UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 19, 2019 at 10:00 a.m.

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1. 19-90509-E-7 HRH-1 | **JAMES/EVA JACOBSON** | **Jessica Dorn** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **9-5-19 [17]**

PATTERSON DENTAL SUPPLY, INC. 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 7 Trustee, and Office of the United States Trustee on September 5, 2019. 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 7 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, ----------.

The Motion for Relief from the Automatic Stay is granted.

Patterson Dental Supply, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as dental equipment listed on Line 53 of the debtor's Schedule A/B ("Property"). Dckt. 1. The moving party has provided the Declaration of Kari Wobse to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by James E. Jacobson and Eva Jacobson ("Debtor").

On Debtor's Statement of Intension, Debtor lists the Property and indicates the Property is to be surrendered. Dckt. 1.

Movant argues Debtor has not made any payments on Movant's claim since December 2018. Declaration, Dckt. 20.

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 $79,405.42 (Declaration, Dckt. 20), while the value of the Vehicle is determined to be $15,000.00, as stated in Schedules B and D filed by Debtor. Dckt. 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 because Debtor and the Estate have not made post-petition payments, and Debtor intends to surrender the Property. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on September 11, 2019. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

Movant has 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 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 Patterson Dental Supply, Inc. ("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 Property, under its security agreement, loan documents granting it a lien in the asset identified as a dental equipment listed on Line 53 of the debtor's Schedule A/B ("Property"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property to the obligation secured thereby.
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> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to James E. Jacobson and Eva Jacobson ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.
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> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. 17-90516-E-7 SSA-1 | **VERA JOHNSON** Thomas Hogan | **AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY** 8-9-19 [39]

MICHAEL JOHNSON VS.

On September 5, 2019, the court issued an Order continuing the hearing on the Motion for Relief from the Automatic Stay to October 3, 2019 at 10:00a.m. Dckt. 50.

3. 19-90759-E-7 ADR-1 | **RAY/JAYLIZA TOBIAS** Christie Lee | **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION** 8-27-19 [9]

BRAD REISZ 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 7 Trustee, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 23 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 7 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, ----------.

The Motion for Relief from the Automatic Stay is granted.

Brad Reisz ("Movant") seeks relief from the automatic stay with respect to Ray M. Tobias and Jayliza Tobias's ("Debtor") real property commonly known as 1744 Torrid Avenue, Modesto, California ("Property"). Movant has provided his own Declaration to introduce evidence as a basis for Movant's contention that 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 which Movant was leasing to Debtor. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant argues Debtor has not paid any post-petition rent. Declaration, Dckt. 11.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 argues this relief is warranted because Debtor is living at the Property without paying rent, and no adequate protection is being provided.

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 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 Brad Reisz ("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 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1744 Torrid Avenue, Modesto, California.

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.

4. 10-90080-E-7 JAD-2 **FRED EICHEL** **CONTINUED PRE-EVIDENTIARY HEARING RE: MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
9-7-18 [31]

Debtor's Atty: Jessica A. Dorn
Creditor's Atty: Cort V. Wiegand

Notes:
Continued from 6/27/19, it being reported that Cort Wiegand will be substituting in as counsel for Respondent, Scarlett Severson-Fiorini. Further continued from 8/29/19 due to court calendaring issues.

[CVW-1] Substitution of Attorney for Creditor, Scarlett A. Von Eichel filed 8/22/19 [Dckt 70]; Order granting filed 8/29/19 [Dckt 71]

The Pre-Evidentiary Hearing Conference is xxxxxxxxxxxxxx

SEPTEMBER 19, 2019 PRE-EVIDENTIARY HEARING CONFERENCE

At the Pre-Evidentiary Hearing Conference xxxxxxxxxxxxx

June 27, 2019 PRE-EVIDENTIARY HEARING CONFERENCE

The court has been advised, and in connection with other cases new attorney's have substituted in the place of, that Michael Babitzke, counsel for the Respondent, has passed away. Order, Dckt. 61.

Respondent Scarlett Severson-Fiorini has not substituted in counsel to replace the late Mr. Babitzke. As of the court's June 26, 2019 review of the file in this case, Respondent was proceeding in pro se.

