

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**November 26, 2019 at 1:30 p.m.**

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1. [19-20026-E-13](#) **THOMAS IVERS** **ORDER REFERRING TO**  
[RHS-1](#) **Pro Se** **SACRAMENTO COUNTY ADULT**  
**PROTECTIVE SERVICES FOR**  
**INVESTIGATION AND**  
**REPORT THE QUESTION OF THE**  
**LEGAL COMPETENCY OF THOMAS**  
**IVERS IN FEDERAL COURT**  
**PROCEEDING**  
**11-8-19 [146]**

**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.

The Order Referring to Sacramento County Adult Protective Services For Investigation and Report The Question Of The Legal Competency Of Thomas Ivers In This Federal Court Proceeding And Setting Initial Hearing was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 14, 2019. The court computes that 12 days' notice has been provided.

The court issued an Order Referring to Sacramento County Adult Protective Services For Investigation and Report The Question Of The Legal Competency Of Thomas Ivers In This Federal Court Proceeding And Setting Initial Hearing to address the issue described in the Order and supporting Memorandum Decision Re: Referral Of Issue Of Legal Competency Of Thomas Ivers To Sacramento County Adult Protective Services For Review, Investigation, Reporting To The Court, And Action.

**The Order Referring to Sacramento Adult Protective Services and Report the Question of the Legal Competency is ~~XXXXXX~~.**

The debtor, Thomas James Ivers, ("Debtor") filed for Chapter 13 bankruptcy relief on January 3, 2019. Debtor is seventy-plus years of age and a Vietnam era veteran. Debtor appeared in open court on October 29, 2019 and led the court to believe that he was legally competent, but the court has since had reason to believe otherwise. As evidenced by his failure to immediately take action in his case

and protect his substantial property interest, the court has filed this order. Debtor has a \$45,000.00 interest in property that is subject to a pending nonjudicial foreclosure sale.

In light of this federal court does not having the authority to *sua sponte* select and appoint a personal representative, conservator, or other person to take the place of the Debtor, the court has submitted a referral to the Sacramento County Adult Protective Service for an investigation of Mr. Ivers and his legal capacity. This court has directed the initial report to be conducted by November 21, 2019 and that a hearing be held on November 26, 2019 to determine what action should be taken (if any), and how such action (if any) shall be taken if it is determined by Sacramento County Adult Protective Services that Mr. Ivers is not legally competent and his rights and interests must be protected.

At the hearing, **xxxxxxx**.

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.

Order Referring to Sacramento County Adult Protective Services For Investigation and Report The Question Of The Legal Competency Of Thomas Ivers In This Federal Court Proceeding And Setting Initial Hearing filed by this court having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **xxxxxxx**.

2.	<a href="#">19-20026-E-13</a> <a href="#">NLG-3</a>	<b>THOMAS IVERS</b> Pro Se	<b>CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 5-29-19 [66]</b>
<b>PROVIDENT FUNDING ASSOC., L.P. VS.</b>			

**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.**  
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Sufficient Notice Provided. This Motion has been set for hearing by order of the court. Order, Dckt. 144. This matter has been set due to the court partially vacating the prior order for relief from stay.

<b>The Motion for Relief From the Automatic Stay is <b>xxxxxxx</b>.</b>
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Provident Funding Associates, L.P. (“Movant”) sought relief from the automatic stay with respect to Thomas James Ivers’s (“Debtor”) real property commonly known as 8610 Pershing Avenue, Fair Oaks, California (“Property”). Movant has provided the Declaration of Patricia Kha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The court granted relief from the stay following extensive negotiations by Movant and the then counsel for Debtor. Movant agreed to delay conducting a foreclosure sale until November 2019. Civil Minutes, Dckt. 93; Order, Dckt. 94.

The court incorporates the Civil Minutes, Dckt. 93, herein and make them part of this Ruling.

### **Vacating Relief to Conduct Foreclosure Sale**

Though Debtor has had eleven months to employ a real estate broker and sell the Property, he and his counsel have failed. In October 2019, it was brought to the court’s attention that the attorney-client relationship between Debtor and his former counsel was ruptured. Further, that Debtor asserts that his former attorneys and the special purpose representative appointed by this court have conspired to steal the Property from Debtor. The is ruptured relationship and Debtor’s contentions are discussed by the court in the Civil Minutes from the hearing on Debtor’s former counsel’s motion to dismiss (Dckt. 127), this court’s Memorandum Opinion and Decision Vacating in Part the Prior Order Granting Relief From the Stay (Dckt. 145), and this court’s Memorandum Opinion and Decision Referring To Adult Protective Services the Debtor for Review of Legal Competency (Dckt. 148), each of which are incorporated herein by this reference.

In short, Debtor’s conduct appeared to demonstrate a lack of legal competency with respect to the marketing and sale of the Property. In addition to Debtor’s equity in the Property, one of the creditors is Debtor’s daughter whose junior deed of trust secures a reported obligation of (\$30,000). While Debtor believed that the proposed sale of the Property presented to the court by the Special Purpose Representative was part of the scheme to steal his Property and did not present a fair market value, that sale would have generated \$45,000 for Debtor and his daughter.

At the October 29, 2019 hearing on the Motion to Withdraw by Debtor’s former counsel, Debtor led the court to believe that Debtor and his daughter would be promptly be obtaining new counsel and would act to protect their interests (which had a value of at least \$45,000).

To insure that Debtor’s daughter is aware of what is transpiring and the impending loss of the value of their interests in the Property (at least \$45,000), the court has had the Clerk of the Bankruptcy Court serve the daughter with copies of the Civil Minutes and Orders since the October 29, 2019 hearing. Certs. of Serv., Dckts. 130, 135, 154, 155, 156, 157, 158.

