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1018 Gateway Drive, Vallejo, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

**IT IS FURTHER ORDERED** that the Movant party having established that the value of the Property subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

3. 14-26593-E-13      CATHERINE WILLIAMS SHAW      MOTION FOR RELIEF FROM  
BEP-1                      Christian J. Younger                      AUTOMATIC STAY  
7-2-15 [23]

CITY OF SACRAMENTO VS.

**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.

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)(iii).**

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Joe Lozano, Jr. And Attorney for American Home Mortgage Servicing, Inc. on July 8, 2015. By the court's calculation, 51 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). 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. At the hearing -----.

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

City of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5003 Argo Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Richard Leiker, a building inspector assigned to monitor the Property, to introduce evidence to authenticate the documents upon which it bases the claim.

However, the Movant has only provided an Amended Proof of Service, which only discusses the service of the Amended Notice of Motion for Relief from

Automatic Stay. Dckt. 30. The Movant failed to provide the Proof of Service of the original Motion and papers. Without that information, the court cannot determine whether proper service and notice was provided and, therefore, the Motion is denied without prejudice.

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 City of Sacramento ("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 Motion is denied without prejudice.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING  
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED  
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

#### **ALTERNATIVE RULING**

City of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5003 Argo Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Richard Leiker, a building inspector assigned to monitor the Property, to introduce evidence to authenticate the documents upon which it bases the claim.

The Declaration of Leiker states that the Property has been abandoned, and has been in a continually declining state of disrepair since a first inspection on June 30, 2014. Upon further monthly inspections, the declarant found the Property to be in violation of several Sacramento City Code sections, including: 8.100.1200 ("vacant building and/or blight"); 8.100.650 ("hazardous/unsanitary premises"); 8.100.620 ("broken, rotted walls or roof"); 8.100.590 ("inadequate electrical service"); and 8.100.410 (potable water").

The Declaration also states that the Property's garage door had to be secured by The Movant's Housing and Dangerous Buildings Division due to reported break-ins and transient activity. The neighbors are also now reporting a potential rat harborage within the Property.

Congress created an exemption from the automatic stay for which provides, in relevant part, for the exercise of governmental police or regulatory power as follows:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority...to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such

governmental unit's or organization's police or regulatory power;....

11 U.S.C. § 362(b)(4).

Commencing judicial proceedings in nonbankruptcy courts by a government unit is within this exception if it satisfies either the "pecuniary purpose" test or "public purpose" test. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1108 (9th Cir. 2005). Under "pecuniary purpose" test, the court must determine that the government action relates primarily to the protection of the government's pecuniary interest in the debtors' property or to matters of public safety and health, and under the "public purpose" test, the court determines whether the government seeks to effectuate public policy or to adjudicate private rights. *Id.*

The Movant seeks to proceed with its abatement action against the Property for public nuisance, which threatens the health, safety, and welfare of the public. Because the government action here is primarily for matters of public health, safety, and welfare in accordance with public policy, the exception to automatic stay applies.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on July 29, 2015.

### **Debtor's Interest in the Property**

On Schedule A Debtor does not list any interest in the Argo Way Property. Dckt. 1 at 9. On her Statement of Financial Affairs, Question 16, Debtor discloses that she and her former spouse, Roosevelt Williams, were divorced in 2012. Dckt. 1 at 29. The court notes that Debtor, and her former spouse, have filed several prior bankruptcy cases with this court. The most recent is case number 08-39481, which was filed on December 31, 2008, in which the Debtor's Chapter 13 discharge was granted on May 27, 2014. (Debtor's counsel in the prior case is the same as her attorney in the current case.) In that case the Argo Way Property was listed as Debtor's residence. 08-39481; Petition, Dckt. 1. The confirmed Modified Chapter 13 Plan in the prior case provided for Class 3 treatment for the claim secured by the Argo Way Property - surrender so that the creditors holding claims secured by the property could foreclose on their collateral.

It appears that Debtor believes that whatever interest she could assert in the property is valueless and intends to have whichever creditors have liens against it (which may include the City of Sacramento for costs and expenses incurred in addressing the health and safety deficiencies concerning the property) enforce those liens to obtain payment on their respective secured claims.

The police power exception is just that, an exception to the automatic stay provisions of 11 U.S.C. § 362(a)(1), (2), (3), or (6). While this obviates the need for the court to "grant relief" from the automatic stay, seeking confirmation that the intended actions do not violate the stay is a proper request. Movant states that it seeks to do the following:

"Accordingly, the City is seeking to proceed with any and all actions necessary to abate the nuisance and recover any costs incurred whereby the action contemplated by the City falls within the 'police or regulatory powers' exception."

Motion, p.5:2-5.

The evidence presented is that the real property commonly know as 5003 Argo Way, Sacramento, California, has been identified as abandoned property, in disrepair, and suffering from numerous housing code violations. Further, that the disrepair is identified as a the source of possible heath concerns.

The court confirms that the automatic stay does not apply to the City of Sacramento taking actions to:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;...

This affords the City to take the necessary action and perform such acts as necessary to obtain possession of and remedy the health and safety violations and concerns. The court does not grant further relief to “collect” from the estate money or property to reimburse the City for the costs of the action taken. Such may be the subject of a future motion for relief from the stay, be provided for in a bankruptcy plan, or, if this bankruptcy case is dismissed, enforced through the non-bankruptcy process.

The court reads the present motion to request that the court also modify the automatic stay to allow the City of Sacramento to enforce any lien rights it may have, or acquire, for the remedial actions taken with respect to the Argo Property in the exercise of its police and regulatory power.

“Accordingly, the City now seeks to proceed with any and all actions necessary to abate the public nuisance and recover costs, if any, incurred therein.”

Motion, p. 3:11-12, and 4:13-19; Dckt. 23.

Movant has show cause pursuant to 11 U.S.C. § 362(d)(1) for the court to modify the automatic stay for the additional enforcement relief against the Argo Property, but not cause for the court to terminate the automatic stay to enforce any monetary obligation against other property of the estate or against the Debtor outside of this bankruptcy case. Debtor does not assert having any interest in the Argo Property on Schedule A. In Debtor’s prior bankruptcy case, the court confirmed the Modified Chapter 13 Plan, relying upon Debtor’s election to surrender the Argo Property to creditors having claims secured by the property.

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 City of Sacramento (“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 court confirms that pursuant to 11 U.S.C. § 362(b)(4) the below specified automatic stay provisions of the Bankruptcy Code does not apply to the City of Sacramento in the exercise of its police and regulatory power with respect to the real

property commonly known as 5003 Argo Way, Sacramento, California:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; and

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

**IT IS FURTHER ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow the City of Sacramento to obtain, perfect, and enforce an liens against the real property commonly known as 5003 Argo Way, Sacramento, California, for any obligations of Debtor or other person too the City of Sacramento for reimbursement of costs and expenses to the City from the exercise of the City's police and regulatory powers relating to the above identified real property.

Further or additional relief is denied without prejudice.