At the Pre-Evidentiary hearing Conference, Respondent appeared and advised the court that Cort Wiegand, an attorney who has regularly appeared in this court will be substituting in as her counsel in place of the late Mr. Babitzke.

Jessica Dorn, counsel for the Debtor, concurred in the request to continue the Pre-Evidentiary Hearing Conference to late August to allow Mr. Wiegand to substitute in, meet and confer, and prepare for the Conference.

5. **19-90487-E-7** **JESUS MADRIGAL** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
NLG-1 **Marc Voisenat** **8-1-19 [20]**

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted prospectively, and the requests to annul the stay and for relief pursuant to 11 U.S.C. § 362(d)(4) are denied.

Federal National Mortgage Association by Nationstar Mortgage LLC D/B/A/ Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to Jesus Madrigal's ("Debtor") real property commonly known as 6340 Snedigar Road, Oakdale, California ("Property"). Movant has provided the Declaration of Chastity Wilson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant proceeded with a foreclosure on the Property on May 29, 2019, the day before this case was filed. Declaration, Dckt. 23 ¶ 11. Movant argues it did not receive notice of the filing of this case, and ceased collection activity after receiving notice. *Id.* Movant requests that if relief is granted, that the stay be annulled to validate the foreclosure sale.

Movant argues case for relief exists because Debtor has missed 12 payments, totaling $18,674.44 in missed payments. *Id.* at ¶ 7. However, all these payments were prepetition.

Movant also argues that its claim totals $343,132.00, which when compared to the Property's fair market value of $390,000.00 and an estimated $31,200.00 cost of sale, results in there being insufficient equity to from adequate protection.

Additionally, Movant argues cause exists for *in rem* relief because this is Debtor's second recent filing, both cases consisting of skeletal petitions.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 5, 2019. Dckt. 38. Debtor argues the following:

1. Debtor's prior Chapter 13 case was filed without the assistance of counsel, which resulted in the case being dismissed. Debtor argues further this case was thereafter filed to preserve equity in Debtor's home, and that all necessary documents in this case have been filed.

2. The court should not annul the stay because Creditor has notice of this bankruptcy filing, there is equity in the Property, and because there is no prejudice to Movant if annulment is not granted.

Debtor does not address Movant's arguments for relief pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

DISCUSSION

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.*

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

Here, it is undisputed that there is an equity cushion. Movant relies on Debtor's valuation of the Property of $390,000.00. Movant has presented evidence that its claim is $343,132.00, which leaves nearly $50,000.00 in equity, before considering costs of sale. Movant itself estimates a cost of sale at only $31,200.00. Assuming arguendo that incorporating the cost of sale leaves roughly $15,000.00 in equity as Movant argues.

While this $15,000.00 could be argued to be a cushion, the $15,000 is 4.37% of the value of the Property. When this case was filed, Debtor was in default in the monthly payments for the period June 1, 2018 through May 1, 2019 - twelve months. These default are computed by Movant to total $18,674.44. Declaration ¶ 7, Dckt. 7. The monthly payment as of May 2019 was $1,591.73. *Id.*

The interest rate on the Note is 5.5% per annum. Exhibit 1, Dckt. 25 at 4. It is a 30 year note dated August 10, 2015. Using the Microsoft Excel Loan Calculator, a principal obligation of $302,400, which is amortized over 30 years and which went into default in June 2018, would have a principal balance of $229,904.43, for which the monthly interest component would be $1,053.73. With interest accruing at $1,053.73 per month, the "equity cushion" quickly deflates.

Movant has sufficiently demonstrated cause for relief pursuant to either 11 U.S.C. § (d)(1). For the relief requested pursuant to 11 U.S.C. § 362(d)(2), the $15,000.00 of "equity" for the Debtor is arguable.

Prospective Relief from Future Stays

Movant also seeks relief based on 11 U.S.C. § 362(d)(4). The section of the Bankruptcy Code allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Here, Debtor has filed one prior bankruptcy. That prior case, No. 19-90142, was filed under Chapter 13 on February 19, 2019. Debtor was proceeding in *pro se.* On March 11, 2019, that case was dismissed after Debtor failed to timely file documents. 19-90142, Order, Dckt. 14.

