

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

August 19, 2014 at 1:30 p.m.

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1. [14-23313](#)-C-13 PAUL/LYNDA FANFELLE CONTINUED MOTION FOR RELIEF  
ANF-2 Peter G. Macaluso FROM AUTOMATIC STAY  
7-21-14 [[31](#)]  
PAWNEE LEASING CORPORATION  
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, parties requesting special notice, and Office of the United States Trustee on July 21, 2014. Fourteen days' notice is required. That requirement was met.

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.

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

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## **PRIOR HEARING**

The court held a prior hearing on the Motion on August 5, 2014. At the hearing, the parties indicated that they were close to reaching terms for providing for this claim through Debtor's plan. The court continued the hearing on the motion to allow for continued negotiations.

As of August 14, 2014, the court does not see a negotiated plan of treatment on the docket and will consider the Motion based on the pleadings presented as of the last hearing date.

## **DISCUSSION AND RULING**

Pawnee Leasing Corporation seeks relief from the automatic stay with respect to the personal property commonly known as a Soft Serve Freezer and 87" Dipping Cabinet. The moving party is seeking to exercise its lawful rights and remedies under the written Lease Agreement entered into with Debtors. Movant provides the Declaration of Sandi Carr to introduce evidence (Dkt. 33).

The Carr Declaration states that on September 16, 2013, Innovative Capital Corp., as Lessor, entered into a Lease Agreement with Crazy for Yogurt Inc. Pursuant to the terms of the Lease Agreement, Innovative Capital Corp. Leased to Crazy for Yogurt a Soft Serve Freezer and 87" Dipping Cabinet. On September 16, 2013, Debtors executed a Guaranty whereby they guaranteed payment by Crazy for Yogurt of all sums to be paid under the terms of the Lease Agreement (Exh. 1), together with costs and attorneys' fees incurred in the collection and enforcement of the Guaranty. (Exh. 2).

Prior to Debtors filing for bankruptcy protection, Innovative Capital Corp. assigned its Lease Agreement to Movant, Pawnee Leasing Corporation. The Assignment is attached as Exh. 3 to Movant's Motion. Movant filed a UCC-1 Filing Statement on the personal property with the California Secretary of State's office (Exh. 4).

The Lease Agreement provides that if the Lessee defaults in the performance of any of its obligations, the Movant may repossess the personal property. Movant alleges that Debtors and Lessee failed to pay the pre-petition March 1, 2014 payment and post-petition April-June 2014 payments. In total, the amount due to cure the default is \$4,535.72. The total balance due under the terms of the Lease Agreement is \$35,968.08.

The declaration offered by Pawnee Leasing Corporation states that it is under penalty of perjury and that the statements are "true and correct to the best of my knowledge and believe [sic]." This could be read two ways. The first is that "whatever I have said is true, to the extent that I have any knowledge about what I am talking about." The second interpretation is that "I am telling you the truth to the best of my ability to testify in this proceeding."

Movant has provided the court with Exhibits demonstrating the leasing and guaranty relationships. Exhibit 1 to the deficient declaration is the Lease Agreement executed between Innovative Capital Corp. and Crazy For Yogurt, Inc. The Lease Agreement is signed by Lynda Fanfelle as "President" of Lessee and dated September 16, 2013. Exhibit 2 to the declaration is the Guaranty executed by Lynda and Paul Fanfelle. The language of the Guaranty provides that the "Guarantor(s) now hereby

individually, jointly and severally, absolutely and unconditionally guaranty to the Lessor (and any person or firm the Lessor may transfer its interest to) all payments and other obligations owed by the Lessee to the Lessor under the Lease . . . ."

The Assignment of Lease is Exhibit 3 and demonstrates a transfer of interest from Innovative Capital Corp. to Pawnee Leasing Corporation concerning the Crazy For Yogurt, Inc. lease.

### **Debtors' Opposition**

Debtors argue that no cause exists for the relief requested. Debtors argue that the reason Movant has not been paid is because Movant has not filed a proof of claim and Trustee cannot disburse payments to Movant without a proof of claim on file.

Further, Debtor argues that the contract relationship between Debtor and Movant is not a "pure" lease and that Debtors have a beneficial interest in paying the claim in Class 2 of their plan. Debtors propose making an adequate protection payment of \$380.00 per month.

