

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 14, 2021 at 10:00 a.m.

1. [20-90645](#)-E-11
[SSA-1](#)

MOHIT RANDHAWA
David Johnston

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-6-20 [25]**

BIKRAM SAHA 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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2020. 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). 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 XXXXX.

Bikram Saha ("Movant") seeks relief from the automatic stay to allow *Saha v. Reply Logistics Inc., et al*, Case No. 19CV350171 (the "State Court Litigation") to be concluded. Movant has provided the Declarations of Bikram Saha and Rebecca D. Martino to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mohit Singh Randhawa ("Debtor in Possession").

On December 11, 2020, the parties filed a joint request for the court to continue the hearing to 10:00 a.m. on January 14, 2021 on the basis that parties are in active settlement negotiations to resolve their differences. Dckt. 41. The court granted the request on December 14, 2020. Dckt. 42.

Movant argues that relief is needed to bring the State Court Litigation to final judgment after more than one year and a half in state court.^{FN.1.} Saha Declaration, Dckt. 28, ¶ 8. Movant also testifies that after Debtor refused to conduct discovery in good faith, Movant filed a Motion to Compel Discovery on July 6, 2020 and the State Court issued a tentative ruling on September 23, 2020 granting Movant's Motion to Compel, but that entry of the order was stalled due to Debtor filing for bankruptcy that same day. Martino Declaration, Dckt. 29, ¶¶ 5-6.

FN.1. According to the e-filed date stamp on the Complaint, filed as Exhibit 1, Dckt. 31, the State Court Litigation was filed on June 24, 2019.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 31, 2020. Dckt. 44. Debtor's Opposition is discussed below.

MOVANT'S REPLY

Movant filed a Reply on January 8, 2021. Dckt. 49. Movant's Reply is discussed below.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8-9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

In his Opposition, Debtor alleges that the automatic stay should not be lifted on the basis that except for a complaint, an answer, and a few minutes-long status conferences not much has occurred in the State Court Litigation. Opposition, ¶ 2:8-11. Moreover, Debtor asserts that no trial date has been set and

no depositions have been taken. *Id.*, ¶ 2: 11-12. Debtor argues that it is more likely that the bankruptcy case will be concluded before there is a trial at the state court.

Debtor further asserts that there is no insurance coverage in order to permit recovery to the extend of the insurance proceeds and Debtor does not have the money to pay an attorney to defend the State Court Litigation. *Id.*, ¶ 3. Lastly, Debtor argues that Movant's claim can be resolved much faster and in its entirety in the bankruptcy court by either filing a proof of claim (by having a \$930,000 claim, Movant has substantial leverage in the plan confirmation process) and by filing an adversary proceeding pursuant to 11 U.S.C. § 523(a) (Debtor having stipulated that the deadline for filing a complaint be extended by 90 days to March 28, 2021.). *Id.*, ¶ 4:22-7.

Movant's Reply

In the Reply, Movant states that Debtor should not be rewarded for his efforts to delay discovery by allowing him to use it as an excuse to not lift the stay and engage in forum shopping. Reply at p. 3:15-20. Movant then notes that Debtor's argument regarding lack of funds to continue the State Court Litigation avoids informing the court that Debtor's bankruptcy counsel is also Debtor's state court counsel and counsel's Compensation form specifically states that counsel would not represent Debtor in an adversary proceeding. *Id.*, at p. 4:15-20.

DECISION

The State Court Action is against the Debtor and his company, Reply Logistics, Inc. Complaint, Exhibit A; Dckt. 31. The State Court Complaint asserts two causes of action: (1) Breach of Contract and (2) Fraud. For the Breach of Contract Claim, it is a "simple" claim being asserted based on personal guarantees executed by Debtor.

For the Fraud Claim, it is asserted that there was no intent to repay the monies when borrowed. Further, that the representations as to how the monies were to be used were misrepresented. While Reply Logistics, Inc. is named, the Complaint appears to allege that all of the actions taken and representations made were by Debtor, whether personally or in a corporate capacity for Reply Logistics, Inc.

