

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

March 6, 2018, at 1:30 p.m.

1. **18-20067-E-13** **ROBERT GODFREY**
RTD-1 **Mark Wolff**

**FINAL HEARING RE: MOTION FOR
RELIEF FROM AUTOMATIC STAY
AND/OR MOTION FOR ADEQUATE
PROTECTION
1-16-18 [\[13\]](#)**

**SCHOOLS FINANCIAL CREDIT
UNION 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 13 Trustee, and parties requesting special notice on January 16, 2018. 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.

The Motion for Relief from the Automatic Stay is denied.

Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 BMW 7-Series, VIN ending in 9885 ("Vehicle"). The moving party has

March 6, 2018, at 1:30 p.m.

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provided the Declaration of Robin Boyce to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Godfrey III (“Debtor”).

The Robin Boyce Declaration provides testimony that Debtor has not made one post-petition payment, with a total of \$582.43 in post-petition payments past due. The Declaration also provides evidence that there is one pre-petition payments in default, with a pre-petition arrearage of \$582.43. Debtor also has a lien placed on the Vehicle by the Department of Motor Vehicles for registration fees totaling \$417 as of January 12, 2018. According to the Robin Boyce Declaration ¶ 32 “The Debtor has failed to adequately protect the interest of [“the Movant”] by his failure to provide proof of insurance, to register the vehicle, to smog the vehicle, to pay the current value on the secured claim, and to make adequate protection payments.”

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 \$28,121.86, as stated in the Robin Boyce Declaration, while the value of the Vehicle is determined to be \$27,000, as stated in Schedules B and D filed by Debtor.

CHAPTER 13 TRUSTEE’S RESPONSE

David Cusick, (“the Chapter 13 Trustee”) filed a Response on January 19, 2018. Dckt. 21. The Chapter 13 Trustee asserts that Debtor’s proposed plan is designated as not a purchase money security interest with payments of \$540.00 per month beginning in month eight, then \$800.00 per month beginning in month thirty.

In Debtor’s prior case, Debtor indicated that the debt for the Vehicle was a purchase money security interest with a monthly dividend of \$605.00, and Movant filed a secured claim totaling \$30,909.72.

JANUARY 30, 2018 HEARING

At the hearing, the court granted a continuance to 1:30 p.m. on February 6, 2018 for an adequate protection hearing regarding the Debtor making an immediate \$450.00 adequate protection payment, providing evidence that the vehicle is insured, and providing evidence that the vehicle’s registration is current. Dckt. 27.

As to the other issues for the Motion for Relief from the Automatic Stay, the court granted a continuance to 1:30 p.m. on February 27, 2018, with any Opposition being filed and served by February 9, 2018, and Replies, if any, filed and served by February 16, 2018. Dckt. 27.

APPLICATION TO APPROVE STIPULATION AND CHANGE HEARING DATE

On February 8, 2018, the parties filed an application to approve a stipulation to change the hearing date from February 27, 2018 at 1:30 p.m. to March 6, 2018 at 1:30 p.m. Dckt. 32. The court approved the application and set the final hearing on the Motion for Relief from the Automatic Stay for March 6, 2018. Dckt. 34.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 9, 2018. Dckt. 40. Debtor asserts that prior to February 6, 2018, he has made the adequate protection payment of \$450.00 directly to Creditor, as well as provided evidence of the Vehicle's insurance and current registration. Additionally, Debtor concurrently filed a First Amended Plan that changes the treatment of Creditor's Class 2 claim to include monthly payments of \$540.00 and increase the interest rate paid from 3.5% to 5.75%.

CREDITOR'S REPLY

Creditor filed a Reply on February 14, 2018. Dckt. 43. Creditor argues that the First Amended Plan filed by Debtor fails to provide for monthly adequate protection payments. Creditor asserts that the First Amended Plan contains a nonstandard provision that sets the second adequate protection payment at \$188.00, which is insufficient.

DISCUSSION

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).

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). 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. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

This bankruptcy case was filed in January 2018. The first monthly plan payment is made in February 2018, with the Plan set to then proceed through a full sixty-month term. Debtor is required to pay Creditor \$540.00 per month under the Plan. With \$450 having been paid directly to the Creditor as an adequate protection payment (the court making Debtor "put his money where his mouth was" to get money directly into the Creditor's hands), there remains \$90.00 to be paid to Creditor in February 2018—the first month of the Plan.

With \$188 paid to the Chapter 13 Trustee, Creditor can be paid the additional \$90.00 and then the Chapter 13 Trustee can pay his fees, and then have money left over to fund the administrative expenses.

The court double checks Debtor's amortization payment amount, using the \$28,103.50 stated by Creditor in Proof of Claim No. 3. Amortizing the \$28,103.50 over sixty months at 5.75% interest, the actual monthly payment would be \$540.06.

Based upon the evidence submitted to the court and the Chapter 13 Plan providing for payment of Creditor's claim, the Motion is Denied.

The court shall issue a minute 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 Schools Financial Credit Union ("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 denied.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall make a distribution from Robert Godfrey III's ("Debtor") February 2018 Plan Payment to Movant in the amount necessary, when added to the \$450.00 adequate protection payment made by Debtor, to provide Movant with the fully amortized payment on its Class 2 Claim as provided in the pending proposed Amended Chapter 13 Plan.

2. [17-28097](#)-E-13 PAUL/ASHANNA BROWN
APN-1 Susan Dodds

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-5-18 [17]**

**GATEWAY ONE LENDING &
FINANCE VS.**

Final Ruling: No appearance at the March 6, 2018 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 February 5, 2018. By the court’s calculation, 29 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Gateway One Lending & Finance (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2008 Chevrolet Express 3500, VIN ending in 2390 (“Vehicle”). The moving party has provided the Saboor Sadiq to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Paul Brown and Ashanna Brown (“Debtor”).

The Saboor Sadiq Declaration provides testimony that Debtor has not made two post-petition payments, with a total of \$799.80 in post-petition payments past due. The Declaration also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of \$1,599.60.

The Saboor Sadiq Declaration also seeks to introduce evidence establishing the Vehicle’s value. Though the NADA Valuation Report is attached as an Exhibit, it is not properly authenticated.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on February 6, 2018. Dckt. 23. Debtor acknowledges they have no basis to object to Movant's Motion for Relief.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on February 20, 2018. Dckt. 25. The Chapter 13 Trustee does not oppose Movant's Motion for Relief. The Chapter 13 Trustee does note that Debtor includes Movant on Schedule F but not in the Plan. Dckt. 1, 5. Additionally, Debtor's Schedule F shows the claim as \$5,000.00 due to repossession of the Vehicle. Dckt. 1.

DISCUSSION

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.

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). 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 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick ("the Chapter 13 Trustee"), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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.

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 a minute 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 Gateway One Lending & Finance (“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 Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2008 Chevrolet Express 3500 (“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 not waived for cause.

No other or additional relief is granted.