UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 27, 2025 at 10:00 a.m.

1.	**24-24023-E-11** **BPC-2**	**NEXT HILL ENTERPRISES, LLC** **Richard Jare**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **1-31-25 [53]**

DAVID PICK FAMILY PARTNERSHIP, 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.

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

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, other parties in interest, and Office of the United States Trustee on January 31, 2025. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period. At the hearing, **xxxxxxx**

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 xxxxxxx.

David Pick Family Partnership, L.P., ("Movant") moves this court for an order granting relief pursuant to 11 U.S.C. § 362(d)(3) against the real property bearing APN 054-371-019 and having a mailing address of 425 Pleasant Valley Road, Diamond Springs, CA ("Property"). Movant pleads that on December 6, 2024, this court issued a ruling that Next Hill Enterprises, LLC ("Debtor in Possession") is a single asset real estate case pursuant to 11 U.S.C. § 101(51B). Order, Docket 52. Movant pleads that Debtor in Possession has not tendered interest payments on its claim or otherwise proposed a Plan within 30 days of

the court issuing the Order on December 6, 2024. Mot. 2:6-16. Therefore, Movant requests the court grant relief pursuant to 11 U.S.C. § 362(d)(3).

Movant does not file any evidence in support of the Motion.

Debtor in Possession's Opposition

Debtor in Possession filed an Opposition on February 13, 2025. Docket 62. Debtor in Possession opposes on the following grounds:

1. Movant does not submit evidence in support of the Motion. Opp'n 1:21-22.

2. Movant has not filled out the relief form stay form. *Id.* at 2:5-9.

3. Debtor in Possession is holding at least one interest payment of $2,733.33 and it ready to tender the payment to Movant immediately. *Id.* at 2:10-25.

4. Movant does not have a secured claim in the second parcel of real property bearing APN 054-361-009 ("Parcel 2"), so Debtor in Possession seeks to clarify the Motion does not seek relief to Parcel 2. *Id.* at 2:27-3:10.

5. Debtor in Possession argues the first post-petition adequate protection payment was not due on January 6, 2025, 30 days after the court's December 6, 2024 Order. Rather, the first payment was due on February 1, 2025, in accordance with the note securing the Property stating that payments are due on the first of each month. *Id.* at 3:11-19.

6. Local Bankruptcy Rule 4001-1(b)(1)(C) imposes a duty on Movant to reach out to Debtor in Possession and advise Debtor in Possession of the delinquency, which Movant did not do. *Id.* at 3:21-4:8.

7. Debtor in Possession does not concede Movant is even secured by the Property. Debtor in Possession suggests the Note secured by the Property is faulty. *Id.* at 4:13-5:13.

8. Debtor in Possession can tender the payments for January and February, if the court determines January 6 was the first day payments were due, in open court at the February 27, 2025 hearing. *Id.* at 5:14-18.

Creditor's Reply

Creditor filed a Reply on February 20, 2025. Docket 66. Creditor states:

1. The evidence supporting the Motion is already on the record at Docket No. 21 and is cited to within the Motion. While the Motion did not attach its own declaration, the Court is already apprised of the facts at issue. Reply 2:20-22.

2. Under 11 U.S.C. § 362(d)(3), the Debtor is required to commence nondefault interest payments to the secured creditor no later than 30 days after the date the order is entered designating the case as a single asset real estate. The Court entered its Order designating this case as a single asset real estate case on December 6, 2024. The Debtor was required to file a plan of reorganization with a reasonable likelihood of being confirmed within a reasonable time or commence nondefault interest payments to the Movant no later than January 6, 2025. As of the date of the filing of this reply, the Debtor is still not in compliance with Section 362(d)(3) and a second nondefault interest payment has come due. *Id.* at 3:11-18.

