

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 15, 2025 at 10:00 a.m.

1. [24-23442-E-7](#)
[MJ-2](#)

GABRIELA LOPEZ
Matthew DeCaminada

**MOTION TO AMEND ORDER ON
MOTION FOR RELIEF FROM STAY
12-11-24 [55]**

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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all parties in interest, and Office of the United States Trustee on December 11, 2024. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Amend Order 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 to Amend the Order is XXXXXXX.

January 15, 2025 Hearing

At the hearing, XXXXXXX

REVIEW OF THE MOTION

Movant AmeriCredit Financial Services, Inc. dba GM Financial has filed a Motion to Amend the Order dated November 15, 2024, Docket 48. Movant seeks to have that Order state relief is granted as to AmeriCredit Financial Services, Inc. dba GM Financial.

The court referred to the moving party in that Order as ACAR Leasing LTD d/b/a GM Financial Leasing because ACAR Leasing LTD d/b/a GM Financial Leasing was referred to as the moving party in the moving papers. Mot. 1:22, Docket 15. However, Movant now states the moving party is Americredit Financial Services, Inc. dba GM Financial, but Movant offers no explanation for the change in names.

Movant does not offer any evidence in support of the request for the amendment.

The hearing on the Motion has been continued to 10:00 a.m. on January 15, 2025 (Specially Set Day).

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 to Amend 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 Motion is **XXXXXXX**.

2. [24-25357-E-7](#)
[SPS-1](#)

LEO MILES / MARIA GOMEZ
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-23-24 [\[21\]](#)

WILMINGTON TRUST, NATIONAL
ASSOCIATION 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)(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 all creditors and parties in interest on December 23, 2024. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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. At the hearing,

XXXXXXX

The Motion for Relief from the Automatic Stay is granted.
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January 15, 2025 Hearing

At the hearing, XXXXXXX

REVIEW OF THE MOTION

Wilmington Trust, National Association, not in its individual capacity but solely as Delaware Trustee of SMRF Trust VII-A ("Movant") seeks relief from the automatic stay with respect to Leo Miles and Maria Gomez's ("Debtor") real property commonly known as 1422 Main Street, Venice, CA 90291 ("Property"). Movant has provided the Declaration of Melissa Braun to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 25.

Movant argues Debtor Leo Miles is the latest recipient of partial interests in real property belonging to Brittany Dawn Debeikes ("Borrower"). Movant alleges Borrower was facing foreclosure, so she gifts a partial interest in her property to someone who immediately files bankruptcy, Debtor here, and uses that other person's automatic stay to delay, hinder, and defraud the foreclosing lender. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4).

Movant provides evidence that Borrower incurred multiple loans in the amount of approximately \$1,500,000 each secured against various parcels of real property. Decl., Docket 25. All loans were in default with foreclosure sales scheduled, and those sales were frustrated by Borrower transferring an interest to a person who then filed bankruptcy.

The loan incurred against the real Property in this case was in the amount of \$1,575,000.00 and incurred on December 30, 2019. *Id.* at ¶ 19. As the loan went into default, the sale was scheduled for December 3, 2024. Just before the sale, Movant received a notice that the property had been conveyed in part to Debtor Leo Miles and that Debtor had filed bankruptcy just prior to the foreclosure sale being conducted. *Id.* at ¶ 18. Movant states in its Memorandum of Points and Authorities that the deed and notary on the deed were a forgery, the notary not existing. Mem. 2:21-24, Docket 23.

Movant provides the following table of Borrower's various parcels of properties and related bankruptcies:

Address	E.D. Cal. Bankruptcies
333 & 333 1/2 Rose Ave, Venice, CA	24-90601 24-13319
355 & 355 1/2 Rose Ave, Venice, CA	24-90601 24-13319
359 & 359 1/2 Rose Ave, Venice, CA	24-90601 24-13319
341 & 341 1/2 Rose Ave, Venice, CA	24-24801 24-90700
337 & 337 1/2 Rose Ave, Venice, CA	24-24801 24-90700
1414 Main St, Venice, CA	24-25062
1422 Main St, Venice, CA	24-25357 (instant bankruptcy)

Id. at 2:7-20.

11 U.S.C. § 362(d)(4)

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.*

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.

Here, it is apparent in the record that this bankruptcy is part of a scheme to hinder and delay Movant. The transfer to Debtor was made just prior to filing, and the transfer follows an obvious trend that Borrower has been engaging in to delay foreclosures.