After the October 29, 2019 hearing the court’s concern was raised when the only further pleading filed by Debtor was arguing about the alleged scheme to steal his property and no new steps being taken by Debtor and/or Debtor’s daughter and the counsel they had obtained. Debtor represented to the court that he worked extensively with attorneys and that he could contact them to find a new attorney, in addition to seeking assistance through the bankruptcy clinic at the University of the Pacific McGeorge School of Law, the County Bar Association, and consumer groups.

As of the court's November 23, 2019, nothing has been filed by Debtor or Debtor's daughter to protect their interests.

## NOVEMBER 26, 2019 HEARING

At the November 26, 2019 hearing ~~XXXXXXXXXX~~

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 Additional Hearing on the Motion for Relief from the Automatic Stay filed by Provident Funding Associates, L.P. ("Movant") having been conducted by 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 further ~~modified to allow Provident Funding Associates, L.P., 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 8610 Pershing Avenue, Fair Oaks, California, ("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 to obtain possession of the Property.~~

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~~This Order Supplements the prior order of this court, Dckt. 94, granting relief from the stay.~~

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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) are waived for cause.~~

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~~Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014. No other or additional relief is granted.~~

**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 Objection. 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*), and Office of the United States Trustee on November 5, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss 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.

**The Motion to Dismiss is ~~XXXXXXX~~.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Thomas Ivers (“Debtor”), is causing unreasonable delay that is prejudicial to creditors.
2. Debtor has failed to file a plan.

## DISCUSSION

### No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on October 1, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C.

§ 1307(c)(1).

**November 26, 2019 - Initial Hearing on Legal Competency**

Debtor's conduct in this case raises some concerns relating to his legal competency as it relates to his real property, representations that he understands the urgent need to sell the property in light of his years of default and imminent foreclosure sale, the obligation owed to his daughter that is secured by a junior deed of trust against the property, and the apparent value of the property that would at least pay his daughter's claim and generate some monies for Debtor.

As this court addressed in the Memorandum Opinion and Decision issued with the Order referring the Debtor to Adult Protective Services, Debtor and his daughter (who has been served with several of the court's orders and ruling identifying these concerns) have not come forward to protect their apparent economic interests.

At the November 26, 2019 hearing, **XXXXXXXXXX**

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 Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), 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 hearing on the Motion to Dismiss is **XXXXXXXXXX**.

**ELIZON MASTER PARTICIPATION  
TRUST I, U.S. BANK TRUST  
N.A. AS OWNER TRUSTEE, 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.

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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 13 Trustee, creditors, and Office of the United States Trustee on October 21, 2019. By the court’s calculation, 36 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, with the court: (1) determining that there is no automatic stay in this case; (2) that the co-debtor stay, if any, as to Mark R. Spotts is terminated in its entirety; and (3) relief pursuant to 11 U.S.C. § 362(d)(4) is proper.**

Elizon Master Participation Trust I, U.S. Bank Trust National Association, as Owner Trustee (“Movant”) seeks relief from the automatic stay with respect to Orlando Cisneros’ (“Debtor”) real property commonly known as 4448 G Street, Sacramento, California 95819, California (“Property”). Movant has provided the Declaration of David Ha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

#### **Review of Bankruptcy Filings and Dismissals by Debtor**

As Movant lays out in the Motion, this is not the “ordinary” motion for relief. In considering the present request for relief, the series of bankruptcy case filings by Debtor is necessary to determine

the respective rights and interests in play. The court summarizes the prior cases as follows:

- A. Chapter 13 Case 18-22528 - Converted to Chapter 7
  - 1. Filed.....April 25, 2018
  - 2. Converted to Chapter 7.....October 9, 2018
  - 3. Movant Granted Relief From Stay.....December 19, 2018
  - 4. Debtor Granted Chapter 7 Discharge.....January 9, 2019
  
- B. Chapter 13 Case 19-20132
  - 1. Filed.....January 10, 2019
  - 2. Dismissed.....April 26, 2019
  
- C. Chapter 13 Case 19-23641
  - 1. Filed.....June 6, 2019
  - 2. Dismissed.....August 26, 2019
  
- D. Current Chapter 13 Case
  - 1. Filed.....September 11, 2019

Movant argues that there are 60 pre-petition payments in default, with a pre-petition arrearage of \$150,099.11. Dckt. 32. *Id.*

Movant prays for relief from co-debtor stay merely mentions it the prayer and does not mention relief from the co-debtor stay in Movant’s motion and does not mention the basis for this relief in the supporting memorandum of points and authorities. Movant states in its prayer merely “If the Court determines that the co-debtor stay of 11 U.S.C. § 1301(a) did go into effect upon the filing of this Case, granting relief from that stay for cause”.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on November 12, 2019. Dckt. 59. Debtor asserts that the current plan provides adequate protection and that the full monthly payment has been distributed to Movant. Additionally, service of the motion was defective because the co-debtor, Yolanda Lopez (identified as Debtor’s sister), was not served. Further, the Internal Revenue Service has a six (6) month right of redemption and the Franchise Tax Board might have a similar right. <sup>FN. 1</sup>

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FN. 1. While making reference to a possible right of redemption, there is not a legal analysis of how this is relevant to the present motion. The totality of the statement of this legal basis for not granting relief,

including determining that there is no stay is:

In addition, there are junior tax liens. The IRS has a 6 month right of redemption. The Franchise Tax Board might have a similar right, but I am not entirely certain as to that. Consequently, it would be better for the movant to just give this debtor an opportunity to complete the plan in this case.

Opposition, p.4:8-12; Dckt. 59. As discussed below, the liens for Debtor's substantial federal and state tax debts exhaust all value in the Property. Given that at least one of the taxing agencies, and possibly both, have some value to recover to pay the taxes of this unemployed debtor, they would step forward to assert such rights and recover such monies as good stewards of the public fisc.

