

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

February 20, 2025 at 10:00 a.m.

1. [24-90700-E-7](#)
[SC-1](#)

ELIJAH DAVIS AND
MONSERATH VOLKOV
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-23-25 [\[48\]](#)

DEBTORS DISMISSED: 01/28/25
CHAMPERY REAL ESTATE 2015,
LLC VS.

**THE COURT HAS POSTED THIS AS A TENTATIVE RULING
TO AFFORD MOVANT'S COUNSEL TO ADDRESS ANY CHANGES
COUNSEL BELIEVES APPROPRIATE TO INCLUDE IN THE ORDER**

**NO APPEARANCE OF COUNSEL REQUIRED FOR HEARING IF THE
TENTATIVE AND FORM OF THE ORDER ARE SATISFACTORY**

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*), Chapter 7 Trustee, and Office of the United States Trustee on January 23, 2025. By the court's calculation, 28 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 granted, the court confirming
that the automatic stay has been terminated by dismissal of this bankruptcy case.**

February 20, 2025 at 10:00 a.m.

Champery Real Estate 2015, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 261 Vista Creek Circle, Sacramento, Ca 95635 (“Property”). The moving party has provided the Declaration of Olivia Reyes to introduce evidence as a basis for Movant’s contention that Elijah Davis and Monserath Volkov (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on March 8, 2024. Decl. ¶ 3, Docket 50. 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 Sacramento and received a judgment for possession. Exhibit 2, Dckt. 51.

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership and the Judgment. 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).

This Bankruptcy Case was dismissed on January 28, 2025 for failing to timely file documents. Dckt. 62.

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 28, 2025, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 28, 2025.

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 Champerty Real Estate 2015, LLC (“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 is granted, this bankruptcy case having been dismissed on January 28, 2025 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Elijah Davis and Monserath Volkov (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 261 Vista Creek Circle, Sacramento, Ca 95635, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 28, 2025 dismissal of this bankruptcy case.

**BORIS A. & MARINA S.
CHECHELNITSKY, TRUSTEES OF
THE BORIS A. & MARINA S.
CHECHELNITSKY REVOCABLE
LIVING TRUST DATED JANUARY**

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, other parties in interest, and Office of the United States Trustee on November 18, 2024. By the court's calculation, 24 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.

The Motion for Relief from the Automatic Stay is XXXXXXX.

February 20, 2025 Hearing

The court continued the hearing on this Motion for administrative purposes, Debtor and Trustee having reached economic terms that will allow Debtor to retain equity in the his residence and allow Trustee to liquidate the Osprey Property.

At the hearing, XXXXXXX

COURT'S CONTINUANCE OF HEARING

On December 12, 2024, the hearing on this Motion for Relief From the Automatic Stay was conducted in conjunction with Motions by the Chapter 7 Trustee for an order compelling the Debtor, along

with Debtor's counsel, to fulfill the Debtor's statutory obligation (11 U.S.C. § 334) to appear at the 341 Meeting of Creditors (Debtor and Debtor's counsel having failed to appear at the originally scheduled and the first continued 341 Meeting), and the Chapter Trustee's Motion to set a deadline for the Debtor to make any changes to claimed exemptions. For this Motion for Relief From the Stay, the court stated that it would grant the Motion.

As the court prepared its written ruling for the Civil Minutes and re-read the Trustee's exhibits, it appears to the court that in granting such relief the Debtor and Debtor's counsel may well not fully appreciate the impact of such relief and possible foreclosure of the property while it is property of the Bankruptcy Estate (and beyond the control of the Debtor). The Debtor must actively work to protect his claimed exemptions, and that the duties and obligations of a Chapter 7 Trustee run to the Bankruptcy Estate and not the Debtor (who in this case is represented by counsel to provide not only legal advice, but commencing such proceedings as are in the Debtor's interest to protect the Debtor's exempt assets).

In light of the grounds upon which this Motion has sought relief, the substantial equity cushion in which Debtor has claimed his three figure homestead exemption, and the email communications between Debtor's Counsel and the Chapter 7 Trustee, the court determines that conducting a continued expedited final hearing on this Motion is necessary and proper.