The present case was filed under Chapter 7 with the assistance of counsel on May 28, 2019. While Debtor initially filed a skeletal petition, all filing documents have now been filed with the court.

The facts herein do not demonstrate a scheme on the part of the Debtor. Rather, they show that Debtor tried to obtain relief without counsel, failed, and then commenced this case with the assistance of counsel to "get it right."

Request for Annulment of the Stay

Retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* The Bankruptcy Appellate Panel for the Ninth Circuit suggests consideration of 12 additional factors:

1. Number of filings;

2. Whether, in a repeat-filing case, the circumstances indicate an intention to delay and hinder creditors;

3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

4. The Debtor's overall good faith (totality-of-circumstances test);

5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;

6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

7. The relative ease of restoring parties to the *status quo ante*;

8. The costs of annulment to debtors and creditors;

9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

11. Whether annulment of the stay will cause irreparable injury to the debtor;

12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003). The factors are not a scorecard, but merely a framework for the analysis in which any one factor may outweigh the others as to be dispositive in a particular case. *Id.*

Focusing on the two specific factors enunciated by the Court of Appeals:

(1) whether the creditor was aware of the bankruptcy petition -

The testimony provided by Movant's witness is the statement that "[D]ebtor failed to provide any notice of the filing of the Current Bankruptcy Action to Movant." Declaration ¶ 11, Dckt. 23. Debtor provides the declaration of Karen Covarrubias, a real estate agent working with Debtor, who testifies that on May 29, 2019, Ms. Covarrubias contacted Movant to confirm a fax number for sending a copy of the bankruptcy petition for this case. Declaration ¶ 4, Dckt. 39. She testifies that she faxed it to the Movant, and then called to confirm with Movant that the fax had been received. *Id.*, ¶¶ 4, 5. She also authenticate the fax and fax confirmation for the notice sent to Movant. *Id.* ¶ 6. Movant offers no reply testimony on this point.

It is significant to note that Ms. Covarrubias did not attempt to communicate the notice to Movant until 9:00 a.m. on May 29, 2019 - the day of the sale. Movant does not provide testimony of when the sale occurred on May 29, 2019. Declaration, Dckt. 23. On the Notice of Trustee's Sale, the original sale was scheduled for February 20, 2019 at 12:00 p.m. If it was set for the same time on May 29, 2019, then Debtor's agent did not begin to try and find a way to communicate with Movant until three hours before the sale.

Also, it does not appear that Debtor attempted to: (1) contact the actual trustee conducting the nonjudicial foreclosure sale (identified as First American Title Insurance Company in the Notice of Sale) or (2) go to the time and place of the scheduled foreclosure sale and present the trustee's employee conducting the sale with a copy of the bankruptcy petition. The aforementioned likely would have been successful ways to communicate an eleventh and one-half hour filing of a bankruptcy case by a debtor who in good faith is filing a bankruptcy case. Additionally, the Notice of Sale itself has a phone number and internet address provided for the borrower to obtain information about the pending foreclosure sale.

While saying that phone calls were made and faxes sent in the hour or two before a sale, it appears that actual knowledge by the trustee conducting the sale did not exist.

> (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The grave prejudice to be suffered by Movant if the stay is not annulled is stated in the Motion as follows:

> Movant will suffer great prejudice and cost in having to re-conduct its sale while Debtor will suffer no prejudice in that he has no equity to capture in the Property, has not cured the default and will be facing the same fate of foreclosure (Factor 3); . . .; 6) Movant will incur unnecessary additional cost in having to re-conduct its sale while Debtor will not experience any cost as he continues to live rent-free. . . .

Motion, p. 6:18-26; Dckt. 20.

Debtor's response to the above is that (1) the prejudice is Movant's own doing by ignoring the notice of bankruptcy that was faxed to it and (2) there is no "legal prejudice" in the sense that it would still be able to enforce its rights. This latter point ignores the cost, harm, and possible damages that would ensue if the stay is not annulled.

At the end of the day considering the above two factors and the more complex set of twelve consideration points stated by the Bankruptcy Appellate Panel, grounds have not been shown for annulling the stay. The fact that a debtor would file bankruptcy to stop a foreclosure sale is not a sign of bad faith or fraud, in and of itself. Second, Movant is less than 30 days from conducting a new sale of the property under applicable California law (assuming a new notice of sale is required). Movant does have a small equity cushion of $15,000 which would cover the additional couple months of interest and re-noticing costs.

