

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

January 10, 2019 at 2:00 p.m.

1. <u>15-90811-E-7</u> <u>16-9002</u>	ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS	CONTINUED STATUS CONFERENCE RE: COMPLAINT 1-13-16 [<u>1</u>]
FARRAR V. MASSELLA ET AL		

**No Appearance at the January 10, 2019 Status Conference If
the Parties Concur in the Continuance Date and Time**

Plaintiff's Atty: Clifford W. Stevens

Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16

Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]

2/23/16 [Johnny Massella; Mary Massella]

Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]

Answer: None

Counterclaim Dismissed 5/2/16

Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]

Answer: None

Counterclaim Dismissed 5/2/16

The Status Conference is continued to 2:00 p.m. on June 19, 2019.
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Nature of Action:

Validity, priority or extent of lien or other interest in property

Notes:

Continued by court order filed 7/27/18 [Dckt 70]; all proceedings stayed pending further order of the court

Plaintiff's Status Conference Statement filed 12/27/18 [Dckt 73]

January 10, 2019 at 2:00 p.m.

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JANUARY 19, 2019 STATUS CONFERENCE

On December 27, 2018, Plaintiff-Trustee filed an updated Status Conference Report. Dckt. 73. The Plaintiff-Trustee reports that the appeal in related Adversary Proceeding No. 19-9061 is pending before the United States District Court, with an amended Appellant Opening Brief having been filed on November 29, 2018, and the Appellee's Opening Brief to be filed by December 28, 2018. The Appellant's Reply Brief is due by January 31, 2019.

Plaintiff-Trustee requests that this Status Conference be further continued to allow the issues on appeal be determined before these parties spend further time, money, and judicial resources in this Adversary Proceeding. This is consistent with the Stipulation filed in this Adversary Proceeding to stay this matter pending final resolution of the appeal. Stipulation, Dckt. 69.

The Status Conference is continued to 2:00 p.m. on June 19, 2019.

2. [18-90428](#)-E-11 **RANDHAWA TRUCKING, LLC** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-7-18 [\[1\]](#)**

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 11/29/18

The Status Conference is XXXXXXXXXXXXXXXXXXXXXX

JANUARY 10, 2019 STATUS CONFERENCE

The Debtor in Possession has not filed an updated Status Conference Report. The Monthly Operating Report for October 2018 (Dckt. 62) provides the following information:

Cash Receipts Since June 2018 Filing.....\$1,256,629
Cash Disbursements Since Filing.....(\$1,241,700)

Net Increase/(Decrease) Since Filing.....\$14,929 (average of \$2,985/month)

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NOVEMBER 29, 2018 STATUS CONFERENCE

The Monthly Operating Report for October 2018, reflects that in the first five post- petition months the estate has generated a positive cash flow of \$14,929 on \$1,256,629 in gross receipts (a 1.2% "profit" margin).

JULY 12, 2018 STATUS CONFERENCE

This Chapter 11 case was filed on June 7, 2018. The Schedules and Statement of Financial Affairs were filed on June 29, 2018. Dckt. 29. The major asset of the Bankruptcy Estate is real property located at 1200 G Street, which is stated to have a value of \$1,300,000. *Id.* at 6. The Estate has no significant assets other than \$6,000 in Lottery Tickets and a 2017 Mercedes GLE 350 with a stated replacement value of \$45,000. *Id.* at 3-6.

The secured claims on Schedule D include \$1,100,000 encumbering the real property (two deeds of trust) and a \$40,000 claim secured by the \$45,000 2017 Mercedes Benz.

The U.S. Trustee's Report from the First meeting of Creditors is that the representative of Debtor in Possession and Debtor did not appear, but counsel for Debtor in Possession did appear. No motion to employ counsel has been filed.

At the Status Conference Counsel states that the estate is operating the mini-mart gas station. At the Status Conference the court addressed a number of issues concerning the good faith prosecution of this case and the related case of Ashwinder Singh (the sole member and manager of this LLC Debtor), 18-90425. It was stated at the Status Conference that the Schedules were inaccurate and would have to be corrected. Additionally, counsel for this Debtor in Possession and counsel for Mr. Singh in his bankruptcy case explained that it was "necessary" for Mr. Singh to have his various entities pay for late model Mercedes Benz for he and his family to drive to work at the businesses of his LLCs.