With respect to the elements, the court concludes that the filing of the current Chapter 7 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 7 case cannot have been for any bona fide, good faith reason in light of the improper and possibly fraudulent property transfers.

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.

**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, to halt the fraudulent transfer scheme, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:23-26, Docket 21.

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 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 Wilmington Trust, National Association, not in its individual capacity but solely as Delaware Trustee of SMRF Trust VII-A (“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 Motion is granted, and 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 1422 Main Street, Venice, CA 90291 (“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 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 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.

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The court set the hearing for December 19, 2024. Dckt. 11.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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. At the hearing, **XXXXXXX**

The Motion to Dismiss is **XXXXXXX.**

January 15, 2025 Hearing

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

On November 14, 2024, a Chapter 11 Bankruptcy Petition was filed for Debtor AK Investments, LLC. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor. On the Petition the name Jeff Czech is typed in as an attorney for the Debtor, but Jeff Czech did not sign the Petition. Dckt. 1 at 4. The Clerk of the Court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss if the Documents were not filed. Dckt. 2. The missing documents include: the List of the Creditors holding the 20 largest unsecured claims; List of Equity Security Holders, Master Equity Security Holder Address List, Schedules A/B, D, E/F, G, H; Statement re Corporate Debtor; Statement of Financial Affairs; and Summary of Assets and Liabilities. *Id.*

The Clerk of the Court also issued a Notice to Debtor Concerning Legal Representation. Dckt. 3. This provides notice that the corporate Debtor must be represented by an attorney and cannot represent itself via its officers, managers, and representatives.

On November 25, 2024, a Motion to Dismiss Chapter 11 Bankruptcy Case was filed for the Debtor by Vishal V. Kaura, who is identified as “Authorized Representative, Manager, AK Investments, LLC. Vishal Kaura is not identified as being an attorney licensed to practice law in the State of California. Dckt. 10.

**Prior Filing of Bankruptcy Cases
For Debtor - Not Represented by an Attorney**

This not the Debtor's and Vishal Kaura's first foray into the world of Bankruptcy with the Debtor not represented by an attorney. The court has identified several prior bankruptcy cases by the Debtor and related entities for whom bankruptcy cases were filed without an attorney representing the limited liability company debtor.

- a. AK Investments, LLC.....Chapter 11 Case No. 24-24458
 - i. Filed.....October 3, 2024
 - (1) Dismissed.....October 15, 2024.
 - (a) Dismissed for failure to timely file Documents, including: Schedules, Statement of Financial Affairs, List of Creditors Holding 20 Largest Unsecured Claims, and Summary of Assets and Liabilities.
 - ii. The Petition is signed by Vishal V. Kaura, as Manager of the Debtor.
 - (1) On the Petition, in the Signature of Attorney Section, the name Pauldeep Bains is typed in, with the firm name stated to be "Sacramento Bankruptcy Lawyer." 24-24458; Petition, Dckt. 1 at 4.
 - iii. The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-24458.
- b. In Case 24-24458, the U.S. Trustee filed a Notice of Related Cases, in which the U.S. Trustee identified the following cases having been filed by the Debtor or Vera Holdings, LLC, whose address was the same as the Debtor and Petitions for both the Debtor and Vera Holdings, LLC having been signed by Vishal V. Kaura.
 - i. AK Investments, LLC.....Chapter 11 Case 24-23560
 - (1) Case filed.....August 12, 2024
 - (a) Dismissed.....August 26, 2024.
 - (i) Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).
 - (2) On the Petition the name of the person signing the Petition for the Debtor is not typed in, but it appears to be the signature of Vishal V.

Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.

- (3) The Clerk of the Court sent the Debtor the Notice to Debtor Concerning Legal Representation, informing the Debtor and its officers, agents, and representatives that the Debtor must be represented by an attorney. 24-23560; Dckt. 3.
- ii. Vera Holdings, LLC.....Chapter 11 Case 24-22817
 - (1) Filed.....June 27, 2024
 - (a) Dismissed..... July 9, 2024
 - (i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).
 - (2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-22817; Dckt. 1 at 4. No attorney's name is typed on this Petition.
 - (3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the Vera Holdings, LLC must be represented by an attorney. 24-22817; Dckt. 3.
- iii. Vera Holdings, LLC.....Chapter 11 Case 24-22289
 - (1) Filed.....May 24, 2024
 - (a) Dismissed..... May 31, 2024
 - (i) Dismissed was pursuant to an Order to Show Cause regarding the failure of Vera Holdings, LLC to be represented by Counsel. 24-22289; Order to Show Cause, Dismissal Order, Dckts. 5, 14.
 - (2) On the Petition the name of the person signing the Petition for the Vera Holdings, LLC is written in next to the signature, and is Vishal V. Kaura. 24-23560; Dckt. 1 at 4. No attorney's name is typed on this Petition.
 - (3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing Vera Holdings,

LLC and its officers, agents, and representatives that Vera Holdings, LLC must be represented by an attorney. 24-22289; Dckt. 3.

iv. Vera Holdings, LLC.....Chapter 11 Case 24-23695.