There is no "great prejudice" on Movant. Rather, the relatively "minor" inconvenience of having to obtain this relief from stay and re-noticing the sale. There is no innocent third-party purchaser and a complex financing transaction to be unwound. The parties very easily remain in there pre-foreclosure *status quo*.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has 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.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

The court shall issue an appropriate order.

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 Federal National Mortgage Association by Nationstar Mortgage LLC D/B/A/ Mr. Cooper ("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 6340 Snedigar Road, Oakdale, California, 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.
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> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

6. **18-90702-E-7** **MICHAEL EVANS AND CHRISTINA SMITH**
19-9011 **EVANS ET AL V. NAVIENT SOLUTIONS, INC. ET AL**

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-26-19 [1]

Plaintiff's Atty: Pro Se
Defendant's Atty:
Dennis Winters [Navient Solutions, Inc.]
Unknown [Internal Revenue Service]
Miriam Hiser [Educational Credit Management Corporation]
["ECMC is a guaranty agency under the Federal Family Education Loan program ("FFELP"). Pursuant to that role, it is receiving transfer of a consolidation loan on which debtor Christina Smith is liable. ECMC will file a formal motion to be added as a party defendant if needed when the transfer is complete."]

Adv. Filed: 6/26/19
Answer:
7/22/19 [Navient Solutions, Inc.]
7/25/19 [Educational Credit Management Corporation]

Nature of Action:
Dischargeability - student loan
Dischargeability - other

Notes:
Continued from 8/29/19 by order of the court filed 8/29/19 [Dckt 18]. Status Reports, if any, to be filed on or before 9/11/19.

Plaintiff Status Conference Statement filed 9/11/19 [Dckt 21]

Status Conference Statement [Educational Credit Management Corp] filed 9/11/19 [Dckt 22]

Navient Solutions, LLC's Status Report filed 9/11/19 [Dckt 23]

The Status Conference is xxxxxxxxxxxx

SEPTEMBER 19, 2019 STATUS CONFERENCE

As scheduled by the Court, the Parties filed updated Status Conference Report. The Plaintiff-Debtor's Status Report (Dckt. 21) includes the assertion that service against the United States was proper effectuated by service on:

> Department of Treasury
> Internal Revenue Service
> P.O. Box 145566
> Cincinnati, OH 45250-5566

Plaintiff-Debtors Status Report, p. 1:26.5-28.5; Dckt. 21.

Plaintiff-Debtors further assert that the Motion for Default Judgment had been served on the United States a the following address:

> Internal Revenue Service
> P.O. Box 7346
> Philadelphia, PA 19101-7346,

which Plaintiff-Debtors state is the address listed on form EDC.002-785. *Id.*, p. 2:18-20.

The "form" EDC 002-785 is the Roster of Governmental Agencies. The information on the Roster of Governmental Agencies includes the following with respect to the Internal Revenue Service (emphasis added):

Internal Revenue Service

Notices and Service in Bankruptcy Cases, Adversary Proceedings, and Contested Matters Shall be Sent to:

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Notices and Service in Adversary Proceedings and Contested Matters **Shall Additionally be Sent to**:

United States Department of Justice
Tax Division
Civil Trial Section Western Region

Box 683 Ben Franklin Station
Washington, DC 20044

AND

If Filed in the Sacramento Division to:

United States Attorney
(For Internal Revenue Service)
501 I St Ste 10-100
Sacramento, CA 95814

If Filed in the Modesto or Fresno Division to:

United States Attorney
(For Internal Revenue Service)
2500 Tulare St Ste 4401
Fresno, CA 93721

The Plaintiff-Debtors have hit one of the three required addresses for litigation with the Internal Revenue Service of the United States of America.

For federally insured student loan debt, the following information for service on the United States is included on the Roster:

Office of Education for Federally Insured Student Loans

US Department of Education
Bankruptcy Section
50 United Nations Plaza
Mail Box 1200
San Francisco, CA 94102

The Supreme Court has enacted Federal Rule of Bankruptcy Procedure 7004 addressing service in adversary proceedings. While incorporating substantial parts of Federal Rule of Civil Procedure 4, with respect to service by mail, Federal Rule of Bankruptcy Procedure 7004(b)(4) provides:

> (b) Service by first class mail
>
> Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:
> . . .
> (4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint

> either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

This Rule is why the Roster provides the multiple addresses.