The court has continued this for an expedited final hearing at 11:30 a.m. on December 19, 2024, specially set in the Sacramento Division Courthouse.

The basis for such conclusion is stated below.

REVIEW OF MOTION

Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common ("Movant") seeks relief from the automatic stay with respect to David Martinez's ("Debtor") real property commonly known as 425 Osprey Drive, Patterson, California 95363 ("Property"). Movant has provided the Declaration of Chris Boulter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 120.

Movant argues Debtor has not made 17 monthly installment payments, including multiple postpetition payments, with a current payment delinquency of (\$35,872.72). Mot. 3:14-20, Docket 117; Decl. ¶ 9, Docket 120. Good through December 1, 2024, the total outstanding payoff balance on Movant's loan has increased to approximately (\$242,691.46), which consists of a principal balance of (\$181,000.00), accrued interest of (\$38,156.29), late charges of (\$4,009.38), and total fees, costs and charges in the sum of (\$19,525.79). Decl. ¶ 10, Docket 120.

Movant states that there is a debt of at least approximately (\$119,815.00) secured by a senior deed of trust that encumbers this Property. Guild Mortgage filed Proof of Claim 2-1 on January 23, 2024, which stated its secured claim to be (\$114,044.83). There were no prepetition defaults as of the time the proof of claim was filed. The monthly loan payment and the monthly escrow payment for the Guild Mortgage Claim is stated to be \$1,250.28. POC 2-1, Proof of Claim Attachment.

Movant using the Debtor's stated value for the Property of \$500,000.00, after deducting Movant's secured claim, the (\$114,004.83) Guild Mortgage secured claims stated in Proof of Claim 2-1, and estimated costs of sale of (\$40,000), which is stated to be Debtor's estimate and would equal 8% of a \$500,000 gross sale, there is \$132,448.31 in equity for the Debtor. As discussed below, the Debtor has exempted this equity pursuant to his homestead exemption. Scheduled C; Dckt. 15 at 11.

The grounds stated in the Motion note that the Chapter 7 Trustee has communicated that the Trustee will not be opposing this Motion in light of the Debtor having exempted all of the equity in this Property with his homestead exemption. Motion, p. 2:15-17; Dckt. 117. However, Debtor and his counsel have not taken any action with respect to the Property in which Debtor has his six figure homestead exemption claimed.

TRUSTEE'S RESPONSE

Peter L. Fear, the Chapter 7 Trustee ("Trustee") filed a Response on December 2, 2024, noting Debtor has failed to appear at either of the 341 Meetings in this case. Docket 137. Trustee states:

1. Debtor's schedules disclose an interest in another parcel of real property, located at 2126 East Las Palmas Avenue, Patterson, CA (the "Las Palmas Property"), which Trustee believes has equity available for distribution to creditors of the bankruptcy estate. *Id.* at ¶ 5.
2. Trustee intends to sell the Las Palmas Property, but the bankruptcy estate would be prejudiced if the Property were foreclosed upon, and Debtor subsequently amended his exemptions to claim an exemption in the Las Palmas Property. *Id.* at ¶ 6.
3. Trustee has brought a motion (the "Exemption Motion") to limit the time for Debtor to amend his claimed homestead exemption in the Property or to amend any portion of the Las Palmas Property, which is set for hearing on December 12, 2024, at 10:30 a.m. *Id.* at ¶ 8.
4. Until the Exemption Motion is granted, Trustee believes the estate would be prejudiced if the Property was foreclosed upon. *Id.* at ¶ 9.
5. As a result, Trustee requests that the granting of the Motion be delayed unless and until the Exemption Motion is granted, and any foreclosure by Movant delayed until after the time period for the Debtor to amend his exemptions has expired pursuant to that motion. *Id.* at ¶ 10.

