

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 23, 2025 at 10:00 a.m.

1. [24-90618-E-11](#) **JEFFERY ARAMBEL**
[COR-1](#) **Chris Kuhner**

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
11-26-24 [\[31\]](#)**

SBN V AG I LLC 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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, Debtor's Attorney, creditors and parties in interest, and Office of the United States Trustee on November 26, 2024. By the court's calculation, 16 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 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, opposition was stated..

The Motion for Relief from the Automatic Stay is XXXXXXX.

January 23, 2025 Hearing

The court continued the hearing on this Motion to be heard as a Status Conference and possible schedule conference, depending on how the Parties decided to move forward with this Motion. The parties were ordered to meet and confer as to whether they will stipulate to having a combined motion for relief

from the stay, an objection to claim (if such exists), and 11 U.S.C. § 506(a) valuation of secured claim in this one contested matter. Movant was further ordered to file an amended Motion that identifies each specific claim secured by each specific asset, setting forth the claim and computation thereof (principal, interest, costs, expenses, and the like to create the current claim balance). The response dates shall be computed from the filing and service of the amended motion.

On January 16, 2025, Movant and Debtor in Possession filed a joint Status Conference Statement. Docket 64. The parties inform the court that Movant intends to file an Amended Motion within 2-3 weeks, and the Parties will be in attendance at the January 23, 2025 hearing to answer any questions or set an evidentiary hearing schedule.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

Secured Creditor SBN V Ag I LLC (“Movant”) seeks relief from the automatic stay with respect to Jeffery Edward Arambel’s (“Debtor in Possession”) following parcels of real property:

Property APN	Common Name¹
021-023-028	Almond 154 Property
021-023-033	
021-023-032	
021-023-029	
021-022-027	Judy Gail Ranch
021-022-028	
021-012-024	Begun Ranch
021-012-025	
021-012-026	
021-012-027	
021-012-028	
021-012-029	
021-012-033	
021-012-034	
021-024-013	Lismer Ranch
021-021-004	
021-021-005	
021-021-006	
021-022-001	
021-022-051	
021-022-052	Carlile Ranch
021-007-002	
021-022-055	Business Park-Adjacent Property
021-013-029	
	Property Adjacent to Home Ranch
021-096-011	Rogers Ranch Contiguous

(“Properties”). Mot. 17, Docket 31. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4).

Movant alleges, as cause for relief pursuant to 11 U.S.C. § 362(d)(1), that relief is warranted because:

- (i) these properties were abandoned to the Debtor for the specific purpose of permitting SBN V to proceed to foreclose thereon,
- (ii) permitting the Debtor to place these properties out of reach pursuant to the automatic stay of the Second Bankruptcy would moot the portions of the Confirmation Order and the Abandonment Order permitting SBN V to foreclose on the Arambel Real Properties and
- (iii) the Debtor has not proven that it can provide sufficient adequate protection for SBN V’s secured collateral. Mot. 10:17-22, Docket 31. Here, Debtor in Possession has not suggested any form of adequate protection for Movant’s collateral.

Movant also alleges that this second case has been filed in bad faith , being nothing more than an attempt to halt Movant from collecting and recovering its real property. This is Debtor in Possession's fourth bankruptcy in nearly six years. *Id.* at 12:3-20.

Pursuant to 11 U.S.C. § 362(d)(2), Movant argues Debtor in Possession has no equity in the Properties and they are not necessary for an effective reorganization of the Debtor's liabilities. The Abandonment Order in the related bankruptcy case at Docket 1448 confirms Debtor in Possession has no equity in the Property. Movant asserts the Properties are not necessary for an effective reorganization as the Debtor has already shown the inability to market and sell the Arambel Real Properties. Mot. 13:16-19.

Finally, Movant alleges this case was filed as part of a scheme to delay or hinder Movant's ability to foreclose on the Properties. Movant alleges:

[I]t is uncontested that the Arambel Real Properties were subject to the Reorganizing Debtor's estate in the Initial Bankruptcy. These same properties were abandoned by that estate to permit Movant to foreclose thereon. However before Movant could complete this process, the Second Bankruptcy was filed. Incredibly, the Second Bankruptcy was filed before the Initial Bankruptcy concluded. As is clear from the Debtor's brazen filing of this Second Bankruptcy, the Debtor will stop at nothing to prevent Movant from foreclosing on the Arambel Real Properties.

Id. at 14:14-20.

Movant does not submit a Declaration as evidence in support.