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In reviewing the Statement of Financial Affairs, Debtor states under penalty of perjury that he quitclaimed a 1% undivided interest in the Property to Yolanda Lopez. Statement of Financial Affairs Question 18, Dckt. 26 at 5. In response to the question of "Date transfer was made," the response by Debtor under penalty of perjury is only "Signed 9-11-19." This appears to be very carefully worded, not affirmatively stating that any interest was transferred, but only that something was signed.

Debtor's counsel directs the court to Debtor's Declaration in asserting that Movant is improperly acting with respect to the present Motion. In his Declaration, Debtor's provides the following testimony under penalty of perjury:

- A. The Property is Debtor's personal residence. Declaration ¶ 2, Dckt. 60.
- B. On Schedule Debtor lists Yolanda Lopez as a "co-debtor." *Id.*, ¶ 5. Ms. Lopez's address is stated in the deed in which she was transferred her undivided 1% interest. *Id.*
- C. The failures of the prior cases were the fault of his prior attorneys. *Id.*, ¶ 7.

The above is repeated in the Amended Declaration. Dckt. 62. The Amended Declaration does amplify Debtor's assertion that the prior failures in the multiple bankruptcy cases rests with Debtor's attorneys, with Debtor stating:

A prime example being the previous chapter 13 case filed by [name of attorney] (on my behalf) was actually documented and submitted by his son (without my knowledge) who is still in law school and NOT an attorney. Court documents were riddled with inaccuracies and other issues, which caused an insurmountable amount of push-back from the trustee, lender & others. Please know that I am confident that this plan is accurate and that I can and WILL make it work! I pray that the court will give me this chance to make good on my mortgage liability and keep me from being another homeless statistic.

Amended Declaration ¶ 7, Dckt. 62. The Amended Declaration also reaffirms that Debtor is unemployed (but it appears that Debtor does not believe that his unemployment could have been a reason for defaulting in the prior Chapter 13 cases). *Id.*, ¶ 6.

While stating that Ms. Lopez's address could be readily obtained from the quitclaim deed, Debtor neglects to provide the court with a copy. However, Movant provided a copy with its Reply. Exhibit 1, Dckt. 66. The information ascertainable from a review of this quitclaim deed includes:

- A. The recording of the quitclaim deed was requested by Debtor.
- B. Ms. Lopez's address is shown as being in Fresno, California.
- C. The tax statements are to be sent to Ms. Lopez at the Fresno, California address. (No instruction to send tax statements to another address in the section at the bottom of the page.)
- D. The quitclaim was recorded on September 12, 2019 - the day after this case was filed.
- E. The transfer tax is stated to be \$0.00
- F. The word "gift" is written next to the \$0.00.
- G. For the exemption for the transfer tax, the following information (emphasis added) is stamped on the quitclaim deed:

Exempt from fee under GC 27388.1(a)(2):  
recorded concurrently in connection with a  
**transfer** of real property that is a residential  
dwelling **to an owner-occupier.**

The quitclaim states that Ms. Lopez is an owner-occupier of the Property, notwithstanding having a Fresno, California address and the tax statements are to be sent to Ms. Lopez at the Fresno, California address.

- H. The quitclaim deed signature block has a typed dated below it of "September 11, 2019."
- I. The quitclaim deed is notarized, with the notary stating that the signature on the quitclaim was not notarized until September 12, 2019.

### **CHAPTER 13 TRUSTEE'S REPLY**

David Cusick ("the Chapter 13 Trustee") filed a Response on November 12, 2019. Dckt. 51. The Chapter 13 Trustee asserts that plan payments are current and \$2,968.29 has been disbursed to Movant of the total \$3,850.00 monies Debtor has paid in plan payments. And that Trustee has objected to confirmation of the Plan.

### **MOVANT'S REPLY TO DEBTOR'S OPPOSITION**

Movant filed a Reply to Debtor's Opposition to the Motion for Relief from Automatic Stay on November 19, 2019. Dckt. 64. First, Movant restates its argument that they are entitled to an order

confirming the automatic stay did not go into effect upon the filing of the instant case. Movant then asserts that relief as to co-debtor appears clearly on the motion, and argues that there was no defect in service because co-debtor at the time the present bankruptcy was filed was not a co-debtor, thus service of the motion on her was not required. Finally, Movant reasserts their argument that Debtor's bad faith actions should not be rewarded by allowing the stay to continue and delay Movant's exercise of its rights.

## 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 \$482,662.91 (Declaration, Dckt. 32), while the value of the Property is determined to be \$650,000.00, as stated in Schedules B and D filed by Debtor. On Schedule D, Debtor identifies the following additional claims secured by the Property:

Chase Bank, JPMorgan NA.....	(\$ 96,868)
Franchise Tax Board.....	(\$ 65,376)
Internal Revenue Service.....	(\$163,081)
=====	
Total Additional Secured Claims.....	(\$325,325)

When added to the (\$482,662.91) on Movant's secured claim, the property is overencumbered, with there being no value for the Debtor or the bankruptcy estate.

### **Property is Property of the Chapter 7 Bankruptcy Estate in Open Case 18-22528**

Debtor received his Chapter 7 discharge in case number 18-22528 on January 9, 2019. 18-22528; Dckt. 99. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay in that case 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).

Such discharge termination is only as to the Debtor and not the bankruptcy estate and property of the bankruptcy estate. Chapter 7 bankruptcy case number 18-22528 has not been closed, with the Chapter 7 Trustee administering assets of that bankruptcy estate. Movant was granted relief from the automatic stay in the Chapter 7 case. 18-22528; December 18, 2018 Order, Dckt. 98.

A review of the Docket in Chapter 7 case number 18-22528 discloses that the court has not authorized the abandonment of the Property from the Chapter 7 bankruptcy estate. Absent a court order, schedules/disclosed property of the bankruptcy estate are abandoned back to the debtor only when the case is closed. 11 U.S.C. § 544(c), § 530.