Homestead Exemption and Impact on Bankruptcy Estate

Peter Fear, the Chapter 7 Trustee, appeared at the hearing and has filed an informational response (Dckt. 137) to the Motion. The Trustee reports that the Debtor has elected to claim his homestead exemption in this Property. Schedule C; Dckt. 15 at 1. In the Schedules Debtor has valued the Property at \$500,000.00 (Sch. A/B; Dckt. 15 at 3), and has identified two claims secured by the Property: (1) Guild

Mortgage for (\$116,278.88) and (2) Movant for (\$210,000). Sch. D, ¶¶ 2.1, 2.3; Dckt. 1 at 13, 14. Movant computes the claim to be approximately (\$242,691). Dec., ¶ 10; Dckt. 120.

Based on Debtor's valuation, the homestead exemption claimed (the actual possible homestead exemption that can be claimed is much higher) exhausts all of the value of the Property, leaving nothing for the Chapter 7 Trustee to administer for the Bankruptcy Estate.

In his response the Trustee states that the Debtor and his counsel have now failed to appear at the first two 341 Meeting of Creditors. Con. Non Opp, ¶ 4; Dckt. 137. The Trustee also reports that he has been attempting to communicate with the Debtor's counsel concerning this Property, and by separate Motion is seeking an order to compel the attendance of the Debtor at the continued 341 Meeting and for the court to set a deadline for Debtor to file amended exemptions.

In the Trustee's Motion to Reduce Time Allowed to Amend Exemptions (Dckt. 99), the Trustee recounts the communication attempts with Debtor's counsel and to see if the Debtor wanted to proceed with the Trustee selling the exempt property. Motion to Reduce, ¶¶ 10, 11, 12, 13, 14, 15; Dckt. 99. Exhibits A, B, C, and D are copies of email communications concerning the Property and the Debtor's exemption. Dckt. 102.

In an email dated October 8, 2024, from the Chapter 7 Trustee to Debtor's counsel, Mr. Moore, the Trustee poses the following question to Debtor's counsel:

The meeting of creditors was today and there was no appearance by the debtor or his counsel. I understand that the lender on the Osprey property wants to move aggressively to foreclose. It appears to me that there is a substantial amount of exempt equity in the property. Would the Debtor prefer for me to sell the real property and work out some split of the equity so that he doesn't lose all of it in a foreclosure sale?

Exhibit A; Dckt. 102.

The Trustee states that the response to the October 8, 2024 email was a call on October 30, 2024, from Mr. Moore's assistant who connected the Trustee with another attorney in that office. Dec., ¶ 16; Dckt. 101. The Trustee further testifies that after that call he received an email from Mr. Moore and an email discussion ensued on October 30, 2024. A copy of the email discussion thread is filed as Exhibit B, Dckt. 102.

The response from Mr. Moore was that the Debtor was open to selling the Property and paying the creditors with secured claims, but Mr. Moore was unsure of the Trustee's "fees" for working out a deal to do that. *Id.*; October 30, 2024 at 3:15 p.m. email from Mr. Moore. Mr. Moore also notes that there are less than \$10,000.00 of unsecured claims in the Bankruptcy Case.

The Trustee responded with an email at 4:58 p.m. on October 30, 2024, stating that they could move forward and work to get the Osprey Property sold prior to any foreclosure sale, and that it would be likely that with the sale of the Osprey Property all claims could be paid and no other assets would need to be sold.

The Trustee testifies that later on October 30, 2024, the Trustee received a reply from Debtor's attorney, Mr. Moore, rejecting an agreement for the sale of the Property in which Debtor had exempted all of the value in excess of the liens. Dec., ¶ 18; Dckt. 101. A copy of Mr. Moore's response email at 8:13 p.m. on October 30, 2024, is provided as Exhibit C; Dckt. 102. Mr. Moore's response is:

You want me to agree to waive a 173k exemption for less than 10k in unsecured debt? That may be enough to not sell the other property? I must be reading your email incorrectly. If I am not, I will file a motion to sell the property myself if that's the case and argue the motion for relief from stay on property one. As far as property two, we will have to file motions I guess.

Id.

What appears to stand out in this response is that Debtor's counsel appears to state that the entire exemption of \$173,000 would be waived to pay only (\$10,000) in unsecured claims. Mr. Moore then states that he will file a motion himself to sell the Property and then argue against the Motion for Relief From the Stay.

