

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

February 25, 2025 at 1:30 p.m.

1. 23-23608 -E-13 DPC-2	TEMA ROBINSON Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 9-6-24 [121]
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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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 4, 2024. By the court’s calculation, 40 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted.
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February 25, 2025 Hearing

The court continued the hearing on this Motion to allow Debtor to cure the delinquency and propose a Modified Plan. Trustee filed a Status Report with the court on February 14, 2025. Docket 163. Trustee informs the court no payments have been made and the delinquency is still outstanding. Moreover, Debtor has not introduced a Modified Plan to address any of the outstanding.

At the hearing, **XXXXXXX**

The Motion to Dismiss is granted.

REVIEW OF MOTION

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Tema Kay Robinson (“Debtor”), is delinquent \$700 in plan payments. Docket 121.
2. Debtor’s Motion to Confirm a third amended Plan was denied by the Court on July 16, 2024, (DN 120). Debtor has failed to file a fourth amended Plan and set a hearing for confirmation. *Id.* at 2:3-6.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 123.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on October 7, 2024. Dockets 133, 134. Debtor states she has set for hearing the confirmation of a fourth Amended Plan for November 19, 2024.

DISCUSSION

Delinquent

Debtor is \$700 delinquent in plan payments, which represents multiple months of the \$350 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Fourth Amended Chapter 13 Plan

Debtor has filed a Fourth Amended Plan and supporting evidence. Dockets 125-132. The Motion (Dckt. 125) appears to state grounds with particularity, and Debtor’s Declaration (Dckt. 127) appears to provide personal knowledge factual testimony (but also her legal opinion that she believes her Plan complies with the Bankruptcy Code).

The Chapter 13 Trustee has filed an Opposition to confirmation of the Fourth Amended Plan, stating that the Debtor is delinquent one payment of \$420.00. Dckt. 141.

The hearing on the Motion to Dismiss is continued to 2:00 p.m. on November 19, 2024, to be conducted in conjunction with the hearing on the Motion to Confirm the Fourth Amended Plan.

November 21, 2024 Hearing

The court continued the hearing on this Motion to be conducted in conjunction with the Motion to Confirm Debtor’s Fourth Amended Plan. Though the Debtor was still delinquent, a payment was in process. The court confirmed the Chapter 13 Plan, and continues this hearing to insure that the defaults are cured and the Debtor is performing the Plan.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on January 22, 2025.

January 22, 2025 Hearing

Debtor is \$700.00 delinquent in plan payments, which represents multiple months of the \$350.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an Amended Plan, which the court confirmed on November 26, 2024. Order, Docket 153.

But according to Trustee, Debtor's last six electronic payments were cancelled by Debtor. Status Rep. 1:23-25, Docket 156. As such, Trustee does not withdraw the motion to dismiss. Status Rep. 1:24-25, Docket 156.

Debtor states she will cure the delinquency prior to the hearing. Decl., Docket 158.

At the hearing, the Trustee reported that the Debtor is still delinquent two plan payments, which total \$710.00.

The Parties agreed to continue the hearing to afford Debtor the opportunity to get filed and set for hearing a modified plan and motion to confirm being filed

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on February 25, 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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted.

PATRICK HANEGAN 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 13 Trustee, and Office of the United States Trustee on February 11, 2025. By the court’s calculation, 14 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 13 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.

Patrick Hanegan (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 1908 Jersey Street, Fairfield, Solano County, Ca (“Property”). The moving party has provided the Declarations of Patrick Hanegan and Joseph M. Canning to introduce evidence as a basis for Movant’s contention that Alexander Perez (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Decl., Dockets 35, 36.

Movant presents evidence that it is the owner of the Property. Decl. ¶ 4, Docket 35. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on July 24, 2024. *Id.* 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 Solano on September 13, 2024. *Id.* at ¶ 7.

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership. Ex. B, Docket 37. 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).

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, as Debtor is retaining the Property and filing bankruptcies to disrupt Movant's efforts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:1-5..

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Patrick Hanegan ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1908 Jersey Street, Fairfield, Solano County, Ca.

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

No other or additional relief is granted.

FINAL RULINGS

3. [22-23051](#)-E-13 **FILIBERTA VASQUEZ** **MOTION FOR RELIEF FROM**
[JCW-1](#) **Catherine King** **AUTOMATIC STAY**
1-24-25 [\[34\]](#)

**U.S. BANK NATIONAL
ASSOCIATION VS.**

Final Ruling: No appearance at the February 25, 2025 hearing is required.

The Motion for Relief is dismissed without prejudice.

U.S. Bank National Association, as Trustee for SASCO Mortgage Loan Trust 2006-WF1 (“Creditor”) having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 13, 2025, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Filiberta Sharon Vasquez (“Debtor”); the *Ex Parte* Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 filed by U.S. Bank National Association, as Trustee for VASCO Mortgage Loan Trust 2006-WF1 (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief is dismissed without prejudice.

**MERCEDES-BENZ VEHICLE TRUST
VS.**

Final Ruling: No appearance at the February 25, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 16, 2025. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Mercedes-Benz C43A4, VIN ending in 4671 (“Vehicle”). The moving party has provided the Declarations of Sofia Taylor and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Carrie Lynn Bain (“Debtor”). Decls., Dockets 15, 16.

Movant argues Debtor is post-petition delinquent the amount of \$6,462.63, which includes one monthly payment and six deferred payments. Declaration ¶ 8, Docket 15.

Debtor filed a Nonopposition on February 12, 2025. Docket 25.

The Chapter 13 Trustee filed a Nonopposition on February 11, 2025. Docket 23.

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 \$48,643.73 (Declaration ¶ 7, Docket 15). This Vehicle being used by Debtor under the terms of a lease, Debtor does not value the Vehicle in her Schedules.

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.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, as Debtor’s Plan provides for surrendering the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:7-8.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Mercedes-Benz C43A4, VIN ending in 4671 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.