Debtor in Possession's Opposition

(The court notes that while counsel in the upper left hand corner of the opposition states that such counsel is the attorney for the "Debtor-In-Possession," in the pleading itself it states that it is the Debtor (a statutorily defined term, 11 U.S.C. § 101(13) that will be prosecuting the opposition.)

Debtor (counsel for the Debtor in Possession choosing to use that statutorily defined term) filed an Opposition to the Motion on December 11, 2024. Docket 45. Debtor states:

1. The Debtor filed this Chapter 11 bankruptcy case in order to preserve the significant and material equity in the various properties of the bankruptcy estate for the benefit of all creditors, not just SBN V. There are millions of dollars in equity to be realized from the sale of the various properties of this bankruptcy estate and two other bankruptcies if given time to sell these assets in an orderly fashion. *Id.* at 2:2-6.
2. Regarding the previous Chapter 11 case, nothing in the Motion to Abandon Property filed by Focus Management nor the order restricted the Debtor from filing a Chapter 11 bankruptcy case to preserve the value of these assets. *Id.* at 2:12-14.
3. In addition, the earlier JAE2 Chapter 12 bankruptcy was not in any way filed in bad faith. The case was dismissed at the request of the Debtor when

issues arose whether wood harvesting activities met the definition of “family farmer.” The second JAE2 case was filed to protect the equity in the properties. Further, the JAE2 case filing did not and could not affect the properties of this estate and therefore is not a “multiple bankruptcy filing affecting the real property.” *Id.* at 2:15-19.

4. Debtor requests an evidentiary hearing to establish that the equity in the Properties far exceed the secured obligation. *Id.* at 2:20-23.

DISCUSSION

On Amended Schedule A/B, Dckt. 44, the Debtor states the following values for the properties at issue and on Amended Schedule D, Dckt. 25, the following claims (identified by Claim number paragraph on Schedule D) secured by such properties:

Properties Identified on Schedule 1 (Dckt. 31 by Movant)	Amended Schedule A/B; Dckt. 44	Amended Schedule D; Dckt. 25
Almond 154 Property and Property Adjacent to Home Ranch	Not Listed by Debtor	
Judy Gail Ranch	\$28,586,250	Movant Claim ¶ 2.2. (\$15,515,282)
Begun Ranch	\$3,600,000	Movant Claim ¶ 2.4. (\$ Unknown)
Lismer Ranch	\$2,400,000	Movant Claim ¶ 2.3. (\$12,792,327)
Carlile Ranch	\$640,000	Movant Claim ¶ 2.4. (\$15,515,282) (? If same as 2.2)
Business Park - Adjacent Property	\$2,956,635	Movant Claim ¶ 2.6 (\$4,753,460) - Debtor states \$0.00 Value of Collateral

Property Adjacent to Home Ranch, Debtor listed as Parcel 29	\$1,150,000	Movant Claim ¶ 2.8 (\$11,233,935)
Rogers Ranch Contiguous, Debtor lists 2 parcels, Movant 1 parcel	\$500,000	
Interest In Cooperative (Not listed by Movant)	\$751,355	Movant Claim ¶ 2.9 (\$ Unknown)
	=====	
Total Value of Properties as Stated on Amended Schedules A/B	\$40,584,240	
(In Debtor's Opposition, Dckt. 45, the asserted values of the properties in the Bankruptcy Estate in this Case are computed to be \$39,592,885, after the court deducts the values for properties Debtor in Possess states do not secure Movant's Claim.)		

Proof of Claim 23-1 filed by Movant states its secured claim to be to be (\$39,423,265.90). Ex. 1 at 5, Docket 33). In Proof of Claim 32-1 Movant states that its claim is "Likely Fully Secured" and states that it has a \$0.00 unsecured claim. *Id.*

On Schedule A/B Debtor lists the properties of the Bankruptcy Estate in this Case as having a value of \$39,832,885 that secure Movant's Claim. This does not include the value of the "Interest in Cooperative."

The Stanislaus Tax Collector is listed as being owed (\$200,000) for which "Various Properties" are encumbered. This is listed as a "Disputed" claim.

On this point, Debtor has requested an evidentiary hearing to prove value of the Properties, asserting that Debtor can establish that the values of the properties securing Movant's claim are consistent with the amount state in the Opposition – \$39,832,885.

It does not appear that there is much dispute over the value - with Movant asserting that it is likely fully secured for its (\$39,423,265) claim and Debtor asserting that the properties securing the claim have a value of \$39,832,285.

It appears that there is no significant equity for the Bankruptcy Estate in the properties identified as securing Movant's claim.

At the hearing, counsel for the Debtor in Possession addressed the court, first noting that this a Motion brought pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Dispute as to amount of the debt. The Debtor in Possession says that the amount of the debt on each loan is not known or clear at this time.

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).

According to Movant, this court's Order abandoning certain real properties back to Debtor in Possession in the related case, case no. 18-90029 at Docket 1448, was for the purpose of allowing Movant to foreclose on the Properties, and this amounts to cause for relief. Mot. 10:23-11:2, Docket 31. The court disagrees. Nothing in the court's abandonment order prohibits Debtor in Possession from filing another case and being protected by the automatic stay there.

Movant also states that cause exists for relief as Debtor in Possession has not shown he can provide adequate protection. On this point, the court agrees. The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Even taking Debtor in Possession's valuation of \$41,377,885 as true, there is not sufficient equity to provide adequate protection under the 20% standard. Debtor in Possession has not otherwise shown he intends to make adequate protection payments on Movant's secured obligations pending a sale. The court has never allowed a Debtor in Possession to sit on their hands pending some future speculative sale while secured obligations continue to grow.

Bad Faith

Regarding the bad faith allegation, in the Motion to Dismiss context, 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.

The court would note that bankruptcy court’s have found that a “desire for orderly liquidation of assets” is not a reason that would support a bad faith filing, but is a “legitimate reason[] to file bankruptcy.” *In re Sullivan*, 522 B.R. 604, 616 (9th Cir. B.A.P. 2014). However, filing a bankruptcy solely to delay state court litigation has been found to constitute a bad faith cause for dismissal in Chapter 11. *In re Silberkaus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000).

Here, no Declaration has been provided explaining how, presumably, the Debtor in Possession will diligently prosecute this Case, fulfilling his fiduciary duties and obligation in exercising the powers of a bankruptcy trustee concerning the property of the Bankruptcy Estate.

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 / rehabilitation]. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

In this case, Debtor asserts there is equity in the Properties and filed Amended Schedules to reflect as much. Debtor in Possession has requested an evidentiary hearing to show there is equity and to determine the amount of the secured obligation.

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.

With respect to the elements, the court concludes that the filing of the current Chapter 11 case in the Eastern District of California was not part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases. As reported by Debtor in Possession, the cases of JAE2 do not affect the Properties of this Estate.

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.

CONTINUANCE OF HEARING

At the December 19, 2024 Hearing the Debtor in Possession stated opposition on the record. A long discussion ensued concerning the Motion as presented, issues relating to the Debtor's prosecution of prior cases, and the handling of any objections to claims in connection with this Motion for Relief.

The court continues the hearing to 10:00 a.m. on January 23, 2025. Counsel for the Debtor in Possession in this Case, counsel for the Debtor in Possession in the JEA-2 Case, and counsel for Movant shall meet and confer as to whether they will stipulate to having a combined motion for relief from the stay, an objection to claim (if such exists), and 11 U.S.C. § 506(a) valuation of secured claim in this one contested matter.

Movant shall file an amended Motion that identifies each specific claim secured by each specific asset, setting forth the claim and computation thereof (principal, interest, costs, expenses, and the like to create the current claim balance).

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 Secured Creditor SBN V Ag I 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 Motion is **XXXXXXX**.

21ST MORTGAGE CORPORATION
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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 8, 2025. By the court's calculation, 15 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, -----

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The Motion for Relief from the Automatic Stay is granted.

21st Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Fleetwood Manufactured Home, Serial No. CAFL617A29350EX12, Label No. PFS0954174, and Decal No. LBI2804 located at 142 Lemon Tree Cir, Vacaville, CA 95687 ("Property"). The moving party has provided the Declaration of Josh Williamson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by James Allen McCabe and Lisa Colleen McCabe ("Debtor"). Decl., Docket 16.

Movant argues Debtor has elected to retain the Property and continue to pay for it on Debtor's Statement of Intentions; however, Debtor has not executed a Reaffirmation Agreement regarding the Property. Mot. 3:9-18, Docket 14. As the Property is not a Vehicle, Debtor cannot retain and pay the Property without complying with 11 U.S.C. § 521(a)(2) and 11 U.S.C. § 362(h). Therefore, in absence of Debtor redeeming or entering into a Reaffirmation Agreement as to the Property, Movant seeks relief from the automatic stay.

Movant argued that it has attempted to contact Debtor regarding a Reaffirmation Agreement, but Movant has not heard back from Debtor. Mot. 3:1-4, Docket 14.

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 \$44,451.24 (Declaration ¶ 6, Dckt. 16).

However, on Schedule A/B the Debtor does not list the Manufactured Home as an asset. Sch. A/B; p. 13-16; Dckt. 1. Rather, Debtor lists owning real property with the address 142 Lemon Tree Circle, Vacaville, California, stating that the real property has a value of \$125,000. *Id.* at 12.

On Schedule D, Debtor lists creditor has having a mortgage against the 142 Lemon Tree Circle, Vacaville, California property. Dckt. 1 at 21.

On Schedule C Debtor claims an exemption of \$80,310.20 in the 142 Lemon Tree Cir, Vacaville, California property, citing California Code of Civil Procedure § 704.730 as the basis for the exemption. That Code Section states the amount of the homestead exemption a debtor may claim.

11 U.S.C. § 521(a)(2) states:

(a) The debtor shall— . . .

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h). . .

11 U.S.C. § 362(h) provides:

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or

of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, **if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property**, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(emphasis added).

In reading these two sections together, it is clear that an individual debtor must elect to either redeem personal property or enter into a reaffirmation agreement as to personal property if that debtor elects to retain the personal property.

Collier's Treatise states on the subject:

Section 362(h) provides for the termination of the stay as to certain personal property if the debtor fails to comply in a timely manner with certain requirements in section 521. In the event that the stay is terminated as to personal property under this subsection, that property is also rendered no longer property of the estate. This subsection is applicable only in regard to personal property of the estate or of the debtor that secures a claim or is subject to an unexpired lease. Although section 362(h) is not by its terms limited to cases brought under a specific chapter, when read together with section 521, it is clear that an early stay termination under section 362(h) can occur only in a chapter 7 case in which the debtor is an individual. . .

Section 362(h)(1)(A) terminates the automatic stay as to personal property if the debtor fails to timely file a statement of intention required under section 521(a)(2).

The stay also may be terminated under this provision if the debtor fails to indicate on the statement an intention to either surrender the personal property, redeem the property pursuant to section 722, enter into a reaffirmation agreement with respect to the secured debt in accordance with section 524(c), or assume an unexpired lease on the property pursuant to section 365(p). . .

Based on the interplay between section 362(h) and section 521(a)(2), the stay should not terminate under section 362(h)(1)(A) because the debtor states an intention to perform an option on terms that the secured creditor may not find acceptable. For example, the debtor need not state an intention to reaffirm the entire amount owed on a particular debt, and the stay should continue to apply while the debtor and secured creditor attempt to negotiate the terms of a reaffirmation. Similarly, the debtor may state an intention to redeem at a reasonable redemption amount, not simply at an amount that it is anticipated the secured creditor would agree to. In addition, the stay should not terminate under section 362(h)(1)(A) if the debtor enters into a reaffirmation agreement that is later disapproved by the court.

3 COLLIER ON BANKRUPTCY ¶ 362.11.

In this case, Debtor is an individual in Chapter 7, so the provisions of 11 U.S.C. § 362(h) apply. The Property is in nature personal property, a manufactured home only being qualified as real property if it has been permanently affixed to a lot. *See* Cal Revenue and Tax Code § 5801. There has been no evidence that the manufactured home in this case has been permanently affixed to the ground with a foundation. Therefore, Debtor must either redeem the Property or enter into a Reaffirmation Agreement as to the Property, or else 11 U.S.C. § 362(h) terminates the automatic stay.

Moreover, Movant has stated it has attempted to enter into negotiations with Debtor regarding a Reaffirmation Agreement. Collier's Treatise makes clear that the court need not lift the automatic stay pursuant to 11 U.S.C. § 362(h) if the parties are negotiating terms of the Reaffirmation Agreement.

At the hearing, **XXXXXXX**

Request for Attorneys' Fees

Movant seeks attorneys fees as part of this Motion in the amount of \$1,435.00. Mot. 6:21-22. Movant cites to the applicable contractual law that shows it is entitled to such fees. *Id.* at 6:24-7:2. As part of this Motion, the court awards a flat attorney's fee in the amount of \$1,435.00 for all attorney work related to drafting and prosecuting this Motion.

Moreover, Debtor values the Property at \$125,000.00 pursuant to their Schedule A and Movant is owed approximately no less than \$44,451.24, less than the value of the Property. Because Movant has established that there is equity in the Property for Debtor and value in excess of the amount of Movant's claims as of the commencement of this case, Movant is awarded attorneys' fees as part of Movant's secured claim in the total amount of \$1,435.00 for all matters relating to this Motion. 11 U.S.C. § 506(b).

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, as Debtor has not complied with the Rules and Code by not entering into a Reaffirmation Agreement, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot:6:10-18.

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.

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 21st 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 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 Property, under its security agreement, loan documents granting it a lien in the asset identified as a 2006 Fleetwood Manufactured Home, Serial No. CAFL617A29350EX12, Label No. PFS0954174, and Decal No. LBI2804 located at 142 Lemon Tree Cir, Vacaville, CA 95687 (“Property”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property 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.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien having a value greater than the obligation secured, the moving party is awarded attorneys’ fees as part of Movant’s secured claim in the total amount of \$1,435.00 for all matters relating to this Motion.

No other or additional relief is granted.

HOSSEI KIANMAJD 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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*), Chapter 7 Trustee, and Office of the United States Trustee on January 9, 2025. By the court's calculation, 14 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 xx 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, -----

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Hossei Kianmajd ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5594 King Road Loomis, CA 95650 ("Property"). The moving party has provided the Declaration of Hossei Kianmajd to introduce evidence as a basis for Movant's contention that Charles Lawrence Segerman ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property.

Movant presents evidence that it is the owner of the Property. Decl. ¶ 2, Docket 17. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Placer. *Id.* at ¶ 7. No judgment was ever reached, this bankruptcy delaying the trial. *Id.* at ¶ 10.

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).

21. This instant case was dismissed on January 14, 2025, for failing to timely file documents. Dckt.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of January 14, 2025, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 14, 2025.

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 Hossei Kianmajd (“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 denied without prejudice as moot, this bankruptcy case having been dismissed on January 14, 2025 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Charles Lawrence Segerman (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 5594 King Road Loomis, CA 95650, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 14, 2025 dismissal of this bankruptcy case.

FINAL RULINGS

4. [24-25012-E-7](#)
[AP-1](#)

AARON BOUTSOMSI
Catherine King

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-11-24 [\[13\]](#)

HUNTINGTON NATIONAL BANK VS.

Final Ruling: No appearance at the January 23, 2025 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, and Office of the United States Trustee on December 11, 2024. By the court’s calculation, 43 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.

Huntington National Bank (“Movant”) seeks relief from the automatic stay with respect to Aaron Eravanh Boutsomsi’s (“Debtor”) real property commonly known as 13208 Zion Street NW, Coon Rapids, MN 55448 (“Property”). Movant has provided the Declaration of Jeremy Tell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 16.

The Chapter 7 Trustee filed a Nonopposition on December 23, 2024.

Movant argues Debtor has not made 13 pre-petition payments with a total arrearage of \$37,074.70. Decl. ¶ 10, Docket 16. Debtor has chosen to surrender the Property on his Statement of Intention. Docket 1.

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 \$420,749.99 (Declaration ¶ 12, Docket 16), while the value of the

Property is determined to be \$452,700, as stated in the Statement of Financial Affairs filed by Debtor. Docket 1 at 40.

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 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). The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

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.

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 Huntington National Bank (“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 13208 Zion Street NW, Coon Rapids, MN 55448 (“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.

No other or additional relief is granted.

**MERCEDES-BENZ FINANCIAL
SERVICES USA LLC VS.**

Final Ruling: No appearance at the January 23, 2025 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, and Office of the United States Trustee on December 19, 2024. By the court’s calculation, 35 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.

Mercedes-Benz Financial Services USA LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2018 Mercedes-Benz CLA250C, VIN ending in 2678 (“Vehicle”). The moving party has provided the Declaration of Sofia Taylor to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Marlyn Niebla (“Debtor”). Decl., Docket 13.

Movant argues the account was charged off on May 8, 2024, thus triggering the default provision of the Contract. As of November 6, 2024, the account is in default for the entire balance of \$26,135.36. The last payment received from Debtor was on December 8, 2023 and applied to the payment due November 26, 2023. Decl. ¶ 6, Docket 13. Moreover, Pursuant to the Statement of Intention, Debtor’s intent is to surrender the Vehicle.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 15. 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 \$26,135.36 (Decl. ¶ 6, Docket 13), while the value of the Vehicle is determined to be \$15,225, as stated on the J.D. Power Valuation Report. Ex. D at 12, Docket 15.

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.

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, as Debtor's Statement of Intention provides for surrender of the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:6, Docket 10.

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 Mercedes-Benz Financial Services USA 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 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 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 2018 Mercedes-Benz CLA250C, VIN ending in 2678 ("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.