It is unclear what motion Mr. Moore, as Debtor's counsel, would file with respect to the Property in which the exemption is claimed, other than a motion to have the property immediately abandoned so the Debtor could sell the Property and pocket the exempt equity in excess of the secured claims.

No motions have been filed by the Debtor and the Debtor has not opposed this Motion for Relief from the Stay so Movant can foreclose on this Property in which the Debtor has claimed his homestead exemption. It appears that Debtor and Debtor's counsel do not understand the role of a Chapter 7 trustee and that trustee's duties to the Bankruptcy Estate. The Trustee is not going to sell property in which all proceeds are claimed as exempt.

The Trustee testifies that he has heard nothing further from Debtor's counsel. Dec., ¶¶ 19, 21; Dckt. 101. He testifies that he sent a follow up email on November 4, 2024, to Mr. Moore, Debtor's counsel, as a (in the court's terminology) "last ditch effort" to see if the Property in which the exemption is claimed could be sold rather than having the automatic stay terminated and the foreclosure sale proceed. *Id.*; ¶ 20. A copy of the November 4, 2024, email from the Trustee to Mr. Moore and counsel for Movant is provided as Exhibit D, Dckt. 102, which states:

Messrs. Moore and Graff:

I have been in conversations with both of you about the property at 425 Osprey Drive. I have told Mr. Graff [Movant's counsel] that I would not oppose a stay relief motion if the Debtor refused to waive some portion of the homestead exemption, such that it made sense for me to sell the property. Mr. Moore has not yet affirmatively stated what he would do, but he seemed disinclined to advise his client to waive any portion of the homestead exemption. This has been dragging on for about a month now. I need to sell either the Las [sic] Palmas property or the Osprey Drive property, or possibly both. But I am not going to wait around any further on this.

Here are the Debtor's options:

1. Stipulate to carve-out at least \$20k from the exempt sale proceeds on Osprey for the bankruptcy estate. I will then sell the Osprey property, pay off the lender, and pay any net proceeds over \$20k to the Debtor. I will also sell Las [sic] Palmas, because that [a \$20,000 carve out] will not be enough to pay all claims in this case.

2. Not agree to waive any exemption in the Osprey property. I will stipulate to stay relief with Mr. Graff's client and will sell Las [sic] Palmas.

3. Agree to waive the entirety of the homestead exemption. I will sell Osprey, use the net proceeds to pay claims, and will turn over any surplus amount to the Debtor. I anticipate this would provide enough to not need to sell Las [sic] Palmas, so I will not list it unless something unexpected happens and Osprey does not generate enough funds to pay all claims in the case.

Debtor has delayed interacting with me about this for about a month, so he needs to act fast. If I do not have an affirmative choice from him as to either 1 or 3 no later than close of business on Thursday, November 7, I will assume he wants to do 2, and will stipulate with Mr. Graff's client for stay relief.

I look forward to hearing from you.

Exhibit D; Dckt. 102.

The statement in Paragraph 1 above is a common form of stipulation for a trustee to sell exempt property in which the debtor will take the majority of the sales proceeds. The Trustee recovers something for the estate that can be applied to the claims and expenses. The Trustee would then proceed to sell the Los Palmas property to pay the claims secured by that property, and then surplus proceeds from that sale would go to the Debtor.

The version in Paragraph 3 would be for the Debtor to waive the homestead exemption in its entirety, the Trustee would sell the Property that is the Debtor's residence, pay all claims with those proceeds, and then have the balance of the proceeds (there being under \$10,000 in unsecured claims) and the Los Palmas property abandoned back to the Debtor. ^{FN.1.}

FN. 1. The Los Palmas property is listed on Schedule A/B as having a value of \$230,000, and on Schedule D Debtor lists it as securing only one claim in the amount of (\$110,000.00). Dckt. 15. On Schedule E/F Debtor lists owing an unsecured priority tax claim of (\$5,541.09) and general unsecured claims of (\$7,571.00). *Id.*

No proof of claim has been filed by a creditor asserting a claim secured by the Los Palmas property, no priority tax claim has been filed, and only two general unsecured claims, which aggregate \$3,812.89, have been filed in this Case.

