

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 5, 2020 at 10:00 a.m.

1. [20-90349-E-11](#) **R. MILLENNIUM TRANSPORT,** **CONTINUED MOTION FOR RELIEF**
[HRH-1](#) **INC.** **FROM AUTOMATIC STAY**
 David Johnston **9-16-20 [93]**
PNC EQUIPMENT FINANCE, LLC
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 11 Trustee, and Office of the United States Trustee on September 16, 2020. By the court’s calculation, 15 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 11 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.

The Motion for Relief from the Automatic Stay is XXXXX.

PNC Equipment Finance, LLC (“Movant”) seeks relief from the automatic stay with respect to assets identified as:

1. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit, VIN ending in 6902,
2. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6901,
3. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6905,
4. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6903, and
5. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 2719

(“Vehicles”). The moving party has provided the Declaration of Michael McGinley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by R. Millennium Transport, Inc. (“Debtor”).

Movant argues Debtor has not made four post-petition payments, with a total of \$28,874.56 in post-petition payments past due. Declaration, Dckt. 95. Movant also provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of \$21,655.92. *Id.*

Expert Valuation Provided

Movant has also provided the declaration of Michael McGinley, Vice President of Litigation and Recovery for Movant. Mr. McGinley testifies, under penalty of perjury, the fair market value of the Trailers is \$28,000 each. Along with Mr. McGinley’s previous knowledge and experience, his opinion of value is based upon the Trailers’ original price, age and forecast of current market values, conversations with equipment vendors, and the industry-standard TruckPaper values.

Thus, as the Trailer with a VIN ending in 6901 was totaled, the total value of the remaining four Trailers is \$112,00.00.

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 \$91,460.31 (Declaration, Dckt. 95), while the value of the Trailers is determined to be \$120,000.00, as stated in Schedules A/B and D filed by Debtor, which is more than the retail value as stated on the Expert Valuation.

Opposition Presented at the Hearing

The Debtor in Possession/Debtor requested, and the Movant concurred, that the hearing be continued to allow the parties to address these issues.

Additionally, that the stay be modified so that the insurance proceeds from a damaged trailer can be paid to Movant. The order was entered on October 26, 2020. Dckt. 109.

Counsel for the Debtor in Possession shall prepare and lodge with the court an order consistent with this ruling.

October 22, 2020 Hearing

At the hearing, counsel for the Debtor in Possession reports that \$3,500.00 adequate protection beginning in October 2020, and that the insurance proceeds for the damaged vehicle have been disbursed, applied to the secured claim to which they relate, and the surplus amount in excess of the secured claim have been disbursed to the Debtor in Possession.

October 29, 2020 Hearing

As of the drafting of this ruling, no other documents have been filed.

At the hearing, **xxxxxxxxxxxxxxxx**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. No certificate of service was filed. The court set the hearing for November 5, 2020. Dckt. 45.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----

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The Motion to Impose the Automatic Stay is ~~XXXXX~~.

On October 28, 2020, Bimlesh Singh, the Chapter 7 Debtor in this case, filed a pleading titled Notice of Motion to Reinstate Automatic Stay. Dckt. 39. The Notice states that a hearing is to be conducted at 10:00 a.m. on November 5, 2020. *Id.* No motion for an order shortening time was filed and no such order issued. No certificate of service has been filed. It appears that the Motion to Impose the Stay has been filed for *ex parte* consideration by the court.

Attached to the Notice of Motion to Reinstate Automatic Stay is another pleading titled: "Certification of Debtor." This one-page document is signed by the Debtor and he certifies what is stated therein is said under penalty of perjury. *Id.* at 2. The information stated under penalty of perjury by Debtor includes (identified by paragraph number used in the Certification):

"2. [Debtor] filed for bankruptcy on 9/2/20."

"3. On 9/22/20, the automatic stay was vacated because of a clerical error."

“4. [Debtor] request the stay to be reinstated because I would like to go back to my house and continue with my Chapter 7 bankruptcy.

As soon as my case was dismissed due to the error, the automatic stay that was preventing my eviction was dismissed which allowed for my eviction.”

Id. at 2. [The court has broken the two sentences in paragraph 4 into 2 different sections for ease of reading.]

Page 3 of the Notice document is a proposed order form titled: “Order Granting Motion to Reinstate Automatic Stay.” *Id.* at 3.

No points and authorities has been filed and no legal grounds authority for the court reinstating the automatic stay is provided.

Review of Prior Proceedings In This Bankruptcy Case

On September 21, 2020, the Clerk of the Court issued an Order dismissing this bankruptcy case. Dckt. 23. The Order dismissing the case states that it was entered due to Debtor failing to file the required documents specified in the Notice of Income Filing and Intent to Dismiss (“Notice of Incomplete Filing”). The Notice of Incomplete Filing (Dckt. 8) states that the Debtor had not filed the Notice of Social Security Number, Statement of Monthly Income, the required bankruptcy schedules, the statement of financial affairs, and the summary of assets and liabilities.