With respect to the above, the Bankruptcy Code provides in 11 U.S.C. § 523(a)(1) for the nondischargeability of certain taxes;

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
>
> (1) for a tax or a customs duty--
>
> > (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
> >
> > (B) with respect to which a return, or equivalent report or notice, if required–
> >
> > > (i) was not filed or given; or
> > >
> > > (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
> >
> > (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

As discussed below, the nondischargeability of tax obligations is not one for which the creditor is required to bring an action to have it determined nondischargeable. See 11 U.S.C. § 523(c)(1).

ECMC Status Report

ECMC states that is has guaranteed the student loan at issue, with Navient Solutions, LLC providing contract servicing. ECMC states that it is the real party in interest to be substituted in as the defendant in this Adversary Proceeding.

Navient, the servicer, goes further in its Status Report (Dckt. 23), stating that ECMC has already paid on the guaranty and is the sole holder of the student loan obligation. With ECMC having paid on the guaranty, Navient says that its work as a servicer has concluded. Navient asserts that since the student loan obligation is not automatically nondischageable, then alleged violations of the discharge injunction against it cannot stand. [FN. 1.]

FN. 1. With respect to the assertion by Plaintiff-Debtors that the credit report information was updated to show that the obligation is $0 was made either in error, or because of the guarantor paying the obligation, then Navient would show it in its system as $0.

At the continued Status Conference xxxxxxxxxxx

AUGUST 29, 2019 STATUS CONFERENCE

Continuance of Status Conference

As discussed below, there are substantial issues as to service of the summons and complaint, what is being asserted, and who the real parties to this Adversary Proceeding are and who needs to actually be substituted in.

Further, it is unclear the relief Plaintiff-Debtor is seeking and the basis. The statement that Congress has enacted no positive law that student loan debt is nondischargeable is contradicted by Plaintiff-Debtor's citation to 11 U.S.C. § 523(a)(8). While talking about rebutting the issue of undue burden, there are no allegations of and requests seeking such determination thereof.

Before the court blunders forward in this Adversary Proceeding, the real parties will be identified and substituted in, the Plaintiff-Debtor will confirm the relief sought and whether this is the actual complaint which states the claim upon which Plaintiff-Debtor's action will live or die, and documentation of sufficient service provided so that the court has a good faith belief that its orders and judgment are effective and not void for lack of personal jurisdiction.

SUMMARY OF COMPLAINT

The Plaintiff-Debtor, Michael Evans and Christina Smith ("Plaintiff-Debtor"), commenced this Adversary Proceeding with the filing of a complaint on June 26, 2019. Dckt. 1. The allegations in the Complaint include:

1. The Plaintiff-Debtor seeks relief from discharge of tax debt due to financial hardship and insolvency.

2. Taxes were assess by the Internal Revenue Service.

3. Plaintiff-Debtor disputes an unsecured claim of defendant Navient in the amount of $53,629.44. That debt was scheduled as a disputed debt by Plaintiff-Debtor in their Chapter 7 bankruptcy case.

4. The deadline for filing objections to discharge or for nondischargeability of debt expired, with no such relief sought by Navient.

5. After the discharge was entered in December 2018, it is alleged that Defendant Navient changed the information provided to consumer reporting agencies about the debt, with the changed information reporting the debt as paid and that the remaining balance was $0.

6. Though reporting the debt as paid and the balance $0 on Plaintiff-Debtor's consumer report, Defendant-Navient began in 2019 sending billing notices and attempting to collect the debt which was reported as paid, had a $0 balance, and was discharged in the Chapter 7 bankruptcy case.

7. Plaintiff-Debtor listed on their schedules a debt in the amount of $2,433.46 of the Internal Revenue Service for the 2016 tax year as disputed. The Internal Revenue Service did not object to Plaintiff-Debtor's discharge or that any such obligation should be nondischargeable.

8. On Plaintiff-Debtor's credit report the tax obligation for the 2016 tax year is show as being $0 and it is noted to be that amount due to the Chapter 7 bankruptcy case.

