

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JANUARY 4, 2016
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [16-11212](#)-A-7 SUSAN SUH AMENDED MOTION TO AVOID LIEN OF
CITIBANK, N.A..
SUSAN SUH/MV 10-12-16 [[41](#)]
DANA DOUGLAS/Atty. for dbt.

No tentative ruling.

2. [16-14120](#)-A-7 SERGIO RODRIGUEZ MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
REHABBERS FINANCIAL, INC./MV 11-25-16 [[14](#)]
MARK ESTLE/Atty. for mv.

Final Ruling

Motion: Relief from Stay

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party consistent with instructions below

Subject: 11831 Hemlock Street, El Monte, CA 91732

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion.

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

The subject real property appears on debtor's Schedule A/B. The bankruptcy petition was filed on November 15, 2016, which is the same date as the scheduled foreclosure sale date recited in the Notice of Sale for the subject property. Hoffman Decl. at 3, ECF No. 16.

The movant attached a grant deed as Exhibit C to the motion, transferring a fractional interest in the property to "Sergio Beltran Rodriguez." Given all these facts, the court infers that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud the movant creditor that involved a transfer of an interest in the subject real property without the movant creditor's consent or the court's approval. These facts constitute grounds for relief from stay under § 362(d)(1) and (2).

The court will grant relief under §362(d)(1) and (4). The order may be prepared consistent with § 362(d)(4). The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

3. [16-14120](#)-A-7 SERGIO RODRIGUEZ
MDE-2
REHABBERS FINANCIAL, INC./MV
MARK ESTLE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-25-16 [[20](#)]

Final Ruling

Motion: Relief from Stay

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party consistent with instructions below

Subject: 2122 W. 54th Street, Los Angeles, CA 90062

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third party to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion.

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) an transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

The subject real property appears on debtor's Schedule A/B. The movant attached a grant deed as Exhibit C to the motion, transferring a fractional interest in the property to the debtor. Given all these facts, the court infers that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud the movant creditor that involved a transfer of an interest in the subject real property without the movant creditor's consent or the court's approval. These facts constitute grounds for relief from stay under § 362(d)(1) and (2).

The court will grant relief under §362(d)(1) and (4). The order may be prepared consistent with § 362(d)(4). The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

4. [16-13428](#)-A-7 MATTHEW WILLIAMS MOTION TO COMPEL ABANDONMENT
NES-1 11-23-16 [[12](#)]
MATTHEW WILLIAMS/MV
NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment

Disposition: Continued to January 25, 2017, at 9:00 a.m.

Order: Civil minute order if appropriate

INSUFFICIENT SERVICE

The certificate of service shows that the U.S. Trustee, the debtor, and the trustee, were served with notice. But the certificate of service also references an attached list. This list is not attached.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the hearing on the motion is continued to January 25, 2017, at 9:00 a.m.

5. [15-11835](#)-A-7 JAMES/JAMIE CANNON CONTINUED MOTION FOR
RP-1 COMPENSATION FOR RANDELL
RANDELL PARKER/MV PARKER, CHAPTER 7 TRUSTEE(S)
11-2-16 [[617](#)]
ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

[Trustee Parker's motion for compensation, RP-1, and the debtor's objection to the Trust's Final Report, RSW-12, will be called simultaneously.]

No tentative ruling.

6. [15-11835](#)-A-7 JAMES/JAMIE CANNON OBJECTION RE: TRUSTEE'S FINAL
RSW-12 REPORT
10-21-16 [[609](#)]
ROBERT WILLIAMS/Atty. for dbt.

[Trustee Parker's motion for compensation, RP-1, and the debtor's objection to the Trust's Final Report, RSW-12, will be called simultaneously.]

No tentative ruling.

7. [16-12947](#)-A-7 TROY/PAMELA GOODVIN
APN-1
NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
JOSEPH PEARL/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-29-16 [[17](#)]

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2014 Nissan Sentra

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Nissan Motor Acceptance Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or

otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2014 Nissan Sentra. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. [16-12654](#)-A-7 ANGELO RAMIREZ
RSW-1
ANGELO RAMIREZ/MV

ROBERT WILLIAMS/Atty. for dbt.

CONTINUED MOTION TO AVOID LIEN
OF TIDALWAVE FINANCE
CORPORATION
11-16-16 [[16](#)]

No tentative ruling.

9. [16-13060](#)-A-7 SHANNON DOSSEY
UST-1
TRACY DAVIS/MV
NEIL SCHWARTZ/Atty. for dbt.
GREGORY POWELL/Atty. for mv.

