UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 15, 2022 at 1:30 p.m.

---

1. **19-21013-E-13** **MELISSA LOVATO** **CONTINUED MOTION FOR RELIEF**
APN-1 **Thomas Amberg** **FROM AUTOMATIC STAY**
SPECIALIZED LOAN SERVICING, LLC VS. **7-27-21 [33]**

No Appearance Required in Light of the Final Ruling Approving the Loan Modification Unless Movant or Debtor Believe Denial Without Prejudice is Incorrect

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 13 Trustee, and Office of the United States Trustee on July 27, 2021. 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 denied without prejudice.

Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Melissa Dawn Lovato's ("Debtor") real property commonly known as 2955 Stable Drive, West Sacramento, California ("Property"). Movant has provided the Declaration of Steven Ross 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 twelve (12) post-petition payments, with a total of $31,451.95 in post-petition payments past due. Declaration, Dckt. 35.

TRUSTEE'S NON-OPPOSITION

Trustee David P. Cusick ("the Chapter 13 Trustee") filed a Nonopposition on August 16, 2021. Dckt. 43. The Chapter 13 Trustee asserts that the Debtor is current under the pending plan and the Creditor is included as a Class 2A and Class 4 Creditor under the confirmed plan. *Id.* The Trustee has not disbursed any payments towards Debtor's post-petition, but has disbursed $733.38, paying the arrears in full. *Id.*

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 $402,847.40 (Declaration, Dckt. 35), while the value of the Property is determined to be $387,000.00, 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 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).

At the October 12, 2021 hearing, counsel for Movant appeared and requested that the court continue the hearing in light of Debtor presenting seeking a loan modification. The hearing is continued as requested by Movant and Debtor.

The Parties filed they Stipulation to continue the hearing, with the court granting the requested continuance.

FEBRUARY 15, 2022 HEARING

The court has granted the Motion to Approve Loan Modification entered into by Debtor and Movant. The Modification having been authorized, this Motion is denied without prejudice.

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 Melissa Dawn Lovato ("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 for Relief from the Automatic Stay is denied without prejudice.

2. 18-90029-E-11 FWP-18 — JEFFERY ARAMBEL, Pro Se — CONTINUED MOTION TO ABANDON 8-26-21 [1513]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 to Abandon is xxxxxxxxxxxxxxxxxxxxxxxxxxxx.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In*

re Vu), 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon 100% membership interest in JEA2, LLC ("Property"). The Property is encumbered by the liens of Summit, securing claims in the aggregate of $43,652,766.22. The Declaration of Juanita Schwartzkopf has been filed in support of the Motion and provides testimony that there is no realizable equity in the Property.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to abandon the Property.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1587.

December 16, 2021 Hearing

The Plan Administrator filed a Status Report requesting a continuance to allow for further negotiations be pursued before this asset is abandoned.

January 12, 2022 Status Report

On January 12, 2022, the Plan Administrator filed a status report stating their intention to defer the abandonment if Summit decides not to go forward with its foreclosure sale to explore the Reorganizing Debtor's proposed sale or for other reasons. Dckt. 1614. The Plan Administrator states their intention to ask the court for either: (1) continuance to February 17, 2022 or (2) court's authorization for the Plan Administrator to complete the abandonment upon filing a subsequent Notice of Abandonment.

January 13, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that while the Plan Administrator will be appropriate, Summit has not noticed its foreclosure, there being ongoing discussions with the Debtor concerning the sale of other properties that have already been abandoned. Counsel for Summit reported that the foreclosure sale has been set for February 11, 2022, has authority to continue it to February 18, 2022.

February 15, 2022 Hearing

The court notes no status report has been filed prior to the February 15, 2022 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 Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 Abandon is xxxxxxxxxxxxx

3. 22-20188-E-13 RHS-1 — ESTATE OF BERTHA REID — ORDER TO SHOW CAUSE
Pro Se — 2-1-22 [12]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Chapter 13 Trustee, Interested Parties, and US Attorney as stated on the Certificate of Service on February 10, 2022. Dckt. 18. The court computes that 5 days' notice has been provided.