9. In 2019, after entry of Debtor's discharge, the Internal Revenue Service began collection efforts on the alleged $2,522.67 tax debt for 2016 which is stated to be $0 on Plaintiff-Debtor's credit report.

10. Plaintiff-Debtor sent a dispute of the 2016 tax amount, made under penalty of perjury, and notified the Internal Revenue Service that unless it responded with a sufficient counter affidavit within thirty-days, Plaintiff-Debtor's dispute would stand.

11. The Internal Revenue Service did not respond with a counter affidavit, but continued in its attempts to collect that asserted obligation.

12. The relief requested by Plaintiff-Debtor is:

> A. The court "make clear that the above-listed accounts. . .were discharged. . . and each of the Defendants are not entitled to collect on such discharged debt. . . ."

While providing some very detailed allegations, the Complaint includes some unusual statements of law. One is that while it might be asserted that the student loan obligation is nondischargeable pursuant to 11 U.S.C. § 523(a), which was enacted by Congress pursuant to Article I of the United States Constitution and is part of the supreme law of the law, second only to the United States Constitution,

> Defendant Navient may argue that student loan debt is not dischargeable pursuant to 11 USC 523(a)(8), however,[t]his part of the code is not positive law. Current Statutory law written by Untied States Congress has no provision excepting discharge of student loans. Statutory text appearing in a nonpositive law title may be rebutted by showing that the wording in the underlying statute is different. In other words, any case law on "undue hardship" made as legal opinion expressed via judicial decisions on non-positive law (prima facie code) is rebuttable.

Complaint ¶ 16, Dckt. 1.

Going to the specific Bankruptcy Code section referenced by the Plaintiff-Debtor and the related provisions in said §523, Congress has provided therein, and the President signed into law, the following provision relating to the nondischargeability of student debt obligations:

> § 523. Exceptions to discharge
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> . . .
> (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
>
> (A)
>
> (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
>
> (ii) an **obligation to repay funds received as an educational benefit, scholarship, or stipend**; or
>
> (B) any other **educational loan that is a qualified education loan**, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;
> . . .

11 U.S.C. § 523(a)(8). On its face, it appears that Congress has affirmatively, positively stated that a discharge in bankruptcy does not discharge the obligation to pay the above "student loan" obligations. However, such positive statement is qualified by the "impose undue hardship" language.

In 11 U.S.C. § 523(c)(1) Congress specifies the three grounds for nondischargeability for which the creditor must commence an adversary proceeding and seek an affirmative judicial determination that grounds exist for the debt to be non-dischargeable - 11 U.S.C. §§ 523 (a)(2) [fraud], (4) [breach of fiduciary duty/embezzlement/theft], and (6) [willful and malicious injury]. Those provision are not at play in this litigation as framed by Plaintiff-Debtor.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 4007(b) that a complaint, other than for the grounds stated in 11 U.S.C. § 523(c), may be filed at any time.

Here, Plaintiff-Debtor has now initiated such a complaint, though it does not appear to allege grounds that the nondischargeability pursuant to 11 U.S.C. § 523(a)(8) would impose an undue burden. As discussed in Collier on Bankruptcy, Sixteenth Ed, ¶ 523.14[3] (emphasis added):

> [3] Discharge Based on Undue Hardship; §523(a)(8)
>
> Section 523(a)(8) is the "hardship" provision, which allows the court to discharge an otherwise nondischargeable student loan if excepting the debt from discharge will

> impose an undue hardship on the debtor or the debtor's dependents. **This exemption from the exception to discharge requires the bankruptcy judge to determine whether payment of the debt will cause undue hardship on the debtor and his dependents**, thus defeating the "fresh start" concept of the bankruptcy laws. There may well be circumstances that justify failure to repay a student loan, such as illness or incapacity. When the court finds that such circumstances exist, it may order the debt discharged.
>
> **The Supreme Court has stated that section 523(a)(8) is "self-executing"** and **that "[u]nless the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt**." [21]In other words, **student loan debt remains due until there is a determination that the loan is dischargeable**.[22]
>
> FN. 21. *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct. 1905, 1912, 158 L. Ed. 2d 764, 51 C.B.C.2d 627 (2004); *Ekenasi v. Educational Resouces Inst. (In re Ekanasi)*, 325 F.3d 541 (4th Cir. 2003).
>
> FN. 22. *Underwood v. United Student Aid Funds, Inc. (In re Underwood)*, 299 B.R. 471 (Bankr. S.D. Ohio 2003).

