

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

February 13, 2025 at 10:00 a.m.

1. [24-23200-E-7](#)
[SKI-1](#)

LAURA GILLIS
Steven Alpert

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-22-25 [\[59\]](#)

AMERICAN CREDIT ACCEPTANCE
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, and Office of the United States Trustee on January 22, 2025. By the court's calculation, 22 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.

American Credit Acceptance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Chevrolet Camaro, VIN ending in 4161 ("Vehicle"). The moving party has provided the Declaration of Brooke Stripling to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Laura Stephanie Gillis ("Debtor"). Decl., Docket 64.

Movant argues Debtor has not made five post-petition payments, and two pre-petition with a total of arrearage of \$6,735.59. Declaration ¶ 7, Docket 64. Movant is in possession of the Vehicle. *Id.* at ¶ 8.

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 65. 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 \$26,420.12 (Declaration ¶ 6, Docket 64), while the value of the Vehicle is determined to be \$18,750, as stated on the J.D. Power Valuation Report.

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. 3:19-21.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by American Credit Acceptance ("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 Chevrolet Camaro, VIN ending in 4161 ("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.

MICHELLE SANTOS 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 7 Trustee, and Office of the United States Trustee on October 18, 2024. By the court's calculation, 48 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.

February 13, 2025 Hearing

The court continued this Motion to allow Trustee an opportunity to review the claims and decide whether the Trustee would be exercising the Estate's rights to pursue avoidance actions.

Trustee filed a Status Report on February 6, 2025. Docket 40. Trustee states that as the court correctly surmised, Trustee was unaware of the avoidance actions occurring in state court. Trustee intends to asserts the Estate's rights with respect to the claims, so Trustee requests the Motion be denied or at least continued to allow a deal to be struck. *Id.* at ¶ 7.

At the hearing, XXXXXXX

THE MOTION

Michele Santos ("Movant") seeks relief from the automatic stay to allow *Michelle Santos v. Bohr S. Bhandal, Paramjit Kaur, Auto Financial Group, Inc., Richa Singh*; Superior Court of California, County of Santa Clara; Case No. 23CV421935 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Julia L. Covello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Bohr Singh Bhandal ("Debtor").

The Motion states a long series of proceedings and disputes between Movant, the Debtor, and Third-Parties. The court summarizes this history as follows:

- A. On June 1, 2020, Movant and Debtor entered into a purchase agreement in which Movant sold her business to Debtor. Debtor then defaulted in the payments due to Movant. Motion, p. 2:3-7; Dckt. 14.
- B. Movant commenced an Arbitration against the Debtor in September 2020. The Arbitration Award was issued to Movant for breach of contract and unjust enrichment in September 2021. The total Arbitration award, including fees and costs, totaled (\$614,912.42). *Id.*; p. 2:8-19.
- C. The Arbitration Award was confirmed in a Judgment issued in *Santos v. Bhandal*, California Superior Court for Santa Clara County, Case No. 21CV38675 (“State Court Judgment”) on July 1, 2022. Abstracts of Judgment were issued, as a well as a personal property judgment lien. *Id.*; p. 2:20-25.
- D. On September 17, 2021, two weeks after the Arbitration Award, Debtor’s ex-wife, Parmjit Kaur, filed for dissolution of their marriage. A marital settlement agreement was executed on November 3, 2021. The marital settlement agreement includes statements concerning the liabilities of Debtor and his ex-wife, as well as how various assets were held prior to the martial settlement agreement. *Id.*; p. 2:24-3:15.
- E. The dissolution of marriage was not disclose in discovery conducted in the State Court Litigation. *Id.*; 3:16-23.
- F. Movant attempted to execute on various bank accounts of Debtor, which the ex-wife then asserted that she separately owned. *Id.*; p. 4:4-25.
- G. On August 31, 2024, filed a second State Court action, asserting claims under the Uniform Voidable Transfers Act, California Superior Court for Santa Clara County, Case No. 23CV421935 (“State Court Voidable Transfer Action”). Restraining orders and preliminary injunctions were issued in the State Court Voidable Transfer Action. *Id.*; 5:1-23.
- H. On May 13, 2024, the State Court Voidable Transfer Action was amended to add the Debtor’s Daughter (“Daughter”) as a Defendant. *Id.*; 6:4-9.
- I. Debtor filed Bankruptcy on August 15, 2024.
- J. Debtor has failed to appear at various enforcement and discovery proceedings in the two State Court actions.