The Debtor, though claiming an exemption in all of the value of the Property, has not filed an opposition to the Motion. The Debtor having claimed the exemption, there is no value for the Bankruptcy Estate in this Bankruptcy Case.

Though the Trustee is bringing to the attention of the court the interests of the Debtor, and the inaction of Debtor and Debtor's counsel, there is not a basis for the Trustee to oppose this Motion in light of the Debtor's homestead exemption, which exhausts all value in the Property.

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 \$242,691.46 (Declaration ¶ 10, Docket 120), while the value of the Property is determined to be \$500,000.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B 3, Docket 15.

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.

Regarding Trustee's Response, the court would note Trustee has not provided any law that would support the court delaying granting such a motion. In order for a debtor to be eligible to claim the homestead exemption, the property must be that debtor's domicile, not mere residence. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.06 (discussing requirements for a "domicile" and for a "residence," noting a homestead exemption may only be applied to a debtor's domicile). It appears to the court Debtor would be unable to simply change the homestead exemption if Movant forecloses on the Property as Debtor has testified under penalty of perjury his homestead, his domicile, is the Property. Trustee expresses concern over Debtor amending the Schedules to claim an exemption in the Los Palmas Property, but Trustee does not cite which exemption Debtor may attempt to claim. As discussed, debtor cannot claim the homestead exemption in the Los Palmas Property if it is not his domicile.

California law defines a "homestead" in which an exemption may be claimed to as follows:

(c) "Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a

dwelling within the six-month period provided by Section 704.720, “homestead” also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor’s spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

Cal Code Civ Proc § 704.710(c). The homestead exemption is not one that can be moved at whim, but must fulfill certain statutory requirements.

At the hearing, counsel for the Movant reported that this case has been pending for more than a year, with no payments made by Debtor.

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, 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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant’s further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant’s Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

December 19, 2024 Hearing

On December 17, 2024, a Stipulation between David Martinez, the Debtor, and Peter Fear, the Chapter 7 Trustee, was filed. Dckt. 151. The Stipulation is quite simple. In it the Debtor irrevocably waives any exemption that he could claim in the 425 Osprey Drive, Patterson, California Property, and that he will not claim any exemption in that Property in the future.

With the exemption waived, the Trustee will proceed with the marketing and sale of that Property for the benefit of the Bankruptcy Estate. As noted below, it is the creditors whose claim that is secured by the second deed of trust are moving for relief from stay on this Property. The Debtor's claim of a homestead exemption precluded the Trustee from selling the Property, the exemption exhausting what appears to be a six figure equity in the Property. There are only less than \$10,000 of unsecured claims, as of this point in time, to be paid in this case. Thus, as a practical economic matter, it appears that a substantial part of the formerly exempt equity will still go back to the Debtor, as well as the other parcel of real property in this Bankruptcy Estate.

At the hearing, counsel for the Chapter 7 Trustee reported that the Debtor appeared at the 341 Meeting, confirming that the Trustee is going forward with the marketing of the Osprey Property.

Counsel for the Movant requested a continuance for administrative purposes.

The hearing Motion for Relief from the Automatic Stay is 10:00 a.m. on February 20, 2025.

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 Hassan Baradaran-Azimi, Trustee of the Azimi Family Trust Dated October 21, 2021, as to 55.25% Interest and Boris A. Chechelnitsky and Marina S. Chechelnitsky, Trustees of the Boris A. Chechelnitsky and Marina S. Chechelnitsky Revocable Living Trust Dated January 8, 2016, as to 44.75% Interest, as Tenants in Common (“Movant”) having been presented to the court, the Debtor and the Chapter 7 Trustee having entered into a Stipulation for the marketing and sale of the Property securing Movant’s Claim, 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
XXXXXXX.