To assist the parties, the court provides the direct quote from the Supreme Court concerning the "self-executing" nature of the Congressional provision of nondischargeability.

> But in 1976, Congress provided a significant benefit to the States by making it more difficult for debtors to discharge student loan debts guaranteed by States. Education Amendments of 1976, § 439A(a), 90 Stat 2141 (codified at 20 U.S.C. § 1087-3 (1976 ed.), repealed by Pub L 95-598, § 317, 92 Stat 2678). That benefit is currently governed by 11 U.S.C. § 523(a)(8), which provides that student **loan debts guaranteed by governmental units are not included in a general discharge order unless excepting the debt from the order would impose an "undue hardship" on the debtor.** See also § 727(b) (providing that a discharge under § 727(a) discharges the debtor from all prepetition debts except as listed in § 523(a)).
>
> **Section 523(a)(8) is "self-executing."** Norton § 47:52, at 47-137 to 47-138; see also S. Rep. No. 95-989, p 79 (1978). **Unless the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt**. Norton § 47:52, at 47-137 to 47-138. Thus, the major difference between the discharge of a student loan debt and the discharge of most other debts is that governmental creditors, including States, that choose not to submit themselves to the court's jurisdiction might still receive some benefit: The debtor's personal liability on the loan may survive the discharge.

Tenn. Student Assistance Corp. v. Hood, 541 U.S. 440, 449-450 (2004) (emphasis added).

A similar legal conclusion is stated with respect to an assertion that certain tax obligations are nondischargeable as Congress has provided in 11 U.S.C. § 523(a)(1).

It is unclear from the Complaint what is being asserted as, or if there is a determination requested, that the automatic nondischargeabilty of the student loan debt constitutes a statutory undue burden and the positive statutory nondischargeabilty provision of 11 U.S.C. § 523(a)(8) should be retroactively terminated by this court.

SUMMARY OF ANSWER

Navient Solutions, LLC, "Defendant Navient," filed its answer on July 22, 2019. Dckt. 6. The responses in that answer include:

> 1. Defendant Navient is a loan servicer for loans guaranteed by the Education Credit Management Corporation ("ECMC").
>
> 2. The filing of this Complaint by Plaintiff-Debtor triggered the guaranty and the asserted obligation serviced by Defendant Navient is being transferred to ECMC.
>
> 3. Defendant-Navient does not have the authority to litigate issues relating to the asserted discharge of the obligation. When the obligation is transferred to ECMC, Defendant-Navient will seek to be dismissed from this Adversary Proceeding.
>
> 4. The answer admits and denies specific allegations in the Complaint.
>
> 5. In the denials, Defendant Navient states that it is without information or knowledge sufficient to respond to the allegations in Paragraph 13 of the Complaint that allege:
>
> > "Defendant Navient had reported the aforementioned account [the one that Navient is alleged to have been collecting post-discharge having been entered] as, '100% of the student loan as paid', balance was reported as '$0' remarks on the account stated, 'Chapter 7 Bankruptcy' and 'Between August 31, 2018 and September 30, 2018, your NAVIENT student loan account balance decreased by $53,516 from $53,516 to $0.' (hereinafter incorporated and reference as Exhibit A)."

Complaint ¶ 13, Dckt. 1.

The above allegations are clear, alleging that Defendant Navient provided information for a consumer reporting agency. It is unclear to the court how Navient would lack knowledge and information in its records as to what information it provided and then affirmatively admit or deny the allegation - rather than saying its wants to deny because it cannot say what it did or did not do.

