

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 30, 2018, at 1:30 p.m.

1. **18-20067-E-13 ROBERT GODFREY**
RTD-1 Mark Wolff

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
1-16-18 [\[13\]](#)**

**SCHOOLS FINANCIAL CREDIT
UNION 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 13 Trustee, and parties requesting special notice on January 16, 2018. 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 13 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 granted.

Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 BMW 7-Series, VIN ending in 9885 ("Vehicle"). The moving party has

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provided the Declaration of Robin Boyce to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Godfrey III (“Debtor”).

The Robin Boyce Declaration provides testimony that Debtor has not made one post-petition payment, with a total of \$582.43 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payments in default, with a pre-petition arrearage of \$582.43. Debtor also has a lien placed on the Vehicle by the Department of Motor Vehicles for registration fees totaling \$417 as of January 12, 2018. According to the Robin Boyce Declaration ¶ 32 “The Debtor has failed to adequately protect the interest of [“the Movant”] by his failure to provide proof of insurance, to register the vehicle, to smog the vehicle, to pay the current value on the secured claim, and to make adequate protection payments.”

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 \$28,121.86, as stated in the Robin Boyce Declaration, while the value of the Vehicle is determined to be \$27,000, as stated in Schedules B and D filed by Debtor.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick, (“the Chapter 13 Trustee”) filed a Response on January 19, 2018. Dckt. 21. The Chapter 13 Trustee asserts that Debtor’s proposed plan is designated as not a purchase money security interest with payments of \$540.00 per month beginning in month 8, then \$800.00 per month beginning in month 30.

In Debtor’s prior case, Debtor indicated that the debt for the Vehicle was a purchase money security interest with a monthly dividend of \$605.00, and Movant had filed a secured claim totaling \$30,909.72.

DISCUSSION

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 as well as failing to maintain vehicle insurance and registration. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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); 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). 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). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Schools Financial Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 BMW 7-Series (“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 by the court.

2. 18-20220-E-13 **AMBER HOWELL** **STATUS CONFERENCE RE:**
 Pro Se **VOLUNTARY PETITION**
 1-16-18 [1]

Debtor's Atty: Pro Se

Notes:

Status conference set by order of the court filed 1/19/18 [Dckt 9]. Debtor to appear in person; no telephonic appearance permitted.

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXX.
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JANUARY 30, 2018 STATUS CONFERENCE

Amber C. Howell ("Debtor") commenced a voluntary Chapter 13 case, No. 17-28076, ("First Case") on December 13, 2017. Debtor has filed her Chapter 13 Plan in the First Case, and the Chapter 13 Trustee has filed an Objection to Confirmation. 17-28076, Dckt. 15. That Objection asserts several grounds, including: (1) Debtor failed to attend her First Meeting of Creditors (which has been continued to March 8, 2018); (2) Debtor fails to provide for payment of her current mortgage payments as part of the Class 1 payment in the Chapter 13 Plan; (3) Debtor does not provide for an apparent \$99,638.00 in nonexempt equity in the Plan; and (4) the Plan does not appear feasible due to Debtor's reported income. On Schedule A, Debtor lists owning property in Shingletown, California, but she does not claim an exemption in that property (which appears to be her residence). On Schedule D, Debtor lists there being one claim secured by the property, which amount of debt leaves the substantial equity for which no exemption has been claimed.

On January 16, 2018, Debtor filed a second Chapter 13 bankruptcy case, No. 18-20220, with the Verification and Master Address List being due on or before January 23, 2018, and all other filing documents being due on or before January 30, 2018. Debtor's motion to pay filing fees in installments was granted.

Debtor having an active Chapter 13 case pending, it is unclear what purpose exists for the filing of the second case. The filing of the second bankruptcy case occurred five days after Debtor failed to attend the First Meeting of Creditors in the First Bankruptcy Case.

Debtor is prosecuting both Chapter 13 cases in *pro se*.

The court determined it is necessary to conduct joint status conferences in the two cases to determine which, if either, is being actively prosecuted by Debtor. Additionally, in light of the substantial equity in the real property (Debtor's residence) that Debtor has failed to claim as exempt, it appears that Debtor may well need to seek the assistance of counsel to help her successfully navigate these bankruptcy proceedings and the substantial value that she reports having in her residence.

In the First Chapter 13 Bankruptcy Case, the Chapter 13 Trustee has filed a Motion to Dismiss. 17-28076, Dckt. 21. The grounds stated in the Motion are: (1) Debtor failed to attend the First Meeting of Creditors set for January 11, 2018 (the continued meeting set for March 8, 2018); and (2) Debtor failed to provide a copy of the 2016 tax return.

At the Status Conference, **XXXXXXXXXXXXXXXXXXXXXXX**.

3. [17-28076-E-13](#) **AMBER HOWELL** **STATUS CONFERENCE RE:**
 Pro Se **VOLUNTARY PETITION**
 12-13-17 [1](#)

Debtor's Atty: Pro Se

Notes:

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The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXX.**

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