(1) Filed.....August 20, 2024

(a) Dismissed..... September 13, 2024

(i) Dismiss Dismissed due to failure to file documents (same as in current the prior Case filed for Debtor).

(2) On the Petition the name of the person signing the Petition for the Vera Holdings, LL is written in next to the signature, and is Vishal V. Kaura. 24-23695; Dckt. 1 at 4. No attorney's name is typed on this Petition.

(3) The Clerk of the Court sent the Debtor the Notice to Vera Holdings, LLC Concerning Legal Representation, informing the Vera Holdings, LLC and its officers, agents, and representatives that the Vera Holdings, LLC must be represented by an attorney. 24-23695; Dckt. 3.

(4) In connection with Case 24-23695 filed by Vera Holdings, LLC, the U.S. Trustee commenced an Adversary Proceeding and obtained a Judgment prohibiting Vera Holdings, LLC from filing a bankruptcy case for two years without obtaining authorization from the Chief Bankruptcy Judge in the District where it sought to file another bankruptcy case. 24-02181; Judgment, Dckt. 18.

California Secretary of State Online Status of Entity Service

A review of the California Secretary of State Website online service for checking the status of corporate, LLC, and other non-living person entities provides information with respect to AK Investments, LLC, including: its principal and mailing addresses are 8850 Williamson Dr., Unit 2204, Elk Grove, California 95759, and its Agent is an individual identified as Vishal V. Kaura, 8850 Williamson Dr., Unit 2204, Elk Grove, California 95759. ^{Fn.1.}

FN. 1. <https://bizfileonline.sos.ca.gov/search/business>.

From the files in this court, Vishal Kaura, the Manager and representative of Debtor has been informed and educated on multiple prior occasions that the Debtor (and another limited liability company entity) must be represented by an attorney and cannot file bankruptcy merely through an officer or manager who is not an attorney. A search of the State Bar of California website online attorney search service discloses that there is not an attorney named "Vishal Kaura" who is licensed to practice law in California

Motion to Dismiss

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

(4) For purposes of this subsection, the term “cause” includes—

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate;
- (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;
- (E) failure to comply with an order of the court;
- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;

- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Ninth Circuit has held that, although “section 1112(b) does not explicitly require that cases be filed in ‘good faith,’ courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis.” *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court’s finding that the Chapter 11 Petition was not filed in good faith when “the debtor’s Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond.” *Id.* at 829.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

In this case, Vishal V. Kaura, as the Authorized Representative, Manager, AK Investments, LLC has signed and filed a Motion to Dismiss the current Bankruptcy Case. Dckt. 10. In it he states that the Bankruptcy Case was filed to stop a foreclosure sale (Motion, § 1, ¶ 2), the creditor will now negotiate with Debtor, and Debtor concludes that the Bankruptcy Case is now not necessary. Motion, § 1, ¶¶ 2, 3, 4; Dckt. 10.

It appears that notwithstanding having been provided notification that the Debtor, and other non-human entities, must be represented by an attorney, Vishal V. Kaura has knowingly filed multiple bankruptcy cases for Debtor – even though Vishal V. Kaura is not an attorney licensed to practice law in California.

Motion for Relief From Stay

On December 11, 2024, U.S. Bank, N.A., as Indentured Trustee, filed a Motion for Relief From the Stay. Dckt. 17. The relief requested is not only for relief in this Bankruptcy Case, but for relief pursuant to 11 U.S.C. § 362(d)(4), which would then preclude an automatic stay going into effect with respect to the property for a two year period following the entry of the order granting 11 U.S.C. § 362(d)(4) relief.

The hearing on the Motion for Relief From the Stay is set for 10:00 a.m. on January 9, 2025.