3. The payment was due on January 6, not February 1. *Id.* at 4:12-17.

4. Movant does not intend to seek relief regarding Parcel 2. *Id.* at 3:19-21.

5. Local Bankruptcy Rule 4001-1(b)(1)(C) does not apply in Chapter 11 cases. *Id.* at 3:22-4:4.

6. Debtor in Possession mut bring an adversary proceeding if it wishes to dispute the validity of the instrument secured by the Property. The instrument is valid and enforceable. *Id.* at 5:6-26.

DISCUSSION

Movant's basis for relief is pursuant to 11 U.S.C. § 362(d)(3), which states:

(d) On request of a party in interest and after notice and a hearing, 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—

> (3)with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—
>
> > (A)the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
> >
> > (B)the debtor has commenced monthly payments that—
> >
> > > (i)may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate

> (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
>
> (ii)are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate. . .

Collier's Treatise states regarding the subject:

> The purpose of section 362(d)(3) is to address perceived abuses in single asset real estate cases, in which debtors have attempted to delay mortgage foreclosures even when there is little chance that they can reorganize successfully. Section 362(d)(3) attempts to shorten such cases by requiring that the court grant relief from the stay if a reasonable plan is not filed promptly or payments are not commenced. The court may, of course, grant relief under subsection 362(d)(1) or (2) when it is appropriate to do so even if the applicable time period in subsection (d)(3) has not run. This might occur, for example, if the court determines that the case was commenced in bad faith and that the debtor is not entitled to bankruptcy relief.
>
> Although technically the court may condition or modify the stay rather than terminate it, it appears that the legislative intention was to terminate the stay when the debtor neither proposes a viable plan nor makes payments to the secured party. A court should refuse to terminate the stay only when there is a strong reason for offering lesser relief.

3 COLLIER ON BANKRUPTCY ¶ 362.07[5][b].

In this case, the court determined the case to be a single asset real estate case by Order date December 6, 2024. Docket 52. The language of 11 U.S.C. § 362(d)(3) imposes a time line from that date: within 30 days, Debtor in Possession must have either proposed a plan of reorganization that has a reasonable possibility of being confirmed, or Debtor in Possession has commenced making monthly interest payments on the secured claim. There is no plan on file and the record reflects Debtor in Possession has not begun making interest payments.

Debtor in Possession offers many arguments in support of why the Motion should be denied, including the suggestion that the underlying note secured by Parcel 1 is not enforceable. Debtor in Possession has presented such arguments before and the court has informed Debtor in Possession that if it wishes to challenge the validity of a note, that type of determination and action must be brought as an adversary proceeding pursuant to Fed. R. Bankr. P. 7001. Debtor in Possession lobbed other arguments in support of denying the Motion, even citing a Local Bankruptcy Rule section that only pertains to Chapter 13 and Chapter 12 cases. Such arguments are not persuasive.

The essential facts before the court are that the Debtor in Possession must have begun making its interest payments within 30 days after December 6, 2024, and Debtor in Possession has not done so. In this type of instance, the court is bound by 11 U.S.C. § 362(d)(3) and must grant relief.

However, Debtor in Possession suggest that it has funds on hand to make the two interest payments that were due and owing. At the hearing, **xxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by David Pick Family Partnership, 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 **xxxxxxx**.

2. 24-25545-E-7 HRH-1 | **ANGELLA BARR** | **Eric Schwab** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **2-13-25 [18]**

NORTH MILL EQUIPMENT FINANCE, LLC 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, creditors, and Office of the United States Trustee on February 13, 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 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, ----------.

The Motion for Relief from the Automatic Stay is granted.

North Mill Equipment Finance, LLC ("Movant") seeks relief from the automatic stay with respect to items of personal property fully detailed in Schedule A to Equipment Acceptance Certificate filed as Exhibit 1 in support of the Motion, Docket 23 ("Property"). The moving party has provided the Declaration

of Ellen W. Miller to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Angella Ann Barr ("Debtor"). Decl., Docket 22.