21ST MORTGAGE CORPORATION
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 29, 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 xx Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

~~The Motion for Relief from the Automatic Stay is granted.~~

21st Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to Robert Clarence Lewis' ("Debtor") manufactured property commonly known as 1972 Kit Manufactured Home, Serial No. S9155X/S9155U, Label No. 291700/291699, and Decal No. ABI7091 located at 2621 Prescott Rd Sp#120, Modesto, CA 95350 ("Property"). The moving party has provided the Declaration of Josh Williamson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor. Decl., Docket 14.

Movant does not provide any evidence that Debtor has not made payments, but that as of the filing of the Motion the Debtor was current in the monthly payments. Debtor's monthly payment is \$442.98, and Debtor has indicated on his Statement of Intentions that he wishes to retain the Property and make payments. Ex. 3, Docket 15. Movant argues because it sent a Reaffirmation Agreement to Debtor and Debtor never signed and returned it, Movant is entitled to relief from the stay pursuant to 11 U.S.C. §§ 521(a)(2) and 362(h). Decl. ¶ 10, Docket 14.

The Chapter 7 Trustee filed a Nonopposition on February 10, 2025.

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 \$35,651.35 (Declaration ¶ 6, Dckt. 14) and the value of the Property is determined to be \$40,000 as stated on Debtor's Schedule A/B. Docket 1 at 11.

On Schedule C Debtor claims an exemption of \$4,073 in the Property, citing California Code of Civil Procedure § 704.140(b)(5) as the basis for the exemption.

11 U.S.C. § 521(a)(2) states:

(a) The debtor shall—. . .

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph;

except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h). . .

11 U.S.C. § 362(h) provides:

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such

statement that the debtor will either surrender such personal property or retain it and, **if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property**, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(emphasis added).

In reading these two sections together, it is clear that an individual debtor must elect to either redeem personal property or enter into a reaffirmation agreement as to personal property if that debtor elects to retain the personal property.

Collier's Treatise states on the subject:

Section 362(h) provides for the termination of the stay as to certain personal property if the debtor fails to comply in a timely manner with certain requirements in section 521. In the event that the stay is terminated as to personal property under this subsection, that property is also rendered no longer property of the estate. This subsection is applicable only in regard to personal property of the estate or of the debtor that secures a claim or is subject to an unexpired lease. Although section 362(h) is not by its terms limited to cases brought under a specific chapter, when read together with section 521, it is clear that an early stay termination under section 362(h) can occur only in a chapter 7 case in which the debtor is an individual. . .

Section 362(h)(1)(A) terminates the automatic stay as to personal property if the debtor fails to timely file a statement of intention required under section 521(a)(2). The stay also may be terminated under this provision if the debtor fails to indicate on the statement an intention to either surrender the personal property, redeem the property pursuant to section 722, enter into a reaffirmation agreement with respect to the secured debt in accordance with section 524(c), or assume an unexpired lease on the property pursuant to section 365(p). . .

Based on the interplay between section 362(h) and section 521(a)(2), the stay should not terminate under section 362(h)(1)(A) because the debtor states an intention to perform an option on terms that the secured creditor may not find acceptable. For example, the debtor need not state an intention to reaffirm the entire amount owed on a particular debt, and the stay should continue to apply while the debtor and secured creditor attempt to negotiate the terms of a reaffirmation. Similarly, the debtor may state an intention to redeem at a reasonable redemption amount, not simply at an amount that it is anticipated the secured creditor would agree to. In addition, the stay should not terminate under section 362(h)(1)(A) if the debtor enters into a reaffirmation agreement that is later disapproved by the court.

3 COLLIER ON BANKRUPTCY ¶ 362.11.

In this case, Debtor is an individual in Chapter 7, so the provisions of 11 U.S.C. § 362(h) apply. The Property is in nature personal property, a manufactured home only being qualified as real property if it has been permanently affixed to a lot. *See* Cal Revenue and Tax Code § 5801. There has been no evidence that the manufactured home in this case has been permanently affixed to the ground with a foundation. Therefore, Debtor must either redeem the Property or enter into a Reaffirmation Agreement as to the Property, or else 11 U.S.C. § 362(h) terminates the automatic stay.

