

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

January 4, 2024 at 10:00 a.m.

1. [23-90452-E-7](#)
[GAL-1](#)

GREWAL CARGO, INC
Simran Hundal

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-27-23 [25]

TRANSPORTATION ALLIANCE
BANK, 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.

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 7 Trustee, and Office of the United States Trustee on November 27, 2023. By the court's calculation, 38 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). Therefore, the defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is XXXXXXX

Transportation Alliance Bank, Inc. ("Movant") seeks relief from the automatic stay with respect to three assets identified as trailers, a 2021 CIMC Cool Globe R8000B 53" Trailer (serial no. 527SR5323MM020906), another 2021 CIMC Cool Globe R8000B 53" Trailer (serial no. 527SR532XMM020921), and another 2021 CIMC Cool Globe R8000B 53" Trailer (serial no. 527SR5329MM020909) ("Collateral"). The moving party has provided the Declaration of Leigh Anne Bishop to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Grewal Cargo, Inc. ("Debtor"). Decl., Dckt. 28.

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The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) are summarized by the court as follows (identified by the paragraph number in the Motion):

2. Debtor entered into a Commercial Security Agreement and Business Loan Agreement with Movant, whereby Debtor purchased the three vehicles.
3. Movant perfected its lien “by recording its lien on Electronic Titles.”
4. As of November 6, 2023, Debtor is in default in payments totaling (\$38,543.37).
5. The balance owing on Movant’s secured claim is (\$140,199.82).
6. Movant asserts that the Collateral has a value of \$270,186.00, and after payment of Movant’s secured claim of (\$140,199.82). Movant state that this leaves an equity of \$129,990.14 in the Collateral’s value above and beyond Movant’s secured claim.
9. Movant states the legal conclusion that it has been denied adequate protection and thereby is entitled to relief pursuant to 11 U.S.C. § 362(d)(1).

Movant does not state any grounds with particularity as to why it is not adequately protected by the \$129,990 equity cushion in excess of the amount of its secured claim.

The Declaration of Leigh Anne Bishop provides testimony that (identified by paragraph number in the Declaration), Dckt. 28, states, as summarized by the court:

1. She is a “Corporate Paralegal” for Movant.
2. She is one of the custodians of the books and records of Movant.
3. She authenticates the copy of the Commercial Security Agreement and Business Loan Agreement, which has been filed as Exhibit A in support of the Motion.
4. She authenticates the copy of the Electronics Title document that has been filed as Exhibit B in support of the Motion.
6. The secured claim of Movant as of November 6, 2023, is (\$140,199.82).
7. She authenticates a PriceDigests Valuation for the Collateral, which is filed as Exhibit C, establishing the value of the Collateral to be \$270,186.00.
8. She testifies that after payment of Movant’s secured claim, there is \$129,990.14 of equity in the value of the Collateral in excess of Movant’s secured claim.

Exhibit B, Premier eTitleLien

Exhibit B consists of three documents with the title, “Electronic Title Copy.” Dckt. 30 at 17-19. The Debtor is listed as the Owner and Movant is listed as the lienholder. These documents contain the following qualifications:

“Information has been supplied by the lienholder, not the state titling agency.”

**“THIS IS NOT A TITLE
This is an official Premier eTitleLien Report
generated by a customer of DDI Technology”**

Dckt. 30.

It is unclear how this Exhibit provides evidence of a perfected lien. It expressly states that the information in the Exhibit has been provided by Movant – not from the state agency responsible of maintain records of such liens. This appears to merely be a statement by Movant that Movant has a perfected lien – not evidence of such perfection.

Debtor has not filed an Opposition in this case. The Chapter 7 Trustee Nikki Farris filed a statement of non-opposition on December 5, 2023.

PriceDigs Valuation Report Provided

Movant has also provided a copy of the PriceDigs Valuation Report for the Collateral. Exhibit C, Dckt. 30. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be (\$140,199.82); (C Decl., Dckt. 28, ¶ 8). Additionally, the evidence presented by Movant establishes that the value of the Collateral is determined to be \$270,186.00, as stated on the PriceDigs Valuation Report, which is slightly more than the retail value as stated in Schedules A/B and D filed by Debtor.

Movant has established that there is a \$129,987 equity cushion providing adequate protection for Movant’s secured claim.

On Schedule D, Debtor does not identify any other creditor having a lien encumbering the collateral. Dckt. 12.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R.

909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Though the Trustee has filed a statement of nonopposition, the Trustee has not indicated why she is not opposing relief from the stay for property of the Bankruptcy Estate in which the Movant has established there is \$129,987 in equity for the Bankruptcy Estate.

With a value of \$270,186.00, and assuming costs of sale of 20%, there is a substantial net equity for the Bankruptcy Estate.

Value.....	\$270,186
Costs of Sale, 20%.....(\$54,037)
Movant's Lien.....	(\$140,199.82)
	=====

Net Equity for Estate.....\$ 75,949

It may be that the Trustee has other information as to why the apparent net equity is not able to be recovered by the Bankruptcy Estate, but that information has not been provided to the Court and Parties in Interest.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
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.

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 Transportation Alliance Bank, 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** the Motion is **XXXXXXX**~~

~~_____ **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.~~