With the Property not having been abandoned, it is only the Chapter 7 Trustee in case number 18-22528 who may use, sell, lease, or transfer the Property or any interest in the Property. 11 U.S.C. § 541, § 707, § 363.

Thus, it is unclear how Debtor could purport to transfer a 1% interest in the Property, that is property of the Chapter 7 estate, to Ms. Lopez. It also may be that such purported transfer may be a violation of the automatic stay in the Chapter 7 case.

The court notes that on Schedule A/B and D the Debtor has stated, under penalty of perjury, that the Property:

“Has escaped the Chapter 7 estate 18-22528-B-7 because \$75,000 exemption allowed and relief from stay also granted.”

Schedule A/B, Dckt. 27 at 3. Presumably the word “escaped” is a clerical error and the intention of Debtor and Debtor’s counsel to say “escaped.”

However, merely because Debtor and Debtor’s counsel may desire to have the Property “escape” the clutches of the bankruptcy estate in the Chapter 7 case, Congress has not so provided in the Bankruptcy Code. As clearly determined by the United States Supreme Court, a debtor merely claiming a monetary exemption in property that exhausts all equity in the property does not remove it from the bankruptcy estate. The property continues in the bankruptcy estate until abandoned or otherwise transferred by the trustee, foreclosed on by a creditor, or otherwise removed from the bankruptcy estate. Even if there is no equity in the property, as the property increases in value post-petition, post-petition equity created over and above the liens and monetary exemption inure to the benefit of the bankruptcy estate. *Schwab v. Reilly*, 560 U.S. 770, 792-793 (2010); *Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206, 1210 (9th Cir. 2010).

#### **Absence of Automatic Stay, Absence of Co-Debtor Stay**

The current bankruptcy case was filed on September 11, 2019. Debtor has two prior cases that were pending and dismissed within one year prior to the commencement of this case:

Case 19-23641.....Dismissed August 26, 2019

Case 19-20132.....Dismissed April 26, 2019

The plain language of 11 U.S.C. § 362(c)(4)(A) provides that upon the filing of a bankruptcy case for a debtor who had two prior cases that were pending and dismissed within one year of the case then before the court, no automatic stay goes into effect in that bankruptcy case.

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), **the stay under subsection (a) shall not go into effect upon the filing of the later case;** and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

11 U.S.C. § 362(c)(4)(A) [emphasis added].

Debtor asserts that the co-debtor stay provided for in 11 U.S.C. § 1301 applies in this case because of his purported transfer of a 1% interest to Yolanda Lopez, purportedly either the day this bankruptcy case was filed or the day after this case was filed.

The first problem with this contention is that Debtor had no right to transfer any interest in the Property as of September 11, 2019 or September 12, 2019. The Property was in the bankruptcy estate in Chapter 7 case number 18-22528, subject to the sole control of the Chapter 7 Trustee, for which interests could be transferred by the Trustee as provided in 11 U.S.C. § 363.

There does not appear to be any colorable interest that could have been transferred to Ms. Lopez by the Debtor that could be subject to the co-debtor stay.

In reviewing the provisions of 11 U.S.C. § 1301, it appears that even if such a property interest existed, it would not be subject to the co-debtor stay. 11 U.S.C. § 1301(a) provides (emphasis added):

§ 1301. Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a **creditor may not** act, or commence or continue any civil action, to **collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt**, unless—

- (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or
- (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

The plain language requires that the codebtor to be protected must either: (1) be liable on such debt with the debtor or (2) secured the debt.

There is no contention that Ms. Lopez is liable on this debt. A copy of the Note upon which Movant bases its claim is provided as Exhibit 1, Dckt. 34. The borrowers on the note are the Debtor and Mark R. Spotts. *Id.* at 5. Ms. Lopez is not liable on the debt.

Neither has Ms. Lopez secured this debt. A copy of the Deed of Trust by which Movant asserts its interest in the Property is provided as Exhibit 2, *Id.* Debtor and Mark R. Spotts have granted the security interest in the Deed of Trust to secure the obligation owed on the Note. Ms. Lopez did not secure the obligation owed on the Note.

There is no co-debtor stay that could apply to Ms. Lopez, if she had an interest in the Property. Such interest is after acquired and subject to the pre-existing Deed of Trust securing Movant's claim.

As to the interests, if any, of Mark R. Spotts., the Motion requests relief from the co-debtor stay. Mr. Spotts was served with this Motion and the supporting pleadings. Cert. of Serv., Dckt. 38.

There has been no assertion that relief should not be granted to the extent that a co-debtor stay exists as to Mr. Spotts.

Additionally, it does not appear that Mr. Spotts is asserted by Debtor to have an interest in the Property, but only Ms. Lopez. It may be that Mr. Spotts formally had an interest in the Property but transferred it to the Debtor. This would be consistent with the Debtor stating under penalty of perjury that he was the sole owner of the property in the following prior bankruptcy cases: 19-23641, Schedule A/B, Dckt. 17 at 3; 19-20132, Schedule A/B, Dckt. 12 at 3; 18-22528, Schedule A/B, Dckt. 48 at 3; and 15-29444, Schedule A/B, Dckt. 1 at 10.

To the extent that the co-debtor stay may exist as to Mr. Spotts (and the information provided under penalty of perjury in the prior cases that Mr. Spotts has no interest in the Property are false statements), grounds exist to terminate the co-debtor stay.

In the proposed Chapter 13 Plan, the Debtor does not proposed to pay Movant's secured claim in full. The Bankruptcy Code provides with respect to granting relief from the automatic stay:

(c) On request of a party in interest and after notice and a hearing, **the court shall grant relief from the stay provided by subsection (a)** of this section with respect to a creditor, **to the extent that—**

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) **the plan filed by the debtor proposes not to pay such claim;** or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

11 U.S.C. § 1301(c) [emphasis added].

The Debtor's Chapter 13 Plan in this case provides as to Movant's claim that the debt will not be paid, but Debtor shall (and it appears must) attempt to obtain a modification of the loan from Movant. The Additional Provisions of the proposed Chapter 13 Plan provide the following for Movant's secured claim:

Section 7.11 - The Plan provides for only payment of adequate protection payments to Movant for its secured claim.