The first Monthly Operating Report is due later in July. The Schedules, as now filed (though stated as inaccurate by counsel for the Debtor in Possession) show no significant assets, other than the real property in the estate. Counsel for the Debtor in Possession stated that this is an active, operating gas station mini-mart.

PG14, LLC VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, Debtor in possession’s Attorney, parties requesting special notice, and Office of the United States Trustee on September 24, 2018. By the court’s calculation, 45 days’ notice was provided. 28 days’ notice is required.

However, as addressed below, service was not completed on all required parties until November 1, 2018, which does not meet the minimum 28 days requires notice.

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 Stay is XXXXXXXXXX.
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PG14, LLC (“Movant”) seeks relief from the automatic stay with respect to Randhawa Trucking, LLC’s (“ΔIP”) real property commonly known as 1200 6th Street, Modesto, California (the “Property”). Movant has provided the Declaration of Sanjiv Patel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Patel Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$6,533.34 in post-petition payments past due. The Declaration also provides evidence that there are 10 pre-petition payments in default, with a pre-petition arrearage of \$32,666.70; however, the Declaration states the entire balance became due on September 1, 2017 pursuant to the note executed by the parties and attached to this Motion.

DEBTOR IN POSSESSION'S STATEMENT OF SERVICE DEFECT

ΔIP filed an Opposition on October 25, 2018. Dckt. 54. ΔIP asserts Movant did not meet Federal Rule of Bankruptcy Procedure 4001(a)(1) requiring service on committees or, if none, those creditors holding the 20 largest unsecured claims. ΔIP argues the Motion is not properly before the court and should be denied. The ΔIP presents no substantive opposition to the grounds asserted in the Motion.

NOVEMBER 8, 2018 HEARING

At the November 8, 2018 hearing on the Motion, the court addressed Movant's improper service. Th court elected to continue the hearing, affording the ΔIP and creditors a full opportunity to respond to the substantive issues after having received sufficient notice, and allowing Movant to provide a notice of continued hearing and deadlines for filing opposition.

Movant filed and served an Amended Notice on November 9, 2018, on Debtor in possession, Debtor in possession's Attorney, parties requesting special notice, Office of the United States Trustee, and creditors. Dckts. 60, 61.

DEBTOR IN POSSESSION'S OPPOSITION

ΔIP filed an Opposition to Movant's Motion on November 15, 2018. Dckt. 63. ΔIP argues that the main grounds supporting the Motion have been resolved—ΔIP has tendered August and September 2018 adequate assurance payments; ΔIP filed Amended Schedules; and ΔIP has filed monthly operating reports itemizing all post-petition income.

ΔIP states further it has been communicating with Movant regarding restructuring secured debt, in hopes of settling this matter.

NOVEMBER 29, 2018 HEARING

At the November 29, 2018, hearing the parties agreed to a continuance. Dckt. 65. The court issued an Order continuing the hearing on the Motion to 2:00 p.m. on January 10, 2019; requiring Movant to file and serve supplemental pleadings on or before December 20, 2018; and requiring Debtor to file and serve supplemental opposition pleadings on or before January 8, 2019. Order, 66.

APPLICABLE LAW

Relief From Stay For Cause

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

909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. See *In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). ~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); In re Ellis, 60 B.R. 432.~~

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 Order to Be Binding in Any Bankruptcy Case for a Period of 180 Days

Movant adds in his prayer a request that this court's order be "binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Non Bankruptcy Action." Dckt. 42 at 4:14-16.

Movant does not state with particularity any legal authority or grounds supporting this request for relief, and this relief is ~~denied.~~

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 waiver of the fourteen day stay as "debtor is occupying property, paying nothing, has not provided any plan for re-payment and has made no post-filing interest payments."

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.~~

DISCUSSION

No supplemental pleadings have been filed since the November 29, 2018, hearing on the Motion. The Parties advised the court ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

~~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 PG14, LLC (“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 PG14, LLC, 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 1200 6th Street, Modesto, 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 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.~~