The court issued an Order to Show Cause for why the case should not be dismissed due to various deficiencies in the Chapter 13 filings.

The Order to Show Cause is sustained, and the case is dismissed.

ORDER TO SHOW CAUSE

On January 27, 2022, Roger A. Brown, Jr., identified as the "Administrator for the Estate of Bertha Reid," filed a Voluntary Petition for Individuals Filing for Bankruptcy in which the Debtor is identified as "Estate of Bertha Reid." Dckt. 1. The address where the Debtor "lives" is stated to be 339 Light House, Sacramento, California.

There is no signature provided on page 6 of the Voluntary Petition for Debtor or an authorized representative of Debtor. Dckt. 1 at 6. The last page of the Petition stating that the person filing the Petition is not represented by an attorney is signed by Roger A. Brown, Jr. *Id*. at 8. No other contact information than the Light House address is provided for Roger A. Brown, Jr. on page 8 of the Petition.

Attached to the Petition is a document titled "Letters Special Administration" for the Estate of Bertha Reid, with a case number 34-2021-00312549, with the court identified as the California Superior Court for the County of Sacramento. *Id*. at 9.

The attorney on the Letters Special Administration for the Estate of Bertha Reid is identified as Steven R. Matulich, State Bar No. 71851, with his address stated to be 1104 Corporate Way, #106, Sacramento, California, 95831. *Id*. Mr. Matulich is listed as an attorney with an active license to practice law by the State Bar of California.

Included with the Petition are several documents relating to the appointment of Roger A. Brown, Jr. as special administrator for the Estate of Bertha Reid. In these documents, Roger A. Brown, Jr. Is identified as a "nominee of Peter Reid, one of Bertha Reid's children and an heir of the estate." Dckt. 1 at 25.

Who and What May File Bankruptcy

Congress provides in 11 U.S.C. § 109(b) that a "person" may be a Chapter 7 debtor, with railroads, and various domestic and foreign insurance and financial institutions excluded. The term person is defined in 11 U.S.C. § 101(41) as follows:

> (41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—
>
> (A) acquires an asset from a person—
>
> (I) as a result of the operation of a loan guarantee agreement; or
>
> (ii) as receiver or liquidating agent of a person;
>
> (B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or
>
> (C) is the legal or beneficial owner of an asset of—
>
> (I) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
>
> (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;
>
> shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

Though non-exclusive, a "Person" includes individuals and business entities. It has long been established that the administrator of a decedent's estate or a decedent's estate is not a "person" eligible to file bankruptcy. These cases include the following decisions:

> Based on these indicia, we conclude that the Code's definition of "person," and therefore its definition of "debtor," excludes insolvent decedents' estates. Other courts that have addressed this question have uniformly embraced this view. *See In re Estate of Whiteside*, 64 B.R. 99, 102 (Bankr.E.D.Cal.1986); *In re Estate of Patterson*, 64 B.R. 807, 808 (Bankr.W.D.Tex.1986); *In re Jarrett*, 19 B.R. 413, 414 (Bankr.M.D.N.C.1982); *In re 299 Jack-Hemp Assocs.*, 20 B.R. 412, 413 (Bankr.S.D.N.Y.1982); *In re Estate of Brown*, 16 B.R. 128, 128 (Bankr.D.D.C.1981). These courts generally have opined that Congress elected not to extend bankruptcy jurisdiction to insolvent decedents' estates because the individual states have developed, through their probate systems, a comprehensive and specialized machinery for the administration of such estates. *See Jarrett*, 19 B.R. at 414; 299 *Jack-Hemp Assocs.*, 20 B.R. at 413. Some of the courts have also noted that the policy of the Bankruptcy Code is to give individuals a "fresh start" through discharge of their debts, and that this policy is not furthered by bankruptcy administration of decedents' estates. *See Jarrett*, 19 B.R. at 414; cf. *In re Estate of Hiller*, 240 F. Supp. 504, 504 (N.D.Cal.1965) (interpreting 1898 Bankruptcy Act); *Adams v. Terrell*, 4 Wood. 337, 4 F. 796, 801 (W.D.Tex.1880) (in the case of an insolvent decedent's estate, "death has already discharged [the decedent] of all personal liability").