Section 7.12 - Notwithstanding a stated pre-petition default of (\$193,000) and the current post-petition monthly payment of (\$2,968.29) the actual treatment is specified in the subsequent sections.

Section 7.14 - Debtor will seek a modification of the loan from Movant. Movant will only make a monthly payment of (\$2,968.29) to Movant for an indefinite period of time. The Plan does not provide for making current payments for the arrearage.

Section 7.15 - Future potential plan terms premised on alternative possible loan modifications or denial of loan modification.

Chapter 13 Plan, Dckt. 18.

The Additional Provisions are those commonly referred to as the “Ensminger Provisions” to allow a debtor in good faith to adequately protect the interests of a creditor while pursuing a loan modification in good faith. These provisions were developed through a cooperative effort of consumer debtor attorneys and creditor attorneys to have a process using the adequate protection provisions of the Bankruptcy Code allow a consumer to confirm a plan, get payments consistent with a good faith modification going to the creditor, and a good faith debtor with an ability to pay the secured claim and retain a residence.

While such a provision may be sufficient to confirm a plan and to deny a motion for relief from the automatic stay that exists under 11 U.S.C. § 362(a), they do not provide for paying the claim. Rather, they provide for paying something other than the claim. It does not provide a basis for denying relief pursuant to 11 U.S.C. § 1301(c).

Here, there is no automatic stay due to Debtor’s repeated filings and dismissals of prior bankruptcy cases in the year preceding the filing of this case. Debtor has attempted to create the illusion of a co-debtor stay by manufacturing a quitclaim deed purporting to transfer a 1% interest in the Property, which is property of the bankruptcy estate in Debtor’s open Chapter 7 case.

Debtor purported to sign the quitclaim deed the same day as the filing of this bankruptcy case, having it notarized the day after this case was filed, and then record the quitclaim deed the day after the bankruptcy case was filed. As discussed above, the Debtor has not right or ability to transfer any interests in the property of the Chapter 7 bankruptcy estate.

As also discussed above, the quitclaim deed states on its face that the transfer tax can be legally waived because the 1% interest purported to be transferred is being transferred to a person who is an owner-occupier of the Property. But Debtor states that Ms. Lopez, the purported 1% transferee address is in Fresno, California.

In the Motion Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4) and asserts that this bankruptcy case was filed as part of a scheme to delay, defraud, and hinder Movant in exercising its rights under the deed of trust.

While forcefully asserting that the purported 1% transfer of an interest in the Property made on the same day or after the filing of the current bankruptcy case to Debtor’s sister gives rise to a co-debtor stay under 11 U.S.C. § 1301 to protect the Debtor from foreclosure, Debtor offers no explanation as to the good faith, bona fide reason for making such a transfer.

Based on the evidence presented and arguments of Debtor’s counsel, no bona fide, good faith reason can be divined from such transfer. Rather, the evidence and arguments clearly show that the purported transfer was attempted solely to hinder, delay, or defraud Movant from foreclosing after multiple prior failed bankruptcy cases by Debtor. Having squandered his automatic stay and falling within the statutory provisions enacted by Congress to address such repeat, non-productive filings (11 U.S.C. § 362(c)(4)), Debtor and counsel now seek to fabricate an extra-legal stay with the apparent

cooperation of Debtor's sister (if she is even aware of her purported interest asserted by Debtor) pursuant to a deed that Debtor had no legal right to execute.

To the extent that a co-debtor stay exists as to Mark R. Spotts, grounds exist to terminate the co-debtor stay.

The court shall issue an order confirming that no automatic stay went into effect in this case as provided in 11 U.S.C. § 362(c)(4)(A) and that to the extent that a co-debtor stay exists as to Mark R. Spotts, said co-debtor stay is terminated and vacated for all persons and purposes, including, without limitation, to allow Movant, 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.

### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) 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.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Debtor has filed four bankruptcy cases in the last eighteen months. Two of Debtor's bankruptcies were filed days prior to plan foreclosure sales

- A. Case No. 2015-27766
  - 1. Filed: October 1, 2015
  - 2. Chapter 13
  - 3. Dismissal Date: January 5, 2016
  - 4. Reason for Dismissal: for failure to file timely documents.
  
- B. Case No. 2015-29444
  - 1. Filed: December 3, 2015
  - 2. Chapter 13
  - 3. Dismissal Date: August 29, 2017
  - 4. Reason for Dismissal: Order granting Motion/Application to Dismiss.
  
- C. Case No. 18-22528
  - 1. Filed: April 25, 2018
  - 2. Chapter 7
  - 3. *Discharge Date*: January 9, 2019
  
- D. Case No. 19-20132
  - 1. Filed: January 10, 2019
  - 2. Chapter 13

3. Dismissal Date: April 26, 2019
  4. Reason for Dismissal: failure to pay fees.
- E. Case No. 19-23641
1. Filed: June 6, 2019
  2. Chapter x13
  3. Dismissal Date: August 26, 2019
  4. Reason for Dismissal: Order granting Motion/Application to Dismiss.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any *bona fide*, good faith reason in light of the pattern of serial filings the Debtor has engaged in. In effect, this is a series of bankruptcy attempts by Debtor.

This is compounded by Debtor purporting to issue the quitclaim deed to his sister either the day this case was filed or the day after. In addition to such purported quitclaim deed having been recorded after the current case was filed, the Property in which the interest is purported to have been transferred.

