

Movant argues Debtor has not made one (1) post-petition payment, with a total of \$700.49 in post-petition payments past due. Declaration, Dckt. 15. Movant also provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of \$2,215.07. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

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 \$29,495.46 (Declaration, Dckt. 10), while the value of the Vehicle is determined to be \$23,750, as stated in Schedules B and D filed by Debtor. Additionally, under his Statement of Intention, Debtor intends to surrender possession of the vehicle to Creditor. Dckt. 12.

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 non-bankruptcy 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 Ford Motor Credit Company (“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 2014 Ford F150, VIN ending in 2837 (“Vehicle”), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

2. [17-90516-E-7](#)
[SSA-1](#)

VERA JOHNSON
Thomas Hogan

**CONTINUED AMENDED MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-9-19 [39]**

MICHAEL JOHNSON VS.

The hearing on the Motion for Relief from the Automatic Stay has been continued to December 19, 2019 at 10:00a.m. by prior order of the court (Order, Dckt. 69).

PARAMJIT RAI 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 in possession, Debtor in possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2019. By the court's calculation, 28 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 denied without prejudice.

Rajinder K. Sharma, Paramjit Rai, Shakuntala Rai and Dalbir Singh ("Movants") seek relief from the automatic stay with respect to Randhawa Trucking, LLC's ("Debtor in Possession") real property commonly known as 1200 6th Street, Modesto, California ("Store Property"). Movants have provided the Declaration of Rajinder K. Sharma to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movants argue that neither the Debtor nor the Bankruptcy Estate have any equity in the Property.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in possession filed an Opposition on October 24, 2019. Dckt. 119. Rajinder K. Sharma, Declarant for the Debtor in Possession, alleges that the deed of trust he possesses has a due date of October 2024 and that he was unaware of the existence of Movant's deed of trust with a Note due date of October 2017. Further, Declarant asserts that Debtor in Possession has been in negotiations with Movants to reach a settlement with respect to Movants' claim and asserted violation of the automatic stay.

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 \$823,000.00 (Declaration, Dckt. 114), while the value of the Property is determined to be \$1.3 million, as stated in Schedules B and D filed by Debtor.

Trustee's Motion to Convert Case

On October 30, 2019, Trustee filed a Motion to Convert Case from, Chapter 11 to Chapter 7. Dckt. 129. Trustee's pending motion set to be heard on December 19, 2019, requests the case be converted on two grounds: (1) Debtor's failure to timely file monthly operating reports, and (2) Debtor in Possession's failure to file a plan under Rule 1121(e)(2) which dictates that small business debtors must file a plan 300 days after filing the Petition.

The Debtor designated itself as a "small business debtor" as defined in 11 U.S.C. § 105(51D). Petition, Question 8; Dckt. 1 at 2. With the Debtor in Possession failing to file a Plan in the time period specified in 11 U.S.C. § 1121(e)(2), that opportunity has closed. While a creditor could step forward with a plan, none have.

It appears that this case will be converted from Chapter 11 to Chapter 7. With that, the Chapter 7 Trustee can engage in a discussion with the holder of the junior deed of trust for which there is approximately \$400,000 of value in the collateral to see if there is a collaborate effort by which the Estate and the junior lien creditor are financially better off than allowing the significantly oversecured Movants foreclosing. However, until the case is converted and trustee appointed, that chair at the table for the bankruptcy estate is empty.

11 U.S.C. § 362(d)(1): 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.

Here, Movants argue several allegations for cause. Debtor has not been diligent in carrying out its duties in its bankruptcy case. Further, Movants contend that the case was filed in bad faith for the purpose of delaying foreclosure. Movants argue that the bad faith can be inferred by the fact that the case is now 16 months old and Debtor has not proposed any type of organization.

Movants also assert that Debtor has failed to file the required monthly operating reports including June 2019 until present. A look at the docket reflects that Debtors submitted five monthly operating reports for May through September 2019 on October 28, 2019. Dckts. 124-128. As it is also a point made by the U.S. Trustee, Debtor has demonstrated that they cannot submit the required timely operating reports.

Additionally, Movants have been receiving a \$5,000.00 a month interest payment from the Estate. In addition to being of benefit to Movants, it has reduced the erosion of value that exists for the junior lien claim and possibly the Bankruptcy Estate.

11 U.S.C. § 362(d)(1): Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movants 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.* In this case, the equity cushion in the Property for Movants' claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movants have not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). Indeed, Creditor appears to have substantial equity cushion as being first in timer for the Store Property. Movants are owed \$823,000.¹ There is \$40,240.50 owed in delinquent property taxes. The Store Property is valued at \$1.3 million. Thus, Movant has an estimated \$400,000.00 equity cushion.

Further, Debtor has been paying monthly interest payments to Movants. According to the monthly operating reports, Debtor has been making monthly interest payments of \$5,000.00 to Falcon Investments. A search of Falcon Investments in the California Secretary of State website shows that the LLC has Movant Rajinder K. Sharma as its agent of service of process.

11 U.S.C. § 362(d)(2): Debtor and Equity

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).

It may be that the Estate has no equity in the Store Property, or that the ability of the Trustee to effectively and efficiently sell the Property has recoverable value in the Store Property as it relates to the

¹ The court finds it curious that Movants have not filed a Proof of Claim, especially for Movants being owed over \$800,000.00. As show in the Debtor in Possession's Opposition, there is some "dispute" (the court cannot determine if there is a *bona fide*, good faith dispute) over which note is the correct note. A Chapter 7 Trustee can evaluate that, as well as the loan documents upon which Movants claim is based.

interests of the junior lien creditor who would otherwise have to deal with satisfying the \$800,000+ senior lien to protect the remaining value in the Property.

At this juncture, the court cannot determine that there is no value in the property for the Bankruptcy Estate. The interests of Movants are more than adequately protected by the substantial equity cushion and the monthly payments of \$5,000 Movants have been receiving.

The Motion is denied without prejudice, to afford the Bankruptcy Estate after what appears to be the pending conversion of this case to one under Chapter 7 (or possibly the appointment of a Trustee, which is proper alternative relief who could pursue a Chapter 11 Plan) to determine the value of the Property that is the subject of this Motion.

For the reasons stated above, the Motion is denied.

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 Ranjinder K. Sharma, Paramjit Rai, Shakuntala Rai and Dalbir Singh (“Movants”) 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 for Relief from Automatic Stay is denied without prejudice.

ACAR LEASING LTD VS.

Final Ruling: No appearance at the November 7, 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 Debtors', Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 9, 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.

ACAR Leasing LTD dba GM Financial Leasing ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Silverado, VIN ending in 3798 ("Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Thomas Leonard Davis and Charlene Davis ("Debtor").

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$1,311.90 in post-petition payments past due. Declaration, Dckt. 16.

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 \$30,842.80 (Declaration, Dckt. 16), while the value of the Vehicle is determined to be \$28,000.00, as stated in Schedules B and D filed by Debtor. Additionally, under his Statement of Intention, Debtor intends to surrender possession of the vehicle to Creditor. 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 JE 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.

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 non-bankruptcy 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 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 ACAR Leasing Ltd dba GM Financial Leasing (“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 Chevrolet Silverado, VIN ending in 3798 (“Vehicle”), and applicable non-bankruptcy law to obtain possession of, non-judicially 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.

