

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 24, 2023 at 1:30 p.m.

1. <u>19-27922-E-13</u>	TANIKA HOPKINS	CONTINUED MOTION TO DISMISS
<u>RAS-1</u>	Matthew Gilbert	CASE
		11-2-22 <u>[23]</u>

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—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 Trustee, and Office of the United States Trustee on November 2, 2022. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss Case 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 Dismiss Case is XXXXXXX

On November 2, 2022, Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Premium Mortgage Acquisition Trust, (“Creditor”) filed a Motion to Dismiss for Failure to Make Plan Payments. Dckt. 23. In the caption of the Motion, it states that the

Confirmation Hearing is set for December 13, 2022. However, there is no Motion to Confirm set in this case.

Creditor states that Debtor's Plan was confirmed on February 24, 2020. Then, on March 5, 2020, Creditor filed its proof of secured claim.

Creditor states that Debtor is delinquent on the post-petition monthly payments due Creditor, with the last being made on June 30, 2022, in the amount of \$1,466. Motion, ¶ 6; Dckt. 23. Creditor states that the Trustee advises Creditor that Debtor has defaulted in Plan payments, and therefore that is why Creditor is not being paid on its claim. *Id.*, ¶ 7.

In violation of the Local Bankruptcy Rules requiring exhibits to be filed as a separate pleading, a payment history has been tacked on to the back of the Motion. Dckt. 23, p. 3-7.

No declaration is filed with the Motion and the Exhibit is not authenticated.

As presented, the Motion does not provide evidence and grounds for dismissing the Case. Additionally, Creditor has specially set a motion to dismiss a Chapter 13 case on a day that is not one for the court hearing motions to dismiss.

From the Proofs of Claim filed, Creditor is the only creditor in this case (there being one other proof of claim filed for \$766).

If the court has a properly authenticated exhibit, the payment report, it appears to show that payments have been made to Creditor through the month of June 2022, for a total of \$41,650.05 disbursed to Creditor.

With monthly Plan payments of \$2,071.00 required to be made by Debtor, and if June 2022 was the last month Debtor made a Plan payment, then it would appear that the Debtor is delinquent for five (5) months, for a total of \$10,355.00.

Though there would appear to be a five figure default over a period of five months, the Chapter 13 Trustee has not addressed the default.

At the hearing, counsel for the Trustee reported that Debtor has paid in \$19,000.00, and a significant portion is being paid to the Creditor. The parties agreed to a continuance of the hearing.

January 24, 2023 Hearing

At the hearing, ~~XXXXXXXXXX~~

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 this Chapter 13 Case filed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust, ("Creditor") 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 to Dismiss Case is **xxxxxxx**

2. [22-23199-E-13](#) **MELISSA/FRANCISCO RUELAS** **STATUS CONFERENCE RE :**
VOLUNTARY PETITION
12-9-22 [1]

Debtors' Atty: Gary Ray Fraley

Notes:

Set by order filed 1/6/23 [DCN: FF-1; Dckt 29] regarding petition documents being filed. At least one of the two Debtors and Debtors' counsel are to appear [telephonic appearance permitted].

[FF-2] Debtors' *Ex Parte* Application for Order Temporarily Extending the Automatic Stay Pending a Hearing on Motion to Extend the Stay filed 1/6/23 [Dckt 31]; Order granting filed 1/9/23 [Dckt 36]

[FF-3] Debtors' Motion to Extend the Automatic Stay as to all Creditors filed 1/10/23 [Dckt 37], set for hearing 2/7/23 at 2:00 p.m.

The Status Conference is xxxxxxx
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JANUARY 21, 2023 STATUS CONFERENCE

This Bankruptcy Case had been dismissed December 20, 2022, due to Debtor's failure to file the necessary documents for the prosecution of this Case. Order, Dckt. 22. Debtor responded, seeking to vacate the order of dismissal, with counsel explaining the mistake or inadvertence in failing to file the one missing document. Motion and Declarations; Dckts. 24, 25, 26. The court granted the Motion and vacated the dismissal. Order, Dckt. 29.

The Order vacating the dismissal also set this Status Conference to confirm that the missing document was filed and to address other case management issues that Debtor or the Trustee identified. The missing document was filed on January 6, 2023. Dckt. 30.

