

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: FEBRUARY 19, 2020
CALENDAR: 1:00 P.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [19-15301](#)-A-7 **IN RE: ALFONSO/JOANNA ISIAH**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
12-23-2019 [\[5\]](#)

ALFONSO ISIAH/MV

No Ruling

2. [20-10102](#)-A-7 **IN RE: HUMBERTO CABRERA**
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2020 [\[14\]](#)

U.S. BANK TRUST NATIONAL
ASSOCIATION/MV
L. JAQUEZ/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

Disposition: Granted in part; denied in part as moot.

Order: Civil minute order

RELIEF UNDER SECTION 362(j)

"On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated." 11 U.S.C. § 362(j).

§ 362(c)(4)(A) provides that where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed, the stay shall not go into effect upon filing of the later case.

The present bankruptcy case is the fourth filed case by the debtor since September 2019. This present case and all previous cases were dismissed. The court therefore confirms to the movant under § 362(j) that the stay had never taken effect.

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d)(1) AND (2)

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. In re Casgul of Nevada, Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because this case has been dismissed and a stay never took effect in this case prior to dismissal, the court cannot grant relief from a non-existent stay under to § 362(d)(1) or (d)(2). The court denies movant's motion as to § 362(d)(1) and (d)(2) as moot.

RELIEF UNDER SECTION 362(d)(4)

The movant requests relief from the automatic stay under § 362(d)(4). Section 362(d)(4) authorizes binding, in rem relief from stay with to respect real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4). An order entered under this subsection must be recorded in compliance with state law to "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." *Id.*

However, similar to paragraphs (1)-(3) of § 362(d), paragraph (4) provides a basis for relief from the automatic stay. Subsection (d)(4) begins with following language: "On request of a party in interest . . . , the court shall grant relief *from the stay provided under subsection (a)* of this section, such as by terminating, annulling, modifying, or conditioning such stay-(4) with respect to a *stay of an act* against real property *under subsection (a)* . . . , if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors" *Id.* § 362(d)(4) (emphases added).

Based on its plain language, paragraph (4) of § 362(d) is one of several disjunctive grounds for relief *from the automatic stay* under § 362(a). It cannot be the basis for relief in a vacuum when no stay exists. Although relief under § 362(d)(4) may be binding in a subsequent bankruptcy case, a prerequisite to such relief is an extant automatic stay under § 362(a).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because this case has been dismissed and a stay never took effect in this case prior to dismissal, the court cannot grant relief from a non-existent stay under § 362(d)(4). The motion will be denied as moot.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as to §§ 362(d)(1) and (d)(4) as moot.

IT IS FURTHER ORDERED that the court grants relief under § 362(j), confirming that the stay had never taken effect in this case.

3. [17-10608](#)-A-7 **IN RE: JOHN ANTONGIOVANNI**
[DMG-2](#)

CONTINUED OBJECTION TO CLAIM OF J. STANLEY AND KATHLEEN
ANTONGIOVANNI LIVING TRUST, CLAIM NUMBER 27
8-22-2019 [[135](#)]

KERN RIDGE GROWERS, LLC/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

Final Ruling

The objection having been withdrawn, the matter is dropped from
calendar.

4. [19-15319](#)-A-7 **IN RE: MICHELLE CHAVEZ**
[SC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-20-2020 [[20](#)]

BRECKENRIDGE PROPERTY FUND
2016, LLC/MV
SAM CHANDRA/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

MOOTNESS STANDARDS

Federal courts have no authority to decide moot questions.
Arizonans for Official English v. Arizona, 520 U.S. 43, 67-68, 72
(1997). "The basic question in determining mootness is whether there
is a present controversy as to which effective relief can be
granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45
(9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d
693, 698 (9th Cir.1984)).

RELIEF UNDER SECTION 362(d)(1) AND (2)

Dismissal of a bankruptcy case terminates the automatic stay. Under
§ 362(c)(1), the stay of an act against property of the estate
terminates when such property leaves the estate. 11 U.S.C. §
362(c)(1). And the dismissal of a case "revests the property of the
estate in the entity in which such property was vested immediately
before the commencement of the case." *Id.* § 349(b)(3). Under §
362(c)(2), the stay of "any other act" under § 362(a) terminates
upon the earlier of three events: (i) dismissal of a case, (ii)
closure of a case, or (iii) the time a discharge is granted or
denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The present motion for relief from the stay has been presented to the court. Having considered the motion together with papers filed in support and opposition to it, and having heard the arguments of counsel, if any, and good cause appearing,

IT IS ORDERED that the motion is denied as moot.

5. [18-14642](#)-A-7 **IN RE: VICTOR/ELIZABETH HOLGUIN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-16-2020 [[30](#)]

NISSAN-INFINITI LT/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED: 03/04/2019

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: 2017 Nissan Altima

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO THE ESTATE

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 1 pre-petition payment of \$446.85 and 14 post-petition payments aggregating \$6,255.90 due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Nissan-Infiniti LT's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 2017 Nissan Altima. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

6. [19-13850](#)-A-7 **IN RE: GERARDO/NANCY VACA**
[GEG-1](#)

MOTION TO COMPEL ABANDONMENT
1-28-2020 [[28](#)]

GERARDO VACA/MV
GLEN GATES/ATTY. FOR DBT.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Real Property Description: 2035 Enrico Avenue, Firebaugh, California
93622

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

7. [20-10279](#)-A-7 **IN RE: ASHLEY PEREZ**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-3-2020 [\[11\]](#)

MECHANICS BANK/MV
VINCENT FROUNJIAN/ATTY. FOR MV.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2014 Chevrolet Cruze

Value of Collateral: \$4,950.00

Liens Encumbering Collateral: \$8,782.44

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Mechanics Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2014 Chevrolet Cruze, as to all parties in

interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. [19-15285](#)-A-7 **IN RE: EARL/JAN GILLIAM**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2020 [[15](#)]

ACAR LEASING LTD/MV
JENNIFER WANG/ATTY. FOR MV.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2018 Chevrolet Tahoe

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)).

The debtor is obligated to make monthly payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle

described above. The debtor has defaulted under such lease agreement with the moving party, and 4 pre-petition payments totaling \$2,529.76 and 1 postpetition payment of \$632.44 are past due. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default.

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Acar Leasing LTD's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 Chevrolet Tahoe, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.