

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

MODESTO DIVISION CALENDAR
March 12, 2020 at 10:00 a.m.

1.	<u>19-90989-E-7</u> <u>MET-1</u>	JAMIE/MELISSA BILLMAN Walter Dahl	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 1-30-20 <u>[58]</u>
BANK OF THE WEST 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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2020. 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.
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Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Jayco Seneca Motorhome, VIN ending in 2776 ("Vehicle"). The moving party has provided the Declaration of Lori Davis to introduce evidence to authenticate the documents upon which it

bases the claim and the obligation owed by Jamie Benjamin Billman and Melissa Marnell Billman (“Debtors”).

Movant argues Debtors have not made two (2) post-petition payments, with a total of \$2,155.58 in post-petition payments past due. Declaration, Dckt. 61. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of \$1,077.79. *Id.*

DEBTORS’ RESPONSE

Debtors filed an Response on February 11, 2020. Dckt. 72. Debtors assert that they do not oppose the motion for relief as they have agreed to voluntarily surrender the vehicle. Further stating that with the conversion of the instant case to Chapter 7, and the admitted equity, Chapter 7 Trustee might be afforded a brief opportunity to attempt to sell the vehicle for the benefit of the 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 \$112,480.94 (Declaration, Dckt. 61), while the value of the Vehicle is determined to be \$140,000.00, as stated in Schedules B and D filed by Debtor.

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.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 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 Bank of the West (“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 2017 Jayco Seneca Motorhome, VIN ending in 2776 (“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.

ALLY BANK 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 February 26, 2020. By the court's calculation, 15 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 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, -----.

<p>The Motion for Relief from the Automatic Stay is denied without prejudice.</p>
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Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Chevrolet Suburban, VIN ending in 0005 ("Vehicle"). The moving party has provided the Declaration of Aaron Nelson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jamie Benjamin Billman and Melissa Marnell Billman ("Debtors").

Movant argues Debtors have not made two (2) post-petition payments, with a total of \$2,231.86 in post-petition payments past due. Declaration, Dckt. 95. Movant also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of \$1,115.93. *Id.*

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

Debtor's Obligation As Guarantor

The Motion expressly and clearly states that Debtor provided a personal guaranty for the obligation of Cool Roofing Systems, Inc. The copy of the Purchase Agreement shows that Cool Roofing Systems, Inc. is obligated for the purchase of the Vehicle. Exhibit A, Dckt. 96.

The last page of Exhibit A is titled “**THIRD PARTY GUARANTY.**” Dckt. 96 at 4 (emphasis in original). It identifies Cool Roofing Systems, Inc. as the “Buyer” and “Jamie Billman” as the guarantor of the obligation of Cool Roofing Systems, Inc.

Movant provides “documentation” of the title owner of the Vehicle in a document titled “Ally Electronic Document.” In this Ally Electronic Document, Cool Roofing Systems, Inc. is stated to be the owner of the Vehicle and “ALLY FNCL” is the lienholder. *Id.* at 5.

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 \$21,790.70 (Declaration, Dckt. 95). As stated by Movant, its claim against the Debtor is based on the guaranty, for which no collateral is asserted to have been pledged.

11 U.S.C. § 362(d)(1)

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).

Here, Movant does not provide the court with “cause” for granting relief from the stay. The evidence presented by Movant demonstrates that the vehicle that secures the obligation is owned by Cool Roofing Systems, Inc. This is consistent with what Debtors represent, not listing this asset on Schedule A/B.

The court cannot identify why relief from the stay in this case is necessary for Movant to repossess and sell the collateral that secures the obligation of Cool Roofing Systems, Inc.

At the hearing, Movant explained **XXXXXXXXXX**

11 U.