In connection with the final hearing on the Motion to Extend the Automatic Stay in this Case, which is set for February 7, 2023, the Chapter 13 Trustee has raised the question of whether there is an automatic stay to extend. Reply; Dckt. 43. The Trustee states, "While the dismissal was vacated, the automatic state, to the extent there was one, expired when the case was dismissed." *Id.*; p. 1:25-27.

The Trustee is correct that 11 U.S.C. § 362(c)(2)(B) provides that the automatic stay continues in effect until the bankruptcy case is dismissed. In reviewing the annotations to 11 U.S.C. § 362(c)(2)(B), the court has identified a decision from the Northern District of California on this specific issue, *In re Hakim*, 244 B.R. 820 (Bankr. ND Cal 1999). In *Hakim*, the court states:

As a general rule, whether the automatic stay is reinstated depends on whether the stay was in effect on dismissal of the case. In turn, the question of whether the stay was in effect depends on whether the stay terminated by operation of law.

In the Chapter 13 context, where a plan has been confirmed and the case is subsequently dismissed, the automatic stay is reinstated upon vacating the order of dismissal in order to afford the debtor the opportunity to complete plan payments and receive a discharge. Cases generally hold that an order vacating an order of dismissal of a Chapter 13 case restores the stay as if it had not been terminated at all pursuant to § 362(c). See *Diviney v. NationsBank of Texas (In re Diviney)*, 225 B.R. 762 (B.A.P. 10th Cir. 1998). See also *In re Nail*, 195 B.R. 922, 931-32 (Bankr. N. D. Ala. 1996) (holding that in a Chapter 13 case, the stay is automatically reimposed when the order of dismissal is vacated); *In re Bennett*, 135 B.R. 72 (Bankr. S.D. Ohio 1992) (assuming without discussion that the automatic stay is reimposed when an order of dismissal is vacated); *In re Bellman Farms*, 86 B.R. 1016, 1020 (Bankr. D. S. D. 1988) (assuming without discussion that the automatic stay is reimposed when a dismissal order is vacated). But see *Guerra v. Commissioner*, 110 T.C. 271 (1998).

In *Diviney*, NationsBank repossessed a car after an order vacated dismissal of the case. The debtors filed an adversary motion alleging that the bank violated the automatic stay. Citing two tax court cases, the bank argued in part that the stay was irrevocably terminated when the case was dismissed. The Tenth Circuit Bankruptcy Appellate Panel rejected the argument holding that when an order of dismissal is vacated, all of its effects are vacated, including the termination of the automatic stay. The court noted that without the protection afforded by the automatic stay, the debtor's ability to comply with the confirmed plan would be in jeopardy since creditors would be free to seize their collateral as well as non-exempt property. *In re Diviney*, 225 B.R. at 770.

In re Hakim, 244 B.R. 820, 821-822.

However, the cases also hold that vacating the dismissal does not retroactively create a stay for the period in which the case was dismissed.

At the Status Conference, **XXXXXXX**

RANDALL AZEVEDO 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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 27, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Glenda Azevedo and Randall Azevedo ("Movant") seek relief from the automatic stay with respect to Zachariah Tesfaye Dorsett's ("Debtor") real property located in Lassen County, California, with APN's 139-030-2011, 139-030-21-11, 139-030-22-11, 139-030-23-11, 139-030-24-11, 139-030-25-11 ("Property"). Movant has provided the Declaration of Randall Azevedo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made any payments since September of 2020. Declaration, Dckt. 40. Movant also provides evidence that as of the petition date, the amount due under the Note through April 12, 2022 was \$112,863.56. *Id.* Movant also argues that interest continues to accrue as of the date of Debtor's filing of petition, April 13, 2022. *Id.*

Movant also asserts that Debtor caused title to the Property to be transferred into his name on April 12, 2022, and then filed bankruptcy on April 12, 2022 to prevent a foreclosure sale that Movant had set for that day.