The Notice of Intent states that if all the documents are not filed by September 16, 2020, the bankruptcy case would be dismissed. Dckt. 8.

After the Order of Dismissal was entered, Debtor filed a Motion to Vacate the Order Dismissing the bankruptcy case. Motion to Vacate, Dckt. 27. In it, Debtor states that he filed all the documents required on September 16, 2020, and that the dismissal was a clerical error. But Debtor then further states that the required summary of assets had not been filed. *Id.*, ¶5. The Debtor’s Summary of Assets was not filed until October 21, 2020. Dckt. 33.

Debtor set a hearing on the Motion to Vacate for September 30, 2020. The court granted the Motion, and extended the deadlines for filing complaints for nondischargeability and proceedings objecting to discharge. Order, Dckt. 35. In the Civil Minutes for the September 30, 2020 hearing the court discusses the Schedules filed and the relationship of this Chapter 7 case to a Chapter 7 case filed by Sati Sen, who is identified as a co-owner of real property that is the subject of a foreclosure.

Hearing on *Ex Parte* Motion

Debtor, acting in *pro se*, is requesting relief from the court for which no legal authority or basis is stated. In his Certification, Debtor states that the Automatic Stay was vacated on September 22, 2020. Dckt. 39, p. 2, ¶ 3. There has been no motion for relief from the stay and no order granting relief from the stay in this bankruptcy case. It appears that the September 22, 2020 “vacating of the stay” may be a reference to the September 21, 2020 order dismissing this Chapter 7 case. As provided in 11 U.S.C. § 362(1), the automatic stay in a case continues until property of the estate is no longer property of the bankruptcy estate. When a bankruptcy case is dismissed, property of the bankruptcy estate reverts in the

debtor. 11 U.S.C. § 349(b)(3). When no longer property of the bankruptcy estate, the automatic stay does not “continue” to apply to such property. 11 U.S.C. § 362(c)(2)(B), as applicable to the situation before the court, states that the stay of other acts continues until the bankruptcy case is dismissed.

As addressed by the Bankruptcy Appellate Panel for the First Circuit in, *Lomagno v. Salomon Bros. Realty Corp. (In re Lomagno)*, 320 B.R. 473, 479, (B.A.P. 1st Cir. 2005), the automatic stay under 11 U.S.C. § 362(a) ceases upon the dismissal of a bankruptcy case but then upon the reinstatement of the bankruptcy case the automatic stay goes back into effect, but not retroactively.

The request of the *Ex Parte* Motion is to “reinstate” the stay. No legal basis is given for a “reinstatement of the stay.” It appears that with the court vacating the dismissal, the case not being dismissed, and there being a bankruptcy estate from and after the October 26, 2020 order vacating the dismissal, the automatic stay is in effect as of and going forward from October 26, 2020.

The court set a hearing for November 5, 2020 on the *Ex Parte* Motion.

On November 3, 2020, Debtor filed two Exhibits in support of the Motion to Reinstate the Automatic Stay. Dckt. 46. The first is identified as a “Receipt for payment made to SPS (1st Mortgage Company) on 10/30/20 in the amount of \$3360.70;” and Repayment Plan Agreement from SPS (1st Mortgage Company).” Exhibits A and B, respectively; Dckt. 46.

November 5, Hearing

At the hearing, **XXXXXXXXXXXXXXXX**

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 to Impose the Automatic Stay filed by Bimlesh Bikash Singh (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX** .

FINAL RULINGS

3. [20-90480-E-7](#) ANITA ANGLE MOTION FOR RELIEF FROM
[RPZ-1](#) Pro Se AUTOMATIC STAY
10-2-20 [\[15\]](#)

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the November 5, 2020 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on October 2, 2020. By the court's calculation, 34 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.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Nissan Quest, VIN ending in 0364 ("Vehicle"). The moving party has provided the Declaration of Erica Chowe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Anita Jean Angle ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$664.74 in post-petition payments past due. Declaration, Dckt. 19. Movant also provides evidence that there are thirteen (13) pre-petition payments in default, with a pre-petition arrearage of \$4,439.55. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Though authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will *sua sponte* take notice that the NADA

Valuation Report can be within the “market reports and similar commercial publications” exception to the hearsay rule (Federal Rule of Evidence 803(17)). Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

No opposition to the Motion has been filed. The Statement of Intention filed by Debtor, who is prosecuting this case *in pro se*, has not been completed.

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 \$12,718.14 (Declaration, Dckt. 19). Debtor does not list the Vehicle in her Schedules. The NADA Valuation Report provided by Movant values the Vehicle at \$7,125.00.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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.

11 U.S.C. § 362(d)(2)

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.

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 U.S. Bank National Association (“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 Nissan Quest, VIN ending in 0364 (“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.