In the Opposition, Debtor clearly seeks to have the fabricated 1% interest purported to have been transferred to his sister the day of or the day after the case as the basis for preventing Movant from foreclosing on the Property. Clearly, Debtor, with the assistance of his counsel, are perpetrating a scheme to hinder, delay, or defraud Movant in attempting to exercise its rights under the Deed of Trust.

Debtor, who is unemployed and almost (\$200,000) in default in payments on the secured claim to just this Movant has had multiple prior opportunities to exercise in good faith his rights under Chapter 13 and failed. Now Debtor seeks to place the blame on his prior attorneys, seeming to ignore his unemployment and inability to fund a plan.

It may be that Debtor and Debtor's counsel may believe that this attempt to hinder, delay, or defraud Movant, have the Debtor issue purported quitclaim deeds to fabricate an assertion that there is a co-debtor stay, to issue a quitclaim deed of property that is property of another Chapter 7 bankruptcy estate in the Debtor's prior Chapter 7 case that is still open and the Trustee is administering assets is a "No Lose Proposition."

However, given that the Property is grossly overencumbered due to Debtor's significant secured tax debt, to the extent that Debtor and counsel have caused Movant to incur additional costs, expenses, and interest, the amount of any unsecured, nondischarged will be increased, continuing to haunt the Debtor.

Further, the filing of this case and the Opposition are subject to the Federal Rule of Bankruptcy Procedure 9011 certifications made by both Debtor and Debtor's counsel. This court may issue corrective and compensatory sanctions for violations of such certifications as well as referring this to the Chief Judge of the United States District Court for the exercise of that Article III judge's corrective and punitive sanction powers.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

### **Issues Concerning Title to the Property**

To the extent that there is a dispute or any person(s) claims an interest pursuant to the 1% quitclaim deed that clouds title to the Property, works as the basis for a co-debtor stay, or otherwise is asserted to have been a transfer of any interest in the Property, the Property is subject to the exclusive jurisdiction of this court as property of the bankruptcy estate. 11 U.S.C. § 541, 28 U.S.C. § 1334(d).

The court has, and expressly reserves its exclusive jurisdiction to determine what is property of the bankruptcy estate, whether in Debtor's prior Chapter 7 case, 18-22528, which is open and for which the Chapter 7 Trustee is administering assets or this Chapter 13 case.

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 Elizon Master Participation Trust I, U.S. Bank Trust National Association, as Owner Trustee ("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) did not go into effect in this Bankruptcy Case as provided in 11 U.S.C. § 362(c)(4) and that no automatic stay exists in this Bankruptcy Case for any persons or purposes.

**IT IS FURTHER ORDERED** that the co-debtor stay arising under 11 U.S.C. § 1301, if any, with respect to Mark R. Spotts is terminated in its entirety for all parties, purposes, and properties, including, without limitation 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 4448 G Street, Sacramento, California 95819, California, ("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 to obtain possession of the Property.

**IT IS FURTHER ORDERED** that this court has and reserves the exclusive federal court jurisdiction pursuant to 28 U.S.C. § 1334(d) over property of a bankruptcy estate, whether the estate in this case or Debtor's prior Chapter 7 case number 18-22528, to determine all rights, interests, claims, liens, stays, and other issues concerning the real property commonly known as 4448 G Street, Sacramento, California 95819, California.

**IT IS FURTHER ORDERED** that the court findings that this bankruptcy case was filed as part of a scheme to hinder, delay, and defraud movant, relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

**IT IS FURTHER ORDERED** that attorneys fees, costs, and expenses, if any are sought, by Movant shall be made as provided in Federal Rule of Civil Procedure and Federal Rules of Bankruptcy Procedure 7054, 9014 in this Contested Matter.

No other or additional relief is granted.

**HSBC BANK USA, NATIONAL  
ASSOCIATION VS. DEBTOR  
DISMISSED: 10/30/19**

**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.

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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 (*pro se*), Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 16, 2019. By the court’s calculation, 41 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.**

HSBC Bank USA, National Association as Trustee for Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 (“Movant”) seeks relief from the automatic stay with respect to Andre Michael Huddleston, Sr. (“Debtor”) real property commonly known as 11879 Fire Agate Way, Rancho Cordova, California (“Property”). Movant has provided the Declaration of Thomas Caragher to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant filed this Motion in the first month this case was filed and no monthly post-petition payments had yet come due. Movant also provides evidence that there are 19 pre-petition payments in default, with a pre-petition arrearage of \$35,929.34. Declaration, Dckt. 26.

**CHAPTER 13 TRUSTEE’S RESPONSE**

David Cusick (“the Chapter 13 Trustee”) filed an Response on November 11, 2019. Dckt. 35. The Chapter 13 Trustee asserts that Debtor has not filed any Schedules or a Plan, and there is an Order to

Show Cause regarding failure to pay filing fees. The Trustee does not oppose the motion.

## **DISCUSSION**

The Motion states the existence of an obligation and deed of trust on Debtor's property securing the obligation. The outstanding principal amount of the obligation is alleged to be (\$389,011.21) and that there are nineteen payments in default as of October 7, 2019, with the arrearage being an additional (\$35,592.00). Motion, p. 4:6-18; Dckt. 23. Evidence of the outstanding obligation and default is provided in the Declaration of Thomas Caragher (Dckt. 26).

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 the repeat, multiple filing of bankruptcy cases, defaults in payments, and the non-productive prosecution of the bankruptcy cases filed by Debtor. 11 U.S.C. § 362(d)(1); *See* discussion below of these for cause grounds in the court determining that relief pursuant to 11 U.S.C. § 362(d)(4).

### **Relief From Co-Debtor Stay**

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). The Motions seeks co-debtor stay relief as to Vonetta Huddleston. The Certificate of Service attests to service of the Motion and supporting pleadings on Vonetta Huddleston. Movant has established, pursuant to 11 U.S.C. § 1301(c), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the account is four months past due.

### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) 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.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Debtor and Co-Debtor Vonetta LeAnn Huddleston have combined have filed six bankruptcy cases and have had five dismissed. This current case is also likely to be dismissed as the Chapter 13 Trustee has brought a

motion to dismiss it for failure to pay fees.

- A. Case No. 08-35589 Andre and Vonetta Huddleston
  - 1. Filed: October 28, 2008
  - 2. Chapter 13
  - 3. Dismissal Date: January 8, 2010
  - 4. Reason for Dismissal: Failure to make plan payments.
  
- B. Case No. 15-21714
  - 1. Filed: March 4, 2015
  - 2. Chapter 13
  - 3. Dismissal Date: November 24, 2015
  - 4. Reason for Dismissal: The court granted the Trustee's Motion to Dismiss for failure to confirm a plan.
  
- C. Case No. 16-20077, Andre and Vonetta Huddleston
  - 1. Filed: January 7, 2016
  - 2. Chapter 13
  - 3. Dismissal Date: May 24, 2016
  - 4. Reason for Dismissal: The court granted the Trustee's Motion to Dismiss for failure to make plan payments, Debtor paid \$0.00 into the plan.
  
- D. Case No. 19-22370, Vonetta LeAnn Huddleston
  - 1. Filed: April 17, 2019
  - 2. Chapter 13
  - 3. Dismissal Date: May 16, 2019
  - 4. Reason for Dismissal: Incomplete filing.
  
- E. Case No. 19-25377, Vonetta LeAnn Huddleston
  - 1. Filed: August 27, 2019
  - 2. Chapter 13
  - 3. Dismissal Date: September 16, 2019
  - 4. Reason for Dismissal: Incomplete filing.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of the fact that this is the sixth case Andre Huddleston and Co-Debtor Vonetta Huddleston (“Co-Debtor”) (collectively “Debtors”) have filed. Further, the five previous Chapter 13 cases were dismissed. The debtors have shown they are unable to

file and execute a plan. In effect, this is a series of bankruptcy attempts by Debtor. In 2019 alone there have been three filings, none of which Debtors put forth a basic effort to complete.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

### **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.

Given that Movant's counsel's firm has repeatedly appeared in this court over many years now, the omission of making the minimal necessary pleadings for requesting relief cannot be inadvertent, but instead an affirmative statement that it has exempted itself and its attorneys from the Federal Rules of Bankruptcy Procedure and its attorneys, as opposed to all other parties and attorneys, may merely ask for relief in the prayer and assign it to the court to do for the Movant. Such assignment of advocacy work to the court is improper.

### **Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

As with exempting itself from the Federal Rules of Bankruptcy Procedure adopted by the United States Supreme Court, Movant and Movant's counsel appear to create additional relief to be granted – terminating future stays that arise if the case is converted. Clearly, based upon the certifications required under Federal Rule of Bankruptcy Procedure, Movant and Movant's counsel believe and admit that upon conversion of the case a new automatic stay springs into life.

Grounds have not been shown for granting relief to such future springing automatic stay in this case. That request 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 HSBC Bank USA, National Association as Trustee for Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4(“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 11879 Fire Agate Way, Rancho Cordova, California, (“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 to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Vonetta LeeAnn Huddleston of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Andre Michael Huddleston (“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.

**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

**IT IS FURTHER ORDERED** that Movant HSBC Bank USA, National Association having admitted in the Motion that upon conversion of a bankruptcy case to one under another Chapter a new automatic stay springs into life and that HSBC Bank USA, National Association must seek relief from such springing automatic stay when a case is converted, and such springing automatic stay

rendering void any action taken after conversion if no relief is obtained, and HSBC Bank, USA, National Association not providing grounds for granting relief from such stay; the request for relief from the admitted automatic stay that springs into effect when any bankruptcy case is converted to one under another Chapter of the Bankruptcy Code, such request for relief is Denied.

The Clerk of the Bankruptcy Court shall serve copies of this Order and the Admission by HSBC Bank USA, National Association that the automatic stay springs into effect as to HSBC Bank USA, National Association in every bankruptcy case upon conversion to insure that the bankruptcy judges are aware of such admission.

**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. [19-26167-E-13](#)      **ANDRE HUDDLESTON**      **CONTINUED NOTICE OF INTENT TO DISMISS CASE**  
**10-1-19 [3]**

**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.

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**The Notice of Intent to Dismiss Case is ~~XXXXX~~.**

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 7, 2019. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on October 31, 2019.

**The Order to Show Cause is for Failure to Pay Fees is XXXXXX.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

REVERSE MORTGAGE SOLUTIONS,  
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.

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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 13 Trustee, and Office of the United States Trustee on July 23, 2019. By the court's calculation, 35 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.**

Creditor Reverse Mortgage Solutions, Inc. holding a secured claim ("Movant") seeks relief from the automatic stay with respect to Arleaner Collins' ("Debtor") real property commonly known as 1828 Jamestown Drive, Sacramento, California ("Property"). Movant has provided the Declaration of Deneen Sowell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckt. 77.

Movant argues the loan is in default because Debtor has not made tax payments, \$2,306.39 having been advanced by Movant to cover taxes. Declaration, Dckt. 77 at ¶ 7.

Movant also argues that its claim is \$281,587.19 while the value of the Property is only \$260,000.00, meaning Debtor has no equity in the Property. *Id.*, ¶ 8.

Movant also seeks \$1,081 in attorney's fees for bringing this Motion and waiver of the 14-day stay.

## CHAPTER 13 TRUSTEE'S RESPONSE

David P. Cusick, the Chapter 13 Trustee ("Trustee"), filed a Response on August 9, 2019. Dckt. 80. Trustee notes that the Movant's claim was provided for in the Confirmed plan as a Class2A, and Debtor is current in plan payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 13, 2019. Dckt. 83.