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
11-28-16 [[20](#)]

Tentative Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)

Notice: LBR 9014-1(f)(1); written opposition filed

Disposition: Granted

Order: Prepared by the movant

The debtor has filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code. The U.S. Trustee has moved to dismiss the debtor's case under § 707(b). The motion is brought on grounds that the presumption of abuse arises under § 707(b)(2) and, alternatively, on grounds that the totality of the circumstances warrants dismissal under § 707(b)(3)(B). The debtor opposes the motion.

LEGAL STANDARDS

Section 707(b)(2)(A) of the Bankruptcy Code contains a statutory means test that determines whether the court should presume that the granting of relief would be an abuse of Chapter 7. See 11 U.S.C. § 707(b)(2)(A); see also *Blausey v. U.S. Tr.*, 552 F.3d 1124, 1132 (9th Cir. 2009). "The means test is applied only if the debtor's CMI

[current monthly income] is above the safe harbor amount set forth in 11 U.S.C. § 707(b)(7)." *Blausey*, 552 F.3d at 1132 (citing 11 U.S.C. § 707(b)(7)).

"If the debtor's CMI minus certain expenses specified in the Internal Revenue Service's collection standards multiplied by 60" is greater than or equal to the lesser of the two amounts specified in § 707(b)(2)(A)(i)(I) and (II), "then the case is presumed to be an abuse and the bankruptcy court may either dismiss it under § 707(b) or, with the debtor's consent, convert it to Chapter 13." *Id.* (citing 11 U.S.C. § 707(b)(1), (b)(2)(A)).

CMI is a defined term in § 101(10A). 11 U.S.C. § 101(10A)(A), (B). The statutory definition is as follows:

"The term 'current monthly income'--

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on-- (i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism."

11 U.S.C. § 101(10A).

DISCUSSION

The court takes judicial notice of the voluntary petition, schedules, and statements filed in this case, as well as judicial notice of their contents. Fed. R. Evid. 201. The contents of the schedules and statements are non-hearsay admissions of the debtor to the extent they are offered against the debtor in this matter. Fed. R. Evid. 801(d)(2)(A), (D).

Section 707(b)(1) and (7)

The voluntary petition shows the nature of the debts in this case. They are primarily consumer debts. Further, the debtor's Form 122A-1 shows that the debtor is above-median income for the debtor's applicable state and household size. See 11 U.S.C. § 707(b)(7)(A).

Section 707(b)(2)

Arguments Relating to Understatement of Income on Schedule I

The debtor presents several arguments in opposition. The first two arguments relate to the ground that the totality of the circumstances demonstrates abuse § 707(b)(3)(B). These two arguments are directed at whether the debtor understated her income on Schedule I. The court does not decide this motion under § 707(b)(3), so these arguments will not be addressed.

Deduction for Taxes

Next, the debtor argues that the U.S. Trustee incorrectly deducted taxes from her means test. The debtor offers unauthenticated evidence from a website that calculates her taxes, and attaches such calculation as Exhibit A. This evidence is unauthenticated, lacks a foundation, and is hearsay. Fed. R. Evid. 602, 801, 802, 901(a).

Accordingly, the court finds probative the tax analysis performed by the U.S. Trustee's CPA. This analysis is based on the debtor's pay advices, schedules, 2015 tax returns, and 2016 tax tables. This analysis is at Exhibit 4.

Chapter 13 Fees and Administrative Expenses and Childcare Expenses

The next two arguments made by the debtor are unsupported by any admissible evidence. See LBR 9014-1(f)(1)(B). These arguments relate to (1) the amount of attorney's fees applicable in chapter 13, and (2) the amount of the childcare deduction on Form 122A-2 (Line 21).

However, even assuming that the debtor's arguments on each of these grounds were valid, the presumption of abuse would still arise. The court calculates the monthly attorney's fee amount at \$158.33 based on the debtor's proposed \$12,000 of attorney's fees in chapter 13. (\$12,000 chapter 13 fees - \$2,500 paid in chapter 7 = \$9,500. \$9,500 / 60 = \$158.33).

The court adds this monthly chapter 13 fee amount to the U.S. Trustee's projected plan payment (\$158.33 fees plus the U.S. Trustee's projected \$3,662.70 plan payment), which equals \$3,821.03. After applying the district's multiplier of 5.3% to this higher projected plan payment, the monthly administrative expense for chapter 13 equals \$202.51. Therefore, the total for Line 36 would be \$360.84 (\$202.51 plus \$158.33). This Line 36 amount is \$141.72 greater than the U.S. Trustee's deduction on Line 36.