In the Motion, Movant states:

Here, [Movant] and [Debtor] are litigating a fraudulent transfer case in the Superior Court of California, County of Santa Clara. This Bankruptcy Court must abstain from adjudication the fraudulent transfer

case and lift the stay to allow it to proceed to judgment. Otherwise - it will merely “help” [Debtor’s] scheme to avoid satisfaction of the Arbitration Award and fraudulently transfer assets.

Id.; p. 7:24-28.

Here, it is asserted that Debtor quit claimed Debtor’s interest in real property located in Dublin, California to his ex-wife on March 26, 2021, and such is the subject of the State Court Voidable Transfer Action. It is further asserted that such property is subject to the judgment lien of Movant. This transfer is approximately three years prior to the filing of the current Bankruptcy Case.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 22, 2024. Dckt. 21. Debtor opposes any relief against him in an attempt to impose personal liability on Debtor, Debtor asserting the deadline to file an adversary proceeding was on November 18, 2024. No adversary was ever filed. Debtor does not appear to oppose relief from stay to allow the State Court Litigation to proceed, but does object to any finding of personal liability.

MOVANT’S REPLY

Movant filed a Reply on November 27, 2024. Docket 24. Movant states that her arguments have not been sufficiently rebutted, and relief should be granted. Further, 28 U.S.C. § 1334(c) permits this court’s abstention in the State Court Litigation dispute.

DISCUSSION

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

State Court Proceedings and Bankruptcy Discharge

The court has before it the State Court Judgment and the State Court Voidable Transfer Action through which Movant is seeking to enforce its State Court Judgment.

As Debtor points out, he was granted a discharge in this Bankruptcy Case on November 26, 2024. Order of Discharge; Dckt. 23. Movant is listed as a creditor with an unsecured claim on Schedule E/F. Dckt. 1 at 21.

On the Statement of Financial Affairs, in response to Question 9, whether within one year prior to the August 15, 2024 filing of the current Bankruptcy Case the Debtor was a party of any lawsuit, court action, or administrative proceeding, Debtor responded “No.” Dckt. 1 at 32. However, Debtor was a party to the State Court Action in which the Judgment was entered and is stated to be a party in the State Court Voidable Transfer Action (See Motion, p. 5:1-5; Dckt. 14; Dec. ¶ 18; Dckt. 17).

No adversary proceeding has been commenced by Movant for a determination that the Debtor’s obligation to her should not be discharged. The deadline for filing such an complaint expired on November 18, 2024. Notice of Chapter 7 Case, ¶ 9; Dckt. 6.

The automatic stay as to the Debtor terminated upon the entry of the discharge. 11 U.S.C. § 362(c)(2)(C). However, this does not terminate the automatic stay as to property of the Bankruptcy Estate.

With the termination of the stay as to the Debtor upon entry of the discharge, the discharge injunction (protecting a debtor personally, exempt assets of a debtor, and future acquired assets of a debt) goes into effect. 11 U.S.C. § 524(a). However, this does not terminate any lien rights of a creditor or the rights of a trustee and bankruptcy estate to recover properties for the bankruptcy estate.

Congress provides in 11 U.S.C. § 544(a) the rights of a bankruptcy trustee to avoid transfers, including the rights that a creditor has to avoid transfers made by a debtor. See 5 Collier on Bankruptcy (16th Edition) ¶ 544.06.

At this juncture, it appears that to the extent that the right to avoid transfers made by Debtor, that power and right rests with the Bankruptcy Trustee in this Bankruptcy Case. While the Trustee has filed a Report of No Distribution (September 18, 2024 Docket Entry Report), it may well be that the Trustee was not aware of the State Court Voidable Transfer Action and the rights of a creditor to avoid such a transfer.