Movant further asserts that through this bankruptcy case was filed in 2022, no Chapter 13 Plan has been confirmed.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick (“the Chapter 13 Trustee”) filed a Response on January, 9 2023. Dckt. 44. The Chapter 13 Trustee asserts that the motion for relief from automatic stay should be granted.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 10, 2023. Dckt. 47. Debtor asserts that the Movant will receive preference to the detriment of the other priority and unsecured creditors and the court should issue and order the court finds just, necessary and proper. The basis for this is stated as:

If the Court Grants the Motion then Movant will receive a preference to the detriment of the other priority and unsecured creditors. Debtor estimates market value of the subject land (collateral) at \$600,000 whereas Movant estimates collateral value at \$250,000 with a \$112,000 secured claim.

Opposition, p. 1:24-27; Dckt. 47.

The Opposition further notes that Debtor had ceased communicating with his counsel. *Id.* at 2:1-2.

Debtor further notes that there is a hearing on a Motion to Convert this case to one under Chapter 7 that has been filed by the Chapter 13 Trustee, which is set for hearing on February 22, 2023.

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 \$112,863.56 (Declaration, Dckt. 40), while the value of the Property is determined to be \$600,000.00, as stated in Schedules A/B and D filed by Debtor.

While asserting that there are hundreds of thousands of dollars of value in the Property, Debtor has not been able to prosecute a Plan in this Chapter 13 case. Nor has Debtor higher a Realtor and sold the property to preserve the asserted value for the Bankruptcy Estate.

Looking at Schedules A/B filed by Debtor under penalty of perjury, there are the following substantial assets in this case:

270 Acres in Milford, CA.....	\$600,000
Movant Deed of Trust.....	(\$125,000)
Kirk Deed of Trust.....	(\$ 50,000)
Azevedo Deed of Trust.....	(\$115,000)
Manufactured Home on 35 Acres in Yoder, CO.....	\$175,000
Exemption pursuant to Colo Stat §§ 36-41-201(1)(a).....	(\$175,000)

100% Ownership of Ecclesiastic Extracts, LLC.....	\$100,000
Exemption, Colo Stat § 13-54-102(1)(g).....	(\$ 50,000)
Machinery and Equipment for Ecclesiastic Extracts, LLC.....	\$ 50,000
Exemption Colo § 13-54-102(1)(i).....	(\$ 25,000)
Inventory of BFF NY, Inc.....	\$ 25,000
Exemption Colo § 13-54-102(1)(i).....	(\$ 10,000)

Schedule A/B; Dckt. 1.

Based Debtor's own statements under penalty of perjury, there are significant assets to be administered by the fiduciary of the Bankruptcy Estate (here the Debtor in this Chapter 13 Case). Rather than administering them, Debtor appears to be failing to take any action to protect what he states are substantial value assets.

Looking at the Petition, while Debtor states he lives in Colorado, the basis for filing bankruptcy in the Eastern District of California is stated to be, "Principal asset (land) of the Debtor located in Lassen County CA." Petition, § 8; Dckt. 1.

This failure to act to administer such significant assets (based on the Debtor's own statements under penalty of perjury) would be a basis for the court to accelerate the hearing on the Motion to Convert to February 7, 2023, (the next available hearing date) and convert the case so that a Trustee, taking over the fiduciary duties to administer property of the Bankruptcy Estate, could step in and immediately address this Motion and the sale of the Property if such substantial value exists for the Bankruptcy Estate.

At the hearing, **XXXXXXX**

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 Buseh*, 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 Buseh*, 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. adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).~~

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). It is the burden of the movant under 11 U.S.C. § 362(d)(2) to establish that a debtor or estate has no equity in property. 11 U.S.C. § 362(g)(2). Although Movant has argued relief should be granted under 11 U.S.C. § 362(d)(2), Movant has not plead adequate facts establishing a lack of equity.~~

**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 that the court grant relief from the Rule as adopted by the United States Supreme Court.~~

~~————— Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.~~

~~————— 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 Glenda Azevedo and Randall Azevedo (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property located in Lassen County, California, with APNs 139-030-20-11, 139-030-21-11, 139-030-22-11, 139-030-23-11, 139-030-24-11, 139-030-25-11 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~IT IS FURTHER ORDERED~~ that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

~~No other or additional relief is granted.~~

4. [22-22917-E-13](#) **JOHN DOUGHERTY** **MOTION FOR RELIEF FROM**
[HLG-1](#) **Mary Ellen Terranella** **AUTOMATIC STAY**
 12-15-22 [21]
CHERYL HENRY VS.

