

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 2, 2018 at 1:30 p.m.

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1. [18-25631-C-13](#)      SHERYL CALALANG      MOTION FOR RELIEF FROM  
[MWM-317](#)      Pro Se      AUTOMATIC STAY  
9-17-18 [\[14\]](#)

6801 LEISURE TOWN ROAD  
APARTMENTS INVESTORS VS.

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**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).**

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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 (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2018. 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). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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

6801 Leisure Town Road Apartments Investors and its Successor in interest, MG Properties Group ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6801 Leisure Town Road, Unit 113, Vacaville, CA, 95688.

As noted in both Movant's Motion (Dckt. 14) and the Chapter 13 Trustee's Non-Opposition (Dckt. 21), Movant was granted a relief from stay with respect to this same property in Debtor's previously bankruptcy proceeding (Case No. 18-24990) on September 6, 2018. (Dckt. 33). The court granted relief from the stay in the previous bankruptcy proceeding based on the following:

(1) Movant leased residential real property to the Debtor.

(2) Prior to the filing of the petition, Movant obtained a judgement against Debtor in an Unlawful Detainer action with respect to this property on July 31, 2018 in Solano County Superior Court, Case NO. FCM160860 and provided the required notice to the Debtor, terminating Debtor's right to possession.

(3) The Debtor no longer had an interest in the subject property.

The same facts support Movant's pending motion.

Given the judgment in the Unlawful Detainer action, Debtor's right to possession has terminated and there is cause to terminate the automatic stay. *In re Windmill Farms, Inc.*, 841 F.2d 1467 (9th Cir. 1988); *In re Smith*, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The court shall issue a minute order terminating and vacating the automatic stay to 6801 Leisure Town Road Apartments Investors and its Successor in interest, MG Properties Group, 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.

The Stay is modified to permit the Movant to seek possession of the property. No fees and costs are awarded. The fourteen day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

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 6801 Leisure Town Road Apartments Investors and its Successor in interest, MG Properties Group, 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 6801 Leisure Town Road, Unit 113, Vacaville, CA, 95688.

No other or additional relief is granted.

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**FIRST INVESTORS FINANCIAL  
SERVICES VS.**

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**Final Ruling:** No appearance at the October 2, 2018 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2018. 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). 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.**

First Investors Services (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2012 Dodge Challenger, VIN ending in 8858 (“Vehicle”). The moving party has provided the Declaration of Virginia Nichols to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtors.

The Virginia Nichols’ Declaration provides testimony that Debtor has not made one post-petition payment, with a total of \$511.96 in post-petition payments past due. The Declaration also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of \$2,150.20.

Debtors’ Chapter 13 Plan lists Movant as a Class 3 creditors and provides for the surrender of the Vehicle. Dckt. 2, Page 4, § 3.09. The Chapter 13 Trustee filed a Non-Opposition to the Motion, noting that Movant filed a secured claim (Claim No. 3-1) and that the Debtor is current under the proposed Plan.

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 \$23,357.09, and the value of the Vehicle is \$17,430.00, as stated in the in Schedules B and D filed by Debtor.

**DISCUSSION**

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 rehabilitation. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by First Investors Financial Services (“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 2012 Dodge Challenger (“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.

No other or additional relief is granted.

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**DITECH FINANCIAL LLC VS.**

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**Final Ruling:** No appearance at the October 2, 2018 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 September 4, 2018. 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.**

Ditech Financial, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5158 Carriage Way, Antioch, California.

Movant asserts that the original borrowers are named Joseph Moscuzza and Cristi L. Moscuzza. The Moscuzzas, on October 2, 2012, transferred an interest in the property to Debtor in this case for the stated purpose of securing "payment of the indebtedness evidenced by a Settlement and Compromise Agreement, dated May 23, 2013" in the amount of \$75,000. Dckt. 108, Exhibit D "Second Deed of Trust." The Moscuzza's have missed nearly 53 mortgage payments. The Debtor did not list any interest in the property, and did not schedule the property or the interest in the "settlement agreement."

Movant requests relief from the stay pursuant to § 352(d)(1). The Trustee has not responded to Movant's motion for relief.

The court notes that on May 1, 2018, the court granted the Bank of New York Mellon's Motion for Relief from Stay based on very similar facts. Dckt. 97. In that proceeding, Joseph Moscuzza purportedly transferred an interests in a different parcel of real property to the Debtor to secure payment of a settlement agreement. Dckt. 87, Exhibit 4, "Second Deed of Trust." As noted in the Civil Minutes entered on April 17, 2018, that "property was transferred to the debtor for the apparent purpose of forestalling foreclosure without the debtor's knowledge." Dckt. 94.

The court shall issue a minute order terminating and vacating the automatic stay to Ditech Financial, LLC, 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 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 Ditech Financial, LLC , 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 5158 Carriage Way, Antioch, California.

No other or additional relief is granted.

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