If the Trustee wants to transfer such rights to Movant, the Trustee may seek such authorization. If Movant and Trustee strike an agreement for the prosecution of such an action, again, the Trustee may seek such authorization.

At the hearing, the Trustee and Movant requested that the hearing be continued so they can address the issues relating to avoidance actions and rights.

The hearing is continued to 10:00 a.m. on February 13, 2024.

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 Michele Santos (“Movant”) having been presented to the court, Movant and the Trustee jointly requesting the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion for Relief from the Automatic Stay is
XXXXXXX.

3. [24-25357-E-7](#) **LEO MILES / MARIA GOMEZ** **MOTION FOR RELIEF FROM**
[PJK-1](#) **Pro Se** **AUTOMATIC STAY**
1-17-25 [[51](#)]

DEBTORS DISMISSED: 01/22/25
NEWREZ 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on January 17, 2025. By the court’s calculation, 27 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, with relief including pursuant to 11 U.S.C. § 362(d)(4). The automatic stay has been terminated by dismissal of this bankruptcy case.

NewRez LLC d/b/a Shellpoint Mortgage Servicing servicer for J.P. Morgan Mortgage Acquisition Corp (“Movant”) seeks relief from the automatic stay with respect to Leo Miles and Maria Gomez’s (“Debtor”) real property commonly known as 190 South Cobblestone Lane, Anaheim, California 92807 (“Property”). Movant has provided the Declaration of Justin Alexander to introduce evidence to

authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 54.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(4). Debtor is not the borrower on the note that is secured by the Property. The borrower is Ala A Abufarie (“Borrower”). As the basis for 11 U.S.C. § 362(d)(4) relief, Movant provides evidence that Borrower transferred an interest in the Property to Debtor in this case just prior to Debtor filing and to delay a scheduled foreclosure sale. Mot. 3:13-22.

However, the instant case was dismissed on January 2, 2025, for a failure to timely file documents. Dckt. 59. Movant requests the court retain jurisdiction to enter the order for relief pursuant to 11 U.S.C. § 362(d)(4).

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) *revests 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 22, 2025, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 22, 2025.

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 7 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation.

However, in this case, Borrower transferred an interest in the Property to Debtor, just prior to filing bankruptcy. The transfer was unauthorized. The transfer and bankruptcy occurred just prior to the scheduled foreclosure sale. The court concludes that the unauthorized transfer amounts to a scheme Debtor has perpetrated to delay Movant's recovery.

The Motion includes the following grounds stated with particularity relating to the transfers of interests in the Property and multiple bankruptcy cases being filed:

10. On November 25, 2024, Debtors Leo Miles and Maria Gomez filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Eastern District of California, Sacramento Division, Case No. 24-25357-E-7. **Debtors are neither a party of title to the property nor the mortgagor or an obligor on the mortgage note.** The Debtors and Movant are not in contractual privity, as the Debtor is not a party to the underlying loan documents. As such, the Debtor cannot modify the rights of the secured creditor, and relief from the automatic stay for “cause” pursuant to §362(d)(1) is warranted.

11. Further cause exists to terminate the automatic stay under 11 U.S.C. §362(d)(4) because Debtor’s bankruptcy filing is part of a scheme, the object of which is to delay, hinder or otherwise seek to interfere with Movant’s ability to enforce its state law remedies. In addition, **the scheme involves multiple fractional and unauthorized transfers which have affected the Property.** Movant requests the Court take Judicial Notice pursuant to Federal Rules of Evidence 201 of the Debtors’ schedules and Petition filed so far in the bankruptcy case, attached hereto to the Exhibit documents, at Exhibits D and E and incorporated herein by reference (the **Debtors have listed 2 properties located in Los Angeles County yet claim that their residence for purposes of filing the Chapter 7 petition is the address of 5949 Raymond Way, Sacramento, CA 92820**, which when researched on the internet has a zip code of 95820).

Motion, ¶¶ 10, 11; Dckt. 51 (emphasis added).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, if no opposition is stated to the Motion, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:2-4.