**This Motion Will be Heard on the 2:00 p.m. Calendar
in Conjunction With the Debtor's
Motion to Vacate Judgment Lien**

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 and Debtor's Attorney on December 16, 2022. By the court's calculation, 39 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 xxxxxxx .
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Cheryl Henry's ("Movant") seeks relief from the automatic stay with respect to John Scott Dougherty's ("Debtor") real property commonly known as 1096 Vintage Court, Vacaville, California ("Property"). Movant has provided the Declaration of Cody S. Fischer ("Movant's Counsel") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that they have a third-position Deed of Trust in the amount of \$191,645.00 secured by Debtor's property. Declaration, Dckt. 22.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David P. Cusick, ("Trustee") filed a reply on January 4, 2023. Dckt. 44. Trustee states Debtor's proposed Plan does not provide for Movant. Additionally, Debtor is delinquent in Plan payments on the proposed Plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 10, 2023. Dckt. 47. Debtor asserts that Creditor does not have a Deed of Trust because Debtor did not consent or agree to sign any Note or Deed of Trust. Rather, Debtor argues Creditor's secured claim is based on an Abstract of Judgment, which is a nonconsensual lien subject to avoidance. Therefore, Creditor's interest is not subject to adequate protection.

From the court's review of Movant's exhibits in support of the Motion, Debtor never signed a promissory note or deed of trust that would give Creditor a consensual lien on Debtor's Property. Dckt. 23. However, Movant provides the declaration of Movant's Counsel to testify under penalty of perjury that the Promissory Note and Deed of Trust were signed and notarized on June 9 and 20, 2022, respectively.

From the court's review of the exhibits (Dckt. 23) filed in support of the Motion, Movant provides the following:

Exhibit B - Promissory Note

Date: October __, 2020, whereas Debtor promises to pay Creditor the principal sum of \$100,000.00.

Payment terms:

- (1) November 1, 2020 - May 1, 2022 - Debtor to pay Trustee, Horner Law Group, P.C., monthly payments of at least \$500.00.
- (2) On or before the May 1, 2022 payment, Debtor is to pay the remaining \$100,000.00
- (3) Late payment - \$50.00 late fee if not received by the 10th day of the month
- (4) Acceleration Clause - If Debtor fails to make a payment after the 15th day of the monthly payment is due, all outstanding settlement proceeds will become due and payable immediately and Creditor may proceed with all of their legal rights and remedies, including foreclosure proceedings.

(5) Attorney's fees - Debtor promises to pay all reasonable costs and expenses incurred by Creditor in connection with the enforcement of the Note.

Signature: The Promissory Note is signed by a "Brian Taylor," a Clerk of Court, in lieu of Debtor, on June 9, 2022. The signature is notarized.

Exhibit C - Recorded Deed of Trust

Date: November 1, 2020

Trustor: Debtor, John Scott Dougherty

Beneficiary: Creditor, Cheryl Henry

Trustee: Horner Law Group, P.C.

Transferred Interest: Debtor irrevocably grants, transfer, and assigns to Trustee in Trust with power of sale the property commonly described as 1096 Vintage Court, Vacaville ("Property").

Signature: The Deed of Trust is signed by a "Robert Oliver," a Clerk of Court, in lieu of Debtor, on June 20, 2022. The signature is notarized.

Recording Information:

Date: June 27, 2022

County: Solano County

Document Number: 202200043969

Movant provides evidence that a Deed of Trust was recorded, securing their interest. In addition to this evidence, however, Debtor provides evidence a judgment was entered against Debtor in favor of Creditor in the amount of \$127,783.17. *Id.* An abstract of judgment was recorded with Solano County on January 24, 2022, which is prior to the date the Deed of Trust was recorded. *Id.* This would create a nonconsensual interest for Creditor on Debtor's Property.

