

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: October 12, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

October 12, 2021 at 1:00 p.m.

1. [17-90818](#)-B-13 LISA GARCIA MOTION FOR COMPENSATION FOR
[MSN](#)-3 Mark S. Nelson MARK S. NELSON, DEBTORS
ATTORNEY(S)
8-31-21 [[146](#)]

WITHDRAWN BY M.P.

Final Ruling

Debtor's attorney having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

2. [21-90434](#)-B-13 EDWARD BRUNNER AND
[MCN-1](#) KATHERINA COGGINS
Eric J. Gravel

MOTION TO EXTEND AUTOMATIC STAY
9-28-21 [[9](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 15, 2021, for failure to make plan payments (case no. 19-90908, dkt. 68). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that they duly made plan payments during the pendency of the previous case. However, the last three payments, made by money order, were not posted at the Chapter 13 Trustee's office. Debtors contacted the Trustee after the dismissal of the prior case and confirmed with the Trustee's office that it had indeed had Debtors' last three payments on hand. The Debtors were ultimately refunded the equivalent of the three payments and the Trustee's office added that it would not object a motion to vacate the order of dismissal if one were filed. Debtors reached out to their prior attorney on multiple occasions but he did not respond to their calls. As a result, the Debtors filed a new case with a new attorney. Debtors assert that the administration of the present case will be greatly facilitated by the extension of the automatic stay. If it is not extended, the automatic stay will terminate even before the meeting of creditors.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3. [21-90164](#)-B-13 EVARISTO AVILA
[SAS](#)-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-9-21 [[41](#)]

ARTURO MARTINEZ VS.

Final Ruling

The motion has been set for hearing on 28-days notice. 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from automatic stay.

Arturo Martinez ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 600 West Main Street, Crows Landing, California (the "Property"). Movant has provided the Declaration of Arturo Martinez to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Martinez Declaration states that he has a first position lien against the Property as determined in two separate civil actions filed with the Stanislaus County Superior Court, case nos. 2130328, 19-006838). The Debtor breached the promissory note by not paying Movant \$450,000.00 by the September 28, 2020, maturity date. Movant thereafter commenced a nonjudicial foreclosure of the Property, and the Debtor filed this bankruptcy on April 16, 2021, just hours before the noticed trustee's sale of the Property was to take place.

From the evidence provided to the court, and only for purposes of this motion, the total amount owing to Movant is approximately \$496,461.36. The total of all liens is \$30,946.21. The value of the Property is \$610,000.00 based on the Declaration of Mike Glazzy, Movant's real estate broker. Debtor's equity in the property is approximately \$82,592.43.

Discussion

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Movant has met that burden.

Creditor submitted evidence of the Property's value with its motion. Specifically, the Declaration of Mike Glazzy, Movant's real estate broker, states that the Property has a value of \$610,000.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$496,461.36. Based on the Property's \$610,000.00 value, that leaves equity of \$113,538.64, which in turn creates an equity cushion of 18.61%. The equity cushion is even less after accounting the additional liens against the property. Creditor is therefore not adequately protected.

Attorneys' Fees Requested

Although requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.