### **Discussion**

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

As this is a Lease Agreement and Movant maintains all ownership interest in the personal property, Debtors, as Guarantors under the Lease, have no equity interest in the subject collateral. Debtors, as Guarantors, have not maintained payments under the terms of the Lease Agreement and Guaranty and the court finds sufficient cause to grant the Motion for Relief from the Automatic Stay.

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 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 Pawnee Leasing Corporation, its

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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 which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the personal property commonly known as a Soft Serve Freezer and 87" Dipping Cabinet.

No other or additional relief is granted.

2. [13-32432](#)-C-13 JEFFREY/RACHELLE FILER MOTION FOR RELIEF FROM  
RMD-1 Dale A. Orthner AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
7-9-14 [[186](#)]

VILLAGE CAPITAL &  
INVESTMENT, LLC VS.

**Final Ruling:** The Creditor having filed a Notice of Withdrawal on August 15, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

3. [11-38134](#)-C-13 KEVIN/KELLI JOHNSON MOTION FOR RELIEF FROM  
PPR-1 C. Anthony Hughes AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
7-14-14 [[37](#)]

THE BANK OF NEW YORK MELLON  
VS.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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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 Debtor, Debtor's Attorney and Chapter 13 Trustee on July 14, 2014. Twenty-eight days' notice is required. That requirement was met.

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 non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Bank of New York Mellon ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 16933 Hackberry Lane, Fontana, California (the "Property"). Movant has provided the

Declaration of Samuel Pearce to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Pearce Declaration states that there are thirty-five (35) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$98,078.46 in post-petition payments past due. The Declaration also provides evidence that there are forty-three (43) pre-petition payments in default, with a pre-petition arrearage of \$100,734.59.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$493,697.01 (including \$493,697.01 secured by Movant's first deed of trust), as stated in the Pearce Declaration. The value of the property is unknown as Debtor's neither scheduled the property nor provided for it in their confirmed Chapter 13 Plan.

The Pearce Declaration states that on December 3, 2010, Debtors were purportedly transferred an interest in the property. Attached as Exhibit D (Dkt. 39) is a Quitclaim Deed granting an interest in the subject property to "Vanessa Brown, Tom Brown, Tracy Johnson, Kevin Johnson (sic), Nancy Rodriguez, and Alex Rodriguez Trust." Movant does not know whether all of the grantees are part of one trust or whether the property was transferred to each individual as well as the "Alex Rodriguez Trust." Out of an abundance of caution, Movant is making this Motion for Relief from the Automatic Stay.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not pleaded 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 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 The Bank of New York Mellon 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 immediately vacated to allow The Bank of New York Mellon, 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 which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 16933 Hackberry Lane, Fontana, California.

No other or additional relief is granted.

4. [13-31548](#)-C-13 ALICIA WHITNEY  
JMO-1 Richard L. Jare

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-10-14 [[60](#)]

VILLAGES OF THE GALLERIA  
CONDOMINIUM ASSOCIATION VS.

**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).

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.**

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

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 10, 2014. Twenty-eight 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). 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). The defaults of the non-responding parties are entered.

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

Villages of the Galleria Condominium Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 701 Gibson Drive, #525, Roseville, California (the "Property"). Movant has provided the Declaration of Sheila Tonini to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Tonini Declaration states that there are eleven (11) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$2,499.32 in post-petition payments past due. The Declaration also provides evidence that there are twenty-eight (28) pre-petition payments in default, with a pre-petition arrearage of \$12,773.02.

**Chapter 13 Trustee Response**, filed 08/05/14 (Dkt. 65)

Response was filed by the Chapter 13 Trustee informing the court of

the status of the claim at issue. Debtor is currently delinquent \$299.00 under the confirmed plan. Creditor's claim was valued and is being treated as unsecured. The First Deed of Trust is included in the confirmed plan under Class 4. Trustee is unsure what Debtor's intentions are with regard to the property.

**Debtor's Opposition**, filed 08/05/14 (Dkt. 68)

Debtor opposes the Motion in so far as it is seeking authority to foreclosure and collect on the pre-petition delinquency that was secured by a lien "stripped" from the property when the court entered an order granting Debtor's Motion to Value the Secured claim of Movant at \$0.00. (Dkt. 45).

From the court's perspective, Movant perceives the secured portion of its claim as only the post-petition delinquency amount, totaling \$2,499.32.

**Discussion and Ruling**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$191,334.32 (including \$2,499.32 secured by Movant's assessment lien), as stated in the Tonini Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$130,000, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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

No other or additional relief is granted by the court.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Villages of the Galleria Condominium Association 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 immediately vacated to allow Villages of the Galleria Condominium Association , 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 which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 701 Gibson Drive, #525, Roseville, California .