In re Goerg, 844 F.2d 1562, 1566 (11th Cir. 1988)

In 2006 the Supreme Court discussed this probate exception in less exclusive terms, making it clear that merely because the “p word” was involved the federal court could walk away from the matter.

> Reversing the Ninth Circuit, which had ordered the case dismissed for want of federal subject-matter jurisdiction, this Court held that federal jurisdiction was properly invoked. The Court first stated:
>
> > "**It is true that a federal court has no jurisdiction to probate a will or administer an estate** . . . . But it has been established by a long series of decisions of this Court that **federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court**." 326 U.S., at 494, 66 S. Ct. 193, 90 L. Ed. 165 (quoting Waterman, 215 U.S., at 43, 30 S. Ct. 10, 54 L. Ed. 80).
>
> Next, the Court described a probate exception of distinctly limited scope:
>
> > "[W]hile a **federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court**, . . . it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." , 66 S. Ct. 193, 90 L.

Ed. 165.

> The first of the above-quoted passages from *Markham* is not a model of clear statement. The Court observed that federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants against a decedent's estate, **"so long as the federal court does not *interfere with the probate proceedings*."** *Ibid.* (emphasis added). Lower federal courts have puzzled over the meaning of the words "interfere with the probate proceedings," and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate. *See, e.g., Mangieri v. Mangieri*, 226 F.3d 1, 2-3 (CA1 2000) (breach of fiduciary duty by executor); *Golden ex rel. Golden v. Golden*, 382 F.3d 348, 360-362 (CA3 2004) (same); *Lepard v. NBD Bank, Div. of Bank One*, 384 F.3d 232, 234-237 (CA6 2004) (breach of fiduciary duty by trustee); Storm v. Storm, 328 F.3d 941, 943-945 (CA7 2003) (probate exception bars claim that plaintiff's father tortiously interfered with plaintiff's inheritance by persuading trust grantor to amend irrevocable inter vivos trust); *Rienhardt v. Kelly*, 164 F.3d 1296, 1300-1301 (CA10 1999) (probate exception bars claim that defendants exerted undue influence on testator and thereby tortiously interfered with plaintiff's expected inheritance).
>
> We read Markham's enigmatic words, in sync with the second above-quoted passage, to proscribe "disturb[ing] or affect[ing] the possession of property in the custody of a state court." 326 U.S., at 494, 66 S. Ct. 296, 90 L. Ed. 256. True, that reading renders the first-quoted passage in part redundant, but redundancy in this context, we do not doubt, is preferable to incoherence. In short, **we comprehend the "interference" language in *Markham* as essentially a reiteration of the general principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res***. *See, e.g., Penn General Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195-196, 55 S. Ct. 386, 79 L. Ed. 850 (1935); *Waterman*, 215 U.S., at 45-46, 30 S. Ct. 10, 54 L. Ed. 80. Thus, **the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate**; it also **precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court**. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.

Marshall v. Marshall 547 U.S. 293, 311-312 (2006).

Even with the admonition from the Supreme Court not to drop a proceeding merely because it would relate to a probate proceeding, including a probate estate as a “person” who may file bankruptcy would necessarily wrench from the state court the administration of the probate estate and property of the probate estate, sweeping it all into the bankruptcy estate 11 U.S.C. § 541, 28 U.S.C. § 1334 (e) (granting exclusive federal court jurisdiction over all property of the bankruptcy estate).