The State Court Complaint was filed June 24, 2019. The grounds stated with particularity (Fed. R. Bankr. P. 9013) in the Motion is that:

7. Due to the automatic stay following Debtor's Randhawa's bankruptcy case filing September 23, 2020, the prosecution of the underlying state court case and resolution of discovery motions and resulting orders could not be achieved.

...

9. Due to the need to expedite the present state court proceedings to final judgment and liquidation of the Saha claims, there is no prejudice to either the Debtor or the subject bankruptcy estate, nor creditors of this estate if stay, as provided under BR 400l(a)(3) should be lifted.

Motion, ¶ 7, 9; Dckt. 25.

Though not stated as grounds in the Motion, the Declaration of Rebecca Martino, Esq., Movant's counsel in the State Court Action has been filed in support of the Motion. Dckt. 29. In it she testifies that after eight months of attempting, unsuccessfully, to obtain financial records concerning the Debtor's various business operations, a motion to compel was filed, with Movant requesting monetary and terminating sanctions. She further testifies that filed as Exhibit 2 is a copy of the State Court's tentative ruling on the Motion to Compel. Declaration, ¶ 5; Dckt. 29.

The "Tentative Ruling" exhibit is titled "Minute Order." Dckt. 31 at 15. It states that no opposition was filed to the Motion to Compel. It states that the Motion is denied as for relief requested against Reply Logistics, Inc. because Movant had not propounded discovery on that entity.

However, as to Debtor, it is stated that the Motion to Compel is granted and Debtor's answer is stricken. *Id.* Additionally, \$2,500.00 in sanctions was to be paid by Debtor. *Id.*

While titled as a "Minute Order," the "Minute Order" concludes with the statement, "Plaintiff is to prepare the order." *Id.* at 16. The Minute Order is dated September 24, 2020. This bankruptcy case was filed on September 23, 2020. Thus, any purported ruling in the State Court Action occurred after this case was filed. This case having been filed, any purported ruling in the State Court Action after the September 23, 2020 filing of this case is void. *See, In re Far Out Productions*, 247 F.3d 986, 995 (Cir. 9th 2001); *Schwartz v. United States of America (In re Schwartz)*, 954 F.2d 569, 572 (Cir. 9th 1992).

Exhibit 2 includes an unauthenticated order in the State Court Action with a filed date of May 20, 2020. Dckt. 31 at 17. This purports to be an Order on an unopposed Motion to Compel, ordering Debtor to produce documents and reply to interrogatories within fifteen days of May 19, 2020. The Order denies Movant's request for monetary sanctions for failure to identify in that Motion to Compel the person(s) against whom the monetary sanctions were requested.

Though not stated as grounds in the Motion, Ms. Martino's Declaration comments that if the stay is not lifted, then Movant will have to proceed separately in the State Court Action against Reply Logistics, Inc. (which appears to be a worthless shell) and then against Debtor in this court. Declaration, ¶ 14; Dckt. 29.

In looking through Ms. Martino's Declaration, some concerns for the court arise. In it, Ms. Martino, an attorney licensed to practice in the State of California purports to give personal knowledge testimony (F.R.E. 601, 602) that includes the following:

- A. It is her firm's understanding, not Ms. Martino's personal knowledge, that "the current state court proceeding also entails factual issues as to whether in the foreign proceedings debtor/defendant acted as a fiduciary." *Id.*, ¶ 10.

Thus, it appears that Ms. Martino has no personal knowledge, but is merely repeating an "understanding" of what she heard someone else say.

- B. Further, it is her firm's understanding, not Ms. Martino's personal knowledge, that "the debtor/defendant was acting as a fiduciary on behalf of all of the companies as he is the one that signed the contracts and approached plaintiff Saha for the money to fund his businesses." *Id.*

Again, Ms. Martino is merely repeating what she has heard someone else say.

The closing paragraphs of Ms. Martino's Declaration consists not of factual testimony, but of argument as to how the law should be applied and why relief should be granted. This "argument" should be left to the attorney prosecuting the present Motion for Relief and the points and authorities.