No other or additional relief is granted.

5. [14-21752](#)-C-13 SCOTT MILES  
JHW-1 Lucas B. Garcia

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-10-14 [[130](#)]

CAB WEST, LLC VS.

**Final Ruling:** No appearance at the August 19, 2014 hearing is required.  
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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 Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 10, 2014. Twenty-eight days' notice is required. That requirement was met.

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 non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

CAB West, LLC ("Movant") seeks relief from the automatic stay with respect to the personal property commonly known as a 2013 Ford Fiesta, VIN Number ending in 1232. Movant has provided the Declaration of Danielle Walker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Walker Declaration states that movant is the legal owner of the vehicle. Debtor's Chapter 13 plan does not provide for the vehicle. Rather, Debtor's Schedule B lists 100% interest in RJ Miles, Inc., the corporation with which Movant executed a lease agreement for the vehicle. Debtor is the alleged guarantor under the lease contract. The Declaration provides that Debtor is in default to Movant for monthly payments coming due March 30, 2014 through June 30, 2014, each in the amount of \$217.77.

#### **LEGAL AUTHORITY**

Pursuant to Local Bankr. Rule 9014-1(d)(5), each motion shall cite the legal authority relied upon by the filing party. Failure to abide by this rule is grounds for denial of the motion. Local Bankr. Rule 1001-1)g.

Here, Movant's motion lacks any reference to the legal authority supporting its allegations. Specifically, while Movant requests relief from the automatic stay, it does not cite to the section of 11 U.S.C. § 362 that would

provide such relief. This mistake is sufficient grounds for the court to deny the Motion; however, the court will consider the Motion on its merits.

## **CHAPTER 13 TRUSTEE**

On July 21, 2014, the Chapter 13 Trustee filed a statement that he has no opposition to the court granting the requested relief.

## **DISCUSSION AND RULING**

Movant requests the court grant relief from stay for it to proceed under applicable non-bankruptcy law to enforce its remedy to repossess and sell the subject vehicle.

11 U.S.C. § 362(a)(6) provides that the filing of a petition operates as a stay of any act to collect a claim against the debtor that arose before the commencement of the case. 11 U.S.C. § 101(5) defines a claim as a right to payment, whether or not such right is "reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Here, Debtor is the guarantor of the lease agreement entered into between Movant and RJ Miles, Inc. At the time the case was filed, Movant held a contingent claim against Debtor in the event RJ Miles, Inc. defaulted under the terms of the contract. That contingent claim became fixed when RJ Miles, Inc. defaulted in March 2014, with Debtor's case having been filed in February 2014. Therefore, the stay does apply to prevent Movant from seeking payment from Debtor without receiving relief pursuant to this motion.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

As this is a Lease Agreement and Movant maintains all ownership interest in the personal property, Debtors, as Guarantors under the Lease, have no equity interest in the subject collateral. Debtors, as Guarantors, have not maintained payments under the terms of the Lease Agreement and Guaranty and the court finds sufficient cause to grant the Motion for Relief from the Automatic Stay.

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.

Movant has not pleaded 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 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 CAB West, LLC 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 lease rights against the Vehicle, under its lease agreement in the asset identified as a 2013 Ford Fiesta("Vehicle"), and applicable nonbankruptcy law to obtain possession of the Vehicle.

No other or additional relief is granted.

SETERUS, INC. 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, parties requesting special notice, and Office of the United States Trustee on August 4, 2014. Fourteen days' notice is required. That requirement was met.

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.

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

Seterus, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8520 Chamonix Way, Antelope, California (the "Property"). Movant has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Robinson Declaration states that there are eight (8) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$15,248.96 in post-petition payments past due.

**CHAPTER 13 TRUSTEE**

On August 6, 2014, the Chapter 13 Trustee filed a statement indicating he has no opposition to the court granting the Motion for Relief from Stay.

**DISCUSSION AND RULING**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$375,190.85 (including 290,334.85 secured by Movant's first deed of trust), as stated in the Kerry Declaration and Schedule D filed by Debtor. The value of the Property is determined to be \$192,794, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d) (1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not pleaded 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 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 Seterus, Inc. 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 immediately vacated to allow Seterus, Inc., 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 which is recorded against the property to secure an obligation to exercise any and all rights arising under the

promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 8520 Chamonix Way, Antelope, California.

No other or additional relief is granted.