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 Order to Show Cause re the filing of a bankruptcy case for the Estate of Bertha Reid 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 Order to Show Cause is **xxxxxxx** and xxxxxxx

4. 22-20188-E-13 ESTATE OF BERTHA REID MOTION TO DISMISS
Pro Se 2-1-22 [16]

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Interested Parties, Chapter 13 Trustee, and U.S. Trustee as stated on the Certificate of Service on February 1, 2022. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on deficiencies in Debtor's petition.

The Motion to Dismiss is xxxxxxx .

The court's review of Debtor's petition reflects the following deficiencies with the bankruptcy case:

1. There is no signature provided on page six (6) of the Voluntary Petition for Debtor or an authorized representative of Debtor. However, Included with the Petition are several documents relating to the appointment of Roger A. Brown, Jr. as special administrator for the Estate of Bertha Reid.

2. The last page of the Petition stating that the person filing the Petition is not represented by an attorney is signed by Roger A. Brown, Jr.

3. No other contact information than the Light House address, 339 Light House, Sacramento, California, is provided for Roger A. Brown, Jr. on page eight (8) of the Petition, which is also identified as Debtor's address.

DEBTOR'S MOTION TO DISMISS

Debtor filed a Motion to Dismiss the Chapter 13 bankruptcy case on February 9, 2022. Dckt. 16.

xxxxxxx.

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 the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), 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 is **xxxxxxx**.

FINAL RULINGS

5. **21-24068-E-13 ETW-1** **JOHN GRUE VS.**

CATHERINE TEEL
Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
1-11-22 [22]

Final Ruling: No appearance at the February 15, 2022 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 (*pro se*) and Chapter 13 Trustee on January 11, 2022. 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.

John Grue ("Movant") seeks relief from the automatic stay with respect to Catherine Ann Teel's ("Debtor") real property commonly known as 7909 Glen Stone Avenue, Citrus Heights, California ("Property"). Movant has provided the Declaration of John Grue to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant's information sheet indicates Debtor has not made one (1) post-petition payments, with a total of $3,751.96 in post-petition payments past due. Dckt. 24. Movant also provides evidence that there are nine (9) pre-petition payments in default, with a pre-petition arrearage of $33,767.64. *Id.*

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David P. Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on February 1, 2022. Dckt. 40.

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 $314,418.06 (Declaration, Dckt. 25), while the value of the Property is determined to be $455,000.00, 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 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)

Movant also moves the court for an Order under 11 U.S.C. § 362(d)(2). Motion at 2:1. However, the facts do not indicate that there is no equity in the property. Rather, there appears to be over $100,000.00 in equity. Therefore, Movant is not entitled to relief under 11 U.S.C. § 362(d)(2).

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.* Debtor has filed the following cases within the last two years:

A. Case No. 20-21539
   1. Filed: March 13, 2020
   2. Chapter 13

3. Dismissal Date: October 2, 2020
4. Reason for Dismissal: Failure to make all payments due under the confirmed chapter 13 plan.

B. Case No. 21-23918
1. Filed: November 17, 2021
2. Chapter 13
3. Dismissal Date: November 29, 2021
4. Reason for Dismissal: Failure to timely file documents.

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

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of debtor's previous two filings and failure to follow through in those cases. In effect, this is a series of bankruptcy attempts by Debtor. Debtor's filings appear to be a series as they have filed three Chapter 13 cases in the Eastern District of California within a period of only two years.

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.

Granting 11 U.S.C. § 362(d)(4) relief is partially duplicative of the statutory relief granted by Congress in 11 U.S.C. § 362(c)(4)(A) preclusion of any stay going into effect in a bankruptcy case if there had been two prior cases pending and dismissed within one year of the filing of another case. Here, Debtor, in pro se, has filed and allowed to be dismissed two prior cases, 21-23918 dismissed on November 29, 2021, and the current case, dismissed on February 11, 2022. Thus, even without the 11 U.S.C. § 362(d)(4) being relief granted here, no automatic stay would automatically go into effect upon the filing of a third case between now and November 29, 2022.

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.

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 not 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 not 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 John Grue ("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 7909 Glen Stone Avenue, Citrus Heights, 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.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.