SUMMARY OF ANSWER

Though not a party, yet, to this Adversary Proceeding (not having been substituted in by order of the court or an amended complaint) Educational Credit Management Corporation ("ECMC") has filed a pleading titled Answer. Dckt. 8. In this pleading, ECMC states:

> 1. ECMC is a guaranty agency and will be receiving, in the future, transfer of the loan for which liability against Defendant-Debtor is asserted. At some later date, ECMC will file a "formal"

motion to be added as a party, if needed. Nothing in the documents states a basis how ECMC, based on some future acquisition can inject itself into this Adversary Proceeding. [FN. 1]

FN.1. The Court acknowledges that yes, ECMC guarantees student loans, ECMC commonly is substituted in by either order of the court or an amended complaint, and that after the court ordered or amended complaint substitution ECMC may prosecute such litigation. However, notwithstanding that there are "legal ways" to do something, there is not an excuse for ECMC cutting the corner and just inserting itself when and it how it deems convenient in federal judicial proceedings.

---

2. The document purports to admit and deny allegations in the Complaint to which ECMC is not a party.

SUMMARY OF ANSWER

No responsive pleading has been filed by the Internal Revenue Service.

SERVICE OF PLEADINGS

While this Adversary Proceeding was filed on June 26, 2019, no certificate of service was filed by Plaintiff-Debtor until August 7, 2019. Dckt. 11. The service purported to have been made by that Certificate is stated to be:

> By First Class Mail to
>
> Navient solutions, Inc.
> P.O. Box 9533
> Willkes Barre, PA 18773-8533
>
> Department of the Treasury,
> Internal Revenue Service
> P.O Box 145566
> Cincinnati, OH 45250-5566

This Certificate filed on August 7, 2019, is dated June 26, 2019 and states that service was made on June 26, 2019 (forty-two days after the stated service date).

Then on August 26, 2019, a second and third Certificate of Service was filed, this one also stating that it was signed on June 26, 2019 (sixty-one days before the filing with the court). Dckts. 15, 16. These Certificate contains a statement at the bottom that the "initial certificate of service is attached as the LAST PAGE to the actual adversary complaint. I'm filing this as a separate page so all can see that there is a record of service." There is a Certificate of Service form, dated June 26, 2019, attached to the last page of the Complaint, which lists the two service addresses above. Dckt. 1 at 24.

Because the Summons and Complaint cannot be served until after the complaint is filed and the summons issued, one questions how a person can state that something has already been served when it

clearly could not have been served. While Plaintiff-Debtor may well say something to the effect of "I knew I was going to do it right after I left the courthouse, I would not lie," it had not occurred when Plaintiff-Debtor states under penalty of perjury that it had occurred.

Service by Mail

Service was sent to the two named defendants at Post Office Boxes. While Federal Rule of Bankruptcy Procedure 7004 allows for service by mail, merely sending something to a Post Office Box is not sufficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

For sufficient service by mail, the Supreme Court provides in Federal Rule of Bankruptcy Procedure 7004(b) the following as applicable to the two named defendants:

> (b) Service by first class mail
>
> Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:
> . . .
> (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.
>
> (4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.
>
> (5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The

> court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.
> . . . .

While Defendant Navient has resolved the service issue as it by filing an answer, the United States has not responded with respect to it, the Internal Revenue Service, as a defendant. It is not uncommon when there is such defective service for a defendant to not respond and voluntarily submit to the jurisdiction of a court. If the court were to blindly go forward and purport to enter a judgment, that judgment would be void - a waste of the time for not only the plaintiff, but the court.

7. 19-90592-E-7 JHW-1 — MICHAEL/TAMERA GRAYSON — Nicholas Wajda — MOTION FOR RELIEF FROM AUTOMATIC STAY — 8-21-19 [18]

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the September 19, 2019 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, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 21, 2019. 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.

The Motion for Relief from the Automatic Stay is granted.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ram 2500, VIN ending in 6636 ("Vehicle"). The moving party has provided the Declaration of Doris Pope-Reyes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Norman Grayson and Tamera Leigh Grayson ("Debtor").

Movant argues Debtor has not made 2 post-petition payments, with a total of $1,096.17 in post-petition payments past due. Declaration, Dckt. 18.

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 $51,469.01 (Declaration, Dckt. 18), while the value of the Vehicle is determined to be $33,831.00, as stated in Schedules B and D filed by Debtor. Dckt. 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.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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 argues this relief is warranted because Debtor is delinquent in payments and the Vehicle is a depreciating asset.

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 TD Auto Finance 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 2017 Ram 2500, VIN ending in 6636 ("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.