The debtor also proposes that \$896 should be the amount of the childcare deduction on Line 21. This is \$570 more than the U.S. Trustee's amount of \$326.

If the court were to increase the total deductions on Line 38 by the additional \$570 (childcare) and additional \$141.72 (chapter 13 administrative expenses plus attorney's fees), the monthly disposable income amount on Line 39c would be \$2,731.86. (\$13,465.50 CMI - \$10,733.64 total deductions.) Multiplied by 60 months, the debtor's disposable income would still be \$163,911.60.

Additional Deposits

The debtor final argument relates to the additional deposits that the U.S. Trustee mentions in its motion. The debtor's argument is unclear on this point, and unsupported by evidence.

Nevertheless, the U.S. Trustee did not increase the debtor's income based on these deposits. McAbee Decl. ¶ 8 & n. 1, ECF No. 23. The U.S. Trustee uses the same CMI figure as the debtors on Line 11 and 39a. The court, therefore, need not address this argument.

Evidence Supporting Presumption of Abuse

The U.S. Trustee has offered evidence that the presumption of abuse arises under § 707(b)(2). The U.S. Trustee's expert, a certified public accountant, has offered her declaration based on personal knowledge. She has reviewed all the materials filed by the debtor in this case, including copies of the petition, schedules A through J, Statement of Financial Affairs, Forms 122A-1 and 122A-2. She has reviewed recordings of the creditors meetings. She has analyzed the Debtor's past advices and 2015 tax returns.

Her analysis of the appropriate means test calculation results in a number of adjustments, some upward, and some downward, of deductions on Form 122A-2. These are set forth in her declaration. McAbee Decl. ¶ 9.

The result of the U.S. Trustee's analysis is that the debtor has monthly disposable income of \$3,443.58, which equates to \$206,614.80 over a 60-month period.

Even assuming that the debtor were correct about attorney's fees in chapter 13, a slightly higher chapter 13 administrative expense payment (based on higher attorney's fees), and higher childcare expenses, the debtor's 60-month disposable income would still be \$163,911.60. Therefore, the court need not consider those arguments as they do not affect the outcome of this motion.

CONCLUSION

The debtor's monthly disposable income on Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A). The presumption of abuse arises, and the case will be dismissed. Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3).

10. [16-13766](#)-A-7 ZACHARY/KAELEA GRABLE MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
BMW BANK OF NORTH AMERICA/MV 12-8-16 [[11](#)]
NEIL SCHWARTZ/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2011 Chevrolet Camaro

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

BMW Bank of North America's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2011 Chevrolet Camaro, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

11. [16-14281](#)-A-7 LUIS HERRERA
MET-1
DLI PROPERTIES, LLC/MV
MARY TANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-19-16 [[16](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: Unlawful detainer action filed in Los Angeles County, Case No. 16F04888, relating to real property located at 1075 Ximeno Avenue, Long Beach, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause shown. Cause includes the debtor's pre-petition loss of real property by way of foreclosure. In this case, the debtor's interest in the property was extinguished prior to the petition date by a foreclosure sale. The motion will be granted. The movant may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

DLI Properties, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as an unlawful detainer action filed in Los Angeles County, Case No. 16F04888, relating to real property located at 1075 Ximeno Avenue, Long Beach, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may take such actions as are authorized by applicable non-bankruptcy law, including prosecution of an unlawful detainer action (except for monetary damages) to obtain possession of the subject property.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

12. [16-13890](#)-A-7 MATHEW SWANSON
JHW-1
TD AUTO FINANCE LLC/MV
STEVEN STANLEY/Atty. for dbt.
JENNIFER WANG/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-15-16 [[11](#)]

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2016 Chevrolet Malibu

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

TD Auto Finance LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly

known as a 2016 Chevrolet Malibu, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

13. [16-14296](#)-A-7 ANGEL TORRES AND ROSA MOTION FOR RELIEF FROM
EMM-1 AGUILAR AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 12-7-16 [[9](#)]
STEVEN STANLEY/Atty. for dbt.
ERIN MCCARTNEY/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 809 Oranewood Street, Bakersfield, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Bank of New York Mellon, as Trustee, has filed a motion for relief from the automatic stay that has been presented to the court. Having entered the default of respondent for failure to appear, timely

oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 809 Orangewood Street, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.