Debtor's counsel asserts that the Property has a fair market value of \$297,632.00, and therefore there is an equity cushion in the Property. In support of this assertion, Debtor's counsel relies on his own testimony(Declaration, Dckt. 84), as well as a Redfin.com price estimate (for which no exception or exemption to the rule against hearsay was established ( FED. R. EVID. 801, et seq.)). Exhibit A, Dckt. 85.

The Opposition also indicates the advance for taxes not paid by Debtor is disputed. However, no evidence is provided in support of Debtor's contention.

## DISCUSSION

From the evidence of the court, and only for the purpose of this Motion for Relief, Movant's claim is in the amount of \$281,587.19 . Declaration, Dckt. 77.

Additionally, the Movant has asserted that the Property has a value of \$265,642.14 at the time of filing—the amount of Creditor's secured claim at the time of filing as indicated by Creditor's Proof of Claim, No. 2. This value is significantly higher than the \$200,000.00 valuation listed on Debtor's Schedule A/B. Dckt. 1.

Debtor's counsel is not a "for hire witness" who presents the court with hearsay and ties to manufacture it as evidence. That such testimony, by which counsel seeks to remove himself as counsel and make himself a witness (whose credibility is clearly impaired) speaks volumes as to the legitimacy of the opposition.

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). Cause exists for relief here, including Debtor's failure to maintain property taxes.

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, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Further, Debtor (whom has the burden of proof) has not argued that the Property is necessary for an effective rehabilitation.

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 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.

### **Request for Attorneys' Fees**

Movant argues it is owed attorneys fees, but does not direct the court to any legal authority showing such a right.

Moreover, 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.

### **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 if the Motion is granted, Debtor will not have an incentive to preserve the Property.

This argument is not persuasive. Debtor continues to have liability on the agreement between Movant and Debtor. Debtor's intentional failure to preserve the Property would not be without recourse.

This part of the requested relief is not granted.

### **Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Secured

Creditor, Reverse Mortgage Solutions, 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** 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 1828 Jamestown Drive, Sacramento, California, 95815, (“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 to obtain possession of the Property.

**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.

## FINAL RULINGS

9. [12-38500-E-13](#)      **DARLENE GRAY**      **ORDER TO SHOW CAUSE**  
[18-2097](#)              **RHS-1**                      **10-25-19 [49]**  
**GRAY VS.**              **Connie Tche**

**Final Ruling:** No appearance at the November 26, 2019 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 30, 2019. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to close the adversary proceeding.

**The Order to Show Cause is sustained, and the adversary proceeding is closed.**

Darlene Gray, the debtor ("Debtor") filed this adversary proceeding on June 20, 2018. On October 3, 2019 Debtor and the remaining defendant Wells Fargo Bank, N.A. ("Wells Fargo, N.A."), filed a joint stipulation after reaching a settlement. This court retained jurisdiction to enforce the settlement agreement. The court's order dismissing Wells Fargo Bank, N.A. was filed October 8, 2019.

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 Order to Show Cause 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 Order to Show Cause is sustained, and the adversary proceeding is closed.

AMERICREDIT FINANCIAL  
SERVICES, INC. VS.

**Final Ruling: No appearance at the November 26, 2019 Hearing is required.**  
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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 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 22, 2019. By the court’s calculation, 35 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.**

Americredit Financial Services, Inc. dba GM Financial (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Chevrolet Cruze, VIN ending in 0937 (“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 Josephine Wright (“Debtor”).

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$692.30 in post-petition payments past due. Declaration, Dckt. 19. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of \$363.46. *Id.*

Movant is not in the Debtor’s Chapter 13 plan.

#### TRUSTEE’S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, (“Trustee”) filed a Non-Opposition on November 8, 2019. Dckt. 31. Trustee asserts that the Debtor is delinquent \$341.80 under the proposed plan. The Debtor has paid a total of \$77.00 to date. The Debtor did not list Movant on her A/B, or D schedules.

Dckt. 1, 3. Movant filed a claim on September 26, 2019, asserting a claim for \$15,295.65. Claim 2-1.

## **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 \$15,546.13 (Declaration, Dckt. 19), while the value of the Vehicle is determined to be \$15,295.65, as stated in Movant's claim. Claim 2-1.

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.

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 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 Americredit Financial Services, Inc. dba GM Financial ("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 2016 Chevrolet Cruze, VIN ending in 0937 (“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 to the extent the Motion seeks relief from the automatic stay as to Josephine Wright (“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.

**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.

11. [19-24390-E-13](#) **ROBERT PATTERSON**  
[JHW-1](#) **Mikalah Liviakis**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
10-22-19 [23]**

**ACAR LEASING LTD VS.**

**Final Ruling:** No appearance at the November 26, 2019 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, parties requesting special notice, and Office of the United States Trustee on October 22, 2019. By the court’s calculation, 35 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 lease for a 2017 Chevrolet Traverse, VIN ending in 5049 (“Vehicle”). The moving party has provided the Declaration of Aaron Rangle to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Earl Patterson (“Debtor”).

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$1,109.73 in post-petition payments past due. Declaration, Dckt. 27. Movant also provides evidence that there is one (1) pre-petition payments in default, with a pre-petition arrearage of \$286.30. *Id.*

#### **TRUSTEE’S RESPONSE**

David Cusick, the Chapter 13 Trustee filed a Response on November 12, 2019. Dckt. 32. The Chapter 13 Trustee asserts that Trustee does not oppose the motion. Debtor’s confirmed Plan

assumes the lease with \$0.00 in pre-petition arrearage.

## **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 \$1,396.03 (Declaration, Dckt. 27), while the value of the Vehicle is determined to be \$25,204.28. (*Id.*)

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.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(c), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the account is four months past due.

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 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 Traverse, Vin ending in 5049 (“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 request to terminate the co-debtor stay of MA Theresa Tagle Patterson of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**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.