The reason this causes the court concern, is that after the year and one-half that Movant states this has been in state court, this court wonders whether Movant will be able to get a judgment that would have collateral estoppel effect with respect to the nondischargeable action Movant must bring in this court.

Debtor's Opposition is that little has been accomplished in the State Court Action, there have been no depositions, and that there is no insurance coverage for the State Court Litigation. Further, Debtor does not have the money to pay for counsel in the State Court Action, and that it would be better (at least for Debtor) to start anew in the Bankruptcy Court.

What Debtor fails to consider is that due to his failure to comply with orders of the State Court judge, that judge is ready to strike his answer and have his default entered. If that is the case, then the State Court Action is a motion for entry of default judgment away from being concluded (at least at the trial level).

While a close call, there was fifteen months of litigation in the State Court Action prior to Debtor commencing this case on the eve of filing this bankruptcy case on September 23, 2020. A significant amount of litigation had occurred, with the State Court judge on the verge of striking Debtor's answer for failing to comply with discovery orders when this case was filed.

While Debtor argues that he cannot afford to pay counsel to defend the action in State Court, presumably he cannot pay counsel to defend him in a federal court action. Merely because a fraud trial would be conducted in the Bankruptcy Court does not turn it into an informal, sit around the table "arbitration." In many respects, if the parties were to try the case in federal court, they would find the Federal Rule of Civil Procedure and Federal Rules of Evidence applied by the federal judge.

Cause exists to modify the stay to allow the state court action to proceed to final judgment, including any appeals. Debtor has chosen to wait until the eve of judgment in the State Court Action to file bankruptcy and attempt to hit the reset button. Debtor can prosecute a Chapter 11 Plan. Debtor can address, if Movant is successful in the State Court Action whether such a judgment is nondischargeable as a matter of federal law. But what would not be proper would be for this court to flush fifteen months of litigation between Debtor and Movant down the drain.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Bikram Saha (“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 modified as applicable to Mohit Singh Randhawa (“Debtor”) to allow Movant, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Saha v. Reply Logistics Inc., et al*, Case No. 19CV350171 to final judgment, including all appeals relating thereto.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

FINAL RULINGS

2. [20-90732-E-7](#)
[DWE-1](#)

KARA BARRON
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-17-20 [\[20\]](#)

FREEDOM MORTGAGE CORPORATION
VS.

Final Ruling: No appearance at the January 14, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 17, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to Kara Barron's ("Debtor") real property commonly known as 3105 New Salem Avenue, Modesto, California ("Property"). Movant has provided the Declaration of Charles W. Hagan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant provides evidence that there are 14 pre-petition payments in default, with a pre-petition arrearage of \$25,630.76. Declaration, Dckt. 23.

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 \$280,991.39 (Declaration, Dckt. 23), while the value of the Property is determined to be \$268,100.00, as stated in Schedules A/B and D filed by Debtor.

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). 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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the 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 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 Freedom Mortgage Corporation (“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 3105 New Salem Avenue, 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 not waived for cause.

No other or additional relief is granted.

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the January 14, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on December 7, 2021. 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). 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.

Santander Consumer USA Inc. dba Chrysler Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Dodge Grand Caravan, VIN ending in 6939 ("Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jeffery Arnold Womack ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of \$404.87 in post-petition payments past due. Declaration, Dckt. 21. Movant also provides evidence that there are eleven (11) pre-petition payments in default, with a pre-petition arrearage of \$4,939.40. *Id.*

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

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$17,413.57 (Declaration, Dckt. 21), while the value of the Vehicle

is determined to be \$0.00, as stated in Schedules A/B and D filed by Debtor, explaining in Schedule A/B that the “Vehicle has been totaled in an accident.” Dckt. 10.

Debtor’s Statement of Intention states Debtor intends to surrender the Vehicle. Dckt. 1. The Statement of Intention also states that the Vehicle was totaled in an accident. *Id.*, at 42.

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). 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.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable 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 Santander Consumer USA Inc. dba Chrysler Capital (“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 Dodge Grand Caravan, VIN ending in 6939 (“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 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.