

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**February 16, 2023 at 10:00 a.m.**

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1. [22-90041-E-7](#)  
[SSA-1](#)

**AREA X INC.**  
**David Johnston**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
TO COMPEL ABANDONMENT  
1-24-23 [\[92\]](#)**

**CARY HAHN 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).**  
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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2023. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay and Abandonment of Property 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, -----.

<p><b>The Motion for Relief from the Automatic Stay and Abandonment of Property is granted.</b></p>
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Cary Hahn ("Movant") seeks relief from the automatic stay to allow the pending action, *Ronald I. Koftinow and Debroah J. Koftinow v. Mark McManis, Area X, Inc., and Cary Hahn*,

Stanislaus County, Case No. CV-21-003047, (the “State Court Litigation”), to be concluded. Additionally, Movant requests the real property commonly known as 829 Brady Avenue, Modesto, California (“Property”) to be abandoned to the Debtor. Pursuant to Local Bankruptcy Rule 9014-1(d)(5)(B)(iv), motions for relief and abandonments of property can be combined in one motion. Movant has provided the Declaration of Cary Hahn to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Area X, Inc. (“Debtor”).

Movant argues that relief is needed to litigate claims involving the Property that will not impact the bankruptcy case. Declaration, Dckt. 95.

No opposition has been filed by Debtor or Trustee.

## **DISCUSSION**

### **Relief from Stay**

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).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Geoffrey Richards (“the Chapter 7 Trustee”), or property of the bankruptcy estate other than the subject Property. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

### **Abandonment of Property**

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 Movant requests that the court authorize abandonment of the Property. The Property is encumbered by the liens of Hahn, Koftinow, and Stanislaus County Tax Collector, securing claims of \$390,000, \$148,617.25, and \$17,043.48, respectively. The Declaration of Cary Hahn has been filed in support of the Motion and provides testimony that the value of the Property is, at best, \$420,000.00.

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 Chapter 7 Trustee to abandon 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 and Motion to Abandon filed by Cary Hahn (“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 modified as applicable to Area X Inc. (“Debtor”) 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 to proceed with litigation in Ronald I. Koftinow and Debroah J. Koftinow v. Mark McManis, Area X, Inc., and Cary Hahn, Stanislaus County, Case No. CV-21-003047.

**IT IS FURTHER ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 829 Brady Avenue, Modesto, California is abandoned to Area X Inc. by this order, with no further act of the Chapter 7 Trustee required.

**IT IS FURTHER ORDERED** automatic stay is not modified with respect to enforcement of any judgment for personal liability against Debtor, Geoffrey Richards (“the Chapter 7 Trustee”), or property of the bankruptcy estate other than the subject Property. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.