Movant states that Debtor is not the borrower on the Equipment Finance Agreement (the "Agreement"), as debtor's company Chemical Dependency Treatment Associates, Inc. is the borrower. Indeed, Debtor lists her interest as $0 in the Property on her Schedules A/B. Schedule A/B line 19, Docket 1. Movant also alleges Debtor is not making any adequate protection payments on the Property. Decl. ¶ 10, Docket 22.

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 $242,864 .03 (Declaration ¶ 11, Dckt. 22).

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).

In this case, it appears Debtor is not making payments, intends to surrender her interest in the Property, if any, and that the Property is not property of this bankruptcy estate. As such, the court determines that cause exists for terminating the automatic stay. 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 Property, 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.

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 the Property is depreciating, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:28-4:1.

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 North Mill Equipment Finance, 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** 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 assets identified and fully detailed in Schedule A to Equipment Acceptance Certificate filed as Exhibit 1 in support of the Motion, Docket 23 ("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.
>
> No other or additional relief is granted.

FINAL RULINGS

3. 23-22719-E-7 TRF-1 | **ANA/FRANCISCO CORRAL** | **Scott Johnson** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **1-16-25 [58]**

CAPITAL BENEFIT, INC. VS.

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

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, Debtor's Attorney, Chapter 7 Trustee, attorneys of record, creditors, and Office of the United States Trustee on January 16, 2025. By the court's calculation, 42 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.

Movant Capital Benefit, Inc. ("Movant") seeks relief from the automatic stay with respect to Ana Lilia Corral and Francisco Corral's ("Debtor") real property commonly known as 2935 Argonaut Avenue, Rocklin, California 95677 ("Property"). Movant has provided the Declaration of Marcel Bruetsch to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by a deed of trust recorded against the Property. Decl., Docket 63. Movant seeks relief pursuant to 11 U.S.C. §§ 363(d)(1) and (d)(2). Debtor indicated on their Statement of Intention their intent to retain the home and enter into a Reaffirmation Agreement with Movant. Docket 51.

Movant argues Debtor has not made one post-petition payment for the Month of January, 2025. Declaration ¶ 5, Docket 63. Movant argues that after adding the senior lien in the amount of $387,169, and Movant's lien in the amount of $104,065.24, and Debtor's homestead exemption in the amount of $130,000, the aggregate of those numbers exceeds the Property's value of $617,000.

Movant is mistaken in this calculation. In determining 11 U.S.C. § 362(d)(2) relief, the court must add the aggregate of the liens against the property. A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984).

In support of its position, Movant cites to a footnote in *dicta* of an unpublished opinion out of Nevada. *In re Brasher*, No. 16-15980-MKN, 2020 Bankr. LEXIS 1530, at *11 n.16 (Bankr. D. Nev. May 15, 2020).

Here Movant's calculations show that the Debtor does have a substantial equity in which Debtor has claimed the homestead exemption. However, in doing so, the Debtor exhausts all of the value in the property, leaving no equity in it for the Bankruptcy Estate.

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 $491,234.24, while the value of the Property is determined to be $617,700.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 12, Docket 1.

11 U.S.C. § 362(d)(1): Deny Relief Because of Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004).

11 U.S.C. § 362(d)(2)

Though there exists an equity for the Debtor for which the homestead exemption is claimed, there is no equity for the Bankruptcy Estate. On the morning of February 25, 2025, (two days before this hearing), the court entered the Debtor's discharge in this Bankruptcy Case. Dckt. 68. With the discharge having been entered, the automatic stay terminated as to the Debtor by operation of law. 11 U.S.C. § 362(c)(2)(C). However, this does not terminate the stay as to the property of the Bankruptcy Estate.

For property of the Bankruptcy Estate, the stay continues until the case is closed or dismissed, absent an order of the court granting relief from the stay. *See*, 11 U.S.C. § 362(c)(1).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization / rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). For this Chapter 7 Case, there is no equity for the Bankruptcy Estate. 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)

The Chapter 7 Trustee has not filed an opposition to this Motion.

Movant has sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(2).

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 Capital Benefit, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 2935 Argonaut Avenue, Rocklin, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.