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 NewRez LLC d/b/a Shellpoint Mortgage Servicing servicer for J.P. Morgan Mortgage Acquisition Corp (“Movant”) having been presented to the court, this Bankruptcy case having been dismissed on January 22, 2025, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay terminated on January 22, 2025, by operation of law pursuant to 11 U.S.C. § 362(c)(2)(B).

IT IS FURTHER 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 190 South Cobblestone Lane, Anaheim, California 92807 (“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.

The court grants this relief to make it clear that even if the order dismissing the case is vacated, the stay has been modified as provided in this Order.

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

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

FINAL RULINGS

4. [24-25631-E-7](#) **RUDY DRUMS RESTAURANT,** **MOTION FOR RELIEF FROM**
[KMT-1](#) **LLC DBA THE LITTLE ITALIAN** **AUTOMATIC STAY**
PLACE **1-15-25 [7]**
Peter Macaluso

MICHAEL MCDERMOTT VS.

Final Ruling: No appearance at the February 13, 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 January 15, 2025. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

Michael McDermott (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 1768-1772 Pleasant Valley Road, Placerville, California 95667 (“Property”). The moving party has provided his own Declaration to introduce evidence as a basis for Movant’s contention that Rudy Drums Restaurant, LLC dba The Little Italian Place (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 9.

Movant further requests authorization to proceed with appropriate state channels in disposing of various items of person property left on the Property so that Movant may re-let the premises and mitigate damages. Mot. 3:9-15. The personal property is described in the Motion as follows:

1. three televisions,
2. two iPads, a stove,

3. a convection oven,
4. a fryer,
5. three prep tables,
6. eight dish racks,
7. 16 tables,
8. 48 chairs,
9. two Bose wall speakers,
10. two lowboy refrigerators,
11. one glass case refrigerator,
12. two couches, and
13. a jukebox.

(“Personal Property”). In the court’s review of Debtor’s Schedules, it does not appear that these items of Personal Property are listed. Docket 1.

Movant presents evidence that it is the owner of the Property. *See* Lease agreement, Ex. A, Docket 10. 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 El Dorado and received a judgment for possession, with a Writ of Possession having been issued by that court on December 5, 2024. Exhibit C, Dckt. 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).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Movant has also properly identified the items of Personal Property Movant seeks to dispose of in order to bring the Property back into suitable condition for leasing. Therefore, the same relief is granted as to the items of Personal Property so Movant may exercise non-bankruptcy remedies in clearing the premises.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Michael McDermott (“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 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the real property commonly known as 1768-1772 Pleasant Valley Road, Placerville, California 95667. This same relief is also granted as to the following items of personal property left on the real property:

- a. three televisions,
- b. two iPads, a stove,
- c. a convection oven,
- d. a fryer,
- e. three prep tables,
- f. eight dish racks,
- g. 16 tables,
- h. 48 chairs,
- i. two Bose wall speakers,
- j. two lowboy refrigerators,
- k. one glass case refrigerator,
- l. two couches, and

m. a jukebox.

No other or additional relief is granted.

5. [24-25545](#)-E-7
[KMM-1](#)

ANGELLA BARR
Eric Schwab

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-3-25 [10]**

**TOYOTA MOTOR CREDIT
CORPORATION VS.**

Final Ruling: No appearance at the February 13, 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 January 3, 2025. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Toyota Sienna, VIN ending in 1608 (“Vehicle”). The moving party has provided the Declaration of Debra Knight to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Angella Ann Barr (“Debtor”). Decl., Docket 13.

Movant argues Debtor is at least two payments past due for the months of September of 2024 and November of 2024. Decl. 2:25-27. Debtor has also failed to maintain insurance on the Vehicle. *Id.* at 3:8-20. Of note, Debtor intends to surrender the Vehicle.

The Chapter 7 Trustee filed a Nonopposition on January 15, 2025.

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 12. 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 \$31,947.65 (Declaration 4:1, Docket 13), while the value of the Vehicle is determined to be \$50,825, as stated on the J.D. Power Valuation Report.

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 a failure to maintain insurance on the Vehicle. 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 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.

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 Toyota Motor Credit 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 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 2021 Toyota Sienna, VIN ending in 1608 (“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.

No other or additional relief is granted.