Moreover, Movant has stated it has attempted to enter into negotiations with Debtor regarding a Reaffirmation Agreement. Collier's Treatise makes clear that the court need not lift the automatic stay pursuant to 11 U.S.C. § 362(h) if the parties are negotiating terms of the Reaffirmation Agreement.

At the hearing, **XXXXXXX**

Request for Attorneys' Fees

Movant seeks attorneys fees as part of this Motion in the amount of \$1,460.00. Mot. 6:19-20. Movant cites to the applicable contractual provisions that show it is entitled to such fees. *Id.* at 6:21-27. As part of this Motion, the court awards a flat attorney's fee in the amount of \$1,460.00 for all attorney work related to drafting and prosecuting this Motion.

Moreover, Debtor values the Property at \$40,000 pursuant to their Schedule A and Movant is owed approximately no less than \$35,651.35, less than the value of the Property. Because Movant has established that there is equity in the Property for Debtor and value in excess of the amount of Movant's claims as of the commencement of this case, Movant is awarded attorneys' fees as part of Movant's secured claim in the total amount of \$1,460.00 for all matters relating to this Motion. 11 U.S.C. § 506(b).

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 has not complied with the Rules and Code by not entering into a Reaffirmation Agreement, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot:6:10-15.

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 21st Mortgage 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 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 Property, under its security agreement, loan documents granting it a lien in the asset identified as a 1972 Kit Manufactured Home, Serial No. S9155X/S9155U, Label No. 291700/291699, and Decal No. ABI7091 located at 2621 Prescott Rd Sp#120, Modesto, CA 95350 (“Property”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Property 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.

~~IT IS FURTHER ORDERED~~ that Movant having established that the value of the Property subject to its lien having a value greater than the obligation secured, the moving party is awarded attorneys’ fees as part of Movant’s secured claim in the total amount of \$1,460.00 for all matters relating to this Motion.

~~No other or additional relief is granted.~~

WESTERN ARBOR COURT PARTNERS
L.P. 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.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice to Debtor was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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.

Western Arbor Court Partners L.P. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 9950 Juanita Street #39, Cypress Ca 90630 (“Property”). The moving party has provided the Declaration of Amy Turner to introduce evidence as a basis for Movant’s contention that Jonathan Emerson and Camila Emerson (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property.

Movant presents evidence that it is the owner of the Property and Debtor is not paying rent. Decl. ¶ 3, Docket 17. 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 Orange on November 14, 2024. Exhibit C, Dckt. 18.

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).

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.

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, 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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Western Arbor Court Partners L.P. (“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 is granted and 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 in, including obtaining possession of, the property commonly known as 9950 Juanita Street #39, Cypress Ca 90630.

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.

5. [24-90776-E-7](#)
[ADR-1](#)

JELINA NICHOLAS
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
1-30-25 [68]**

DENNIS BARRAZA 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 30, 2025. By the court's calculation, 21 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 xx Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion for Relief from the Automatic Stay is granted.
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REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not

complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

THE MOTION

Dennis Barraza (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 5653 Cornerstone Drive, Riverbank, Modesto, CA 95356 (“Property”). The moving party has provided the Declaration of Bradley Cardoso to introduce evidence as a basis for Movant’s contention that Jelina Nicholas (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Decl. 2:1-4, Docket 71.

Based on the evidence presented, Debtor would be at best a tenant at sufferance. Debtor was served a 3-day Notice to Pay Rent or Quit on October 7, 2024 and as of October 10, 2024 the notice was expired, the rental agreement was terminated and no rent was paid or offered. Debtor did not pay any money and did not move from the property prior to the expiration of the Notice. Decl. 2:18-21 Movant seeks relief to continue an unlawful detainer action that was commenced on October 22, 2024. *Id.* at 3:27.

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).

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.

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, 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.

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 Dennis Barraza (“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 in, including remedies to obtain possession of, the property commonly known as 5653 Cornerstone Drive, Riverbank, Modesto, CA 95356.

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.