Adversary Proceeding

The United States Trustee for Region 17 has commenced Adversary Proceeding 24-02212, against the Debtor from filing a bankruptcy case for a period of two years without first obtaining

authorization from the Chief Bankruptcy Judge in the District where Debtor seeks to file another bankruptcy case. The U.S. Trustee notes in the Complaint that such a judgment has been entered against Vera Holdings, LLC, for which Vishal V. Kaura is the person signing the petition and commencing the bankruptcy cases for Vera Holdings, LLC.

January 9, 2025 Hearing

The court ordered Debtor to appear at the hearing on this Motion that was held on December 19, 2024. Debtor did not appear. Debtor has been ordered to appear at the hearing to be held on January 15, 2025, or face sanctions. Order, Docket 32.

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 To Dismiss filed by AK investments, LLC (“Debtor in Possession”) 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 is **XXXXXXX**.

U.S. BANK NATIONAL
ASSOCIATION 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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, and Office of the United States Trustee on December 11, 2024. By the court's calculation, 29 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.

January 15, 2025 Hearing

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

U.S. Bank National Association, as Indenture Trustee, for LHOME Mortgage Trust 2022-RTL3, Mortgage-backed Notes, Series 2022-RTL3, by and through its servicing agent Kiavi Funding, Inc. fka LendingHome Funding Corp. ("Movant") seeks relief from the automatic stay with respect to AK Investments, LLC's ("Debtor in Possession") real property commonly known as 1609 Q St., Sacramento, CA 95811 ("Property"). Movant has provided the Declaration of Barbara Sweazen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 19.

Movant argues its loan to Debtor in Possession became due in full on December 1, 2023, in the amount of \$1,130,691.10. Decl. ¶ 10, Docket 19. Debtor in Possession has not paid this obligation, instead filing a string of bankruptcies with skeletal petitions in an effort to delay foreclosure. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) for the failure to make any payments, including adequate protection payments, and pursuant to (d)(4) for filing a string of bankruptcies in an effort to delay foreclosure.

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 \$1,130,691.10 (Declaration, Docket 19), but the value of the Property is not clear in the record.

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).

Of note and relevance in this case, 11 U.S.C. § 362(c)(4) states:

(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. . .

Debtor in Possession has filed the following cases that were dismissed in the previous year:

- A. Case No. 24-23560
 - 1. Filed: August 12, 2024
 - 2. Chapter 11
 - 3. Dismissal Date: August 26, 2024
 - 4. Reason for Dismissal: Failure to timely file documents
- B. Case No. 24-24458
 - 1. Filed: October 3, 2024
 - 2. Chapter 11
 - 3. Dismissal Date: October 15, 2024

4. Reason for Dismissal: Failure to timely file documents

With these two cases having been filed and dismissed in the previous year, the court is obligated to enter an order confirming that no automatic stay is in effect.

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.

11 U.S.C. § 362(d)(4)

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.* As discussed above, there are two cases affecting the property filed and dismissed in the previous year. These filings were incomplete and quickly dismissed, much like the case now. Such conduct serves as grounds for the court to grant relief pursuant to 11 U.S.C. § 362(d)(4).

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 11 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 11 case cannot have been for any bona fide, good faith reason in light of the history of the cases filed and a failure to prosecute. In effect, this is a series of bankruptcy attempts by Debtor.

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.

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. However, as the court is granting relief pursuant to 11 U.S.C. §362(d)(4), and to prevent any further delay, the court will waive the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3). This part of the requested relief is 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 U.S. Bank National Association, as Indenture Trustee, for LHOME Mortgage Trust 2022-RTL3, Mortgage-backed Notes, Series 2022-RTL3, by and through its servicing agent Kiavi Funding, Inc. fka LendingHome Funding Corp. (“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 Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are confirmed to be 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 1609 Q St., Sacramento, CA 95811 (“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 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 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.

5. [24-25163-E-11](#) **AK INVESTMENTS, LLC** **STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
 11-14-24 [1]

Debtor’s Atty: Pro Se

Notes:

Motion to Dismiss Chapter 11 Bankruptcy Case [filed by AK Investments, LLC] filed 11/25/24 [Dckt 10]; Order setting hearing and Order to appear filed 11/25/24 [Dckt 11]; set for hearing 1/19/25 at 10:30 a.m.

[JCW-1] Motion for Relief from Automatic Stay filed 12/11/24 [Dckt 17]; set for hearing 1/9/25 at 10:00 a.m.

Trustee Report at 341 Meeting lodged 12/23/24

The Status Conference is XXXXXXX.

January 15, 2025 Hearing

At the hearing, XXXXXXX