MOVANT'S REPLY BRIEF

In response to Debtor's opposition, Movant filed a Reply Brief. Dckt. 58. As evidence in support of the reply brief, Movant provides the Declaration of Movant's Counsel, Cody S. Fischer. Dckt. 59. Movant's Counsel testifies much of the same facts testified in their prior Declaration, however, provides

further evidence for the court. Dckt. 22. Under penalty of perjury, Movant's Counsel states they have personal knowledge that:

1. The underlying secured interest arises from enforcing Debtor and Movant's settlement agreement from September 30, 2020. Declaration, Dckt. 58 ¶ 3.
2. The settlement agreement arose from a Solano County Superior Court Case between the Movant and Debtor, Case No. FCS052751. *Id.*
3. After Debtor failed to comply with the terms of the settlement agreement, Movant filed a Motion to Enforce Settlement Agreement. *Id.* ¶ 4.
4. On November 30, 2021, Solano County Superior Court entered its Judgment in favor of Movant. Judgment was filed by the court on December 13, 2021. *Id.* ¶ 5.
5. As part of the Judgment, the court ordered Debtor to execute a Promissory Note and Deed of Trust, no later than December 29, 2021. *Id.* ¶ 6.
6. Debtor failed to comply with the court order. *Id.* ¶ 7.
7. In May of 2022, Debtor stated, with notary present, "Well I guess I'm going to jail then, because I'm not signing." *Id.* ¶ 7. The court notes, Movant's Counsel has not made it clear whether Movant's Counsel was present for this statement. If Movant's Counsel were present, the statement would be admissible evidence as an opposing party statement. Federal Rules of Evidence Rule 801(d)(2).
8. Movant requested an appointment of an Elisor (person authorized by the court to sign documents for another person; *see Blueberry Properties, LLC v. Chow*, 230 Cal. App. 4th 1017, 1020-1021 (2014)) to have the Note and Deed of Trust signed and notarized. *Id.* ¶ 8.
9. The Note and Deed of Trust were signed and notarized, and the Deed of Trust was recorded in Solano County on June 27, 2022. *Id.* ¶ 11.

It is not clear to the court how Movant's Counsel has personal knowledge as to the facts above. As discussed in Weinstein's Federal Evidence § 602.02:

A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness's testimony must be based on events perceived by the witness through one of the five senses.

Movant's Counsel has not informed the court whether they represented Movant and was present at the time of the listed events.

At the hearing, XXXXXXXXXXXX

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 \$191,645.00 (Declaration, Dckt. 22), while the value of the Property is determined to be \$847,000.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. See *J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Buseh*, 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 Buseh*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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 Cheryl Henry (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1096 Vintage Court, Vacaville, California (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note,

~~trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.~~

~~_____~~
~~_____ No other or additional relief is granted.~~

FINAL RULINGS

5. [19-22025](#)-E-12 JEFFREY AND JAN DYER CONTINUED MOTION FOR RELIEF
[BPC-3](#) Stephen Reynolds FROM AUTOMATIC STAY
8-12-22 [[344](#)]
RABO AGRIFINANCE LLC VS.

Pursuant to court order, Dckt. 381, the hearing on the Motion for Relief from the Automatic Stay has been continued to March 23, 2023 at 10:00 a.m.

6. [21-21478](#)-E-13 AUSTIN PICKERING MOTION FOR RELIEF FROM
[SKI-1](#) Ronald Holland AUTOMATIC STAY
12-16-22 [[33](#)]
DEBTOR DISMISSED: 01/02/23
FORD MOTOR CREDIT COMPANY
LLC VS.

Final Ruling: No appearance at the January 24, 2023 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice as moot, the case having been dismissed.

7. [21-24291](#)-E-7
[JWC](#)-1

JIWAN KAUR
Peter Cianchetta

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
5-18-22 [[33](#)]

7 thru 8

Final Ruling: No appearance at the January 24, 2023 hearing is required.

Creditor and Debtor having filed a Stipulation to Vacate the Objection, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Exemptions is dismissed without prejudice, and the matter is removed from the calendar.**

8. [21-24291](#)-E-7
[PLC](#)-1

JIWAN KAUR
Peter Cianchetta

CONTINUED MOTION TO AVOID LIEN
OF BMO HARRIS BANK
2-2-22 [[12](#)]

Final Ruling: No appearance at the January 24, 2023 hearing is required.

Creditor and Debtor having filed a Stipulation to Vacate the Motion, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Avoid Lien is dismissed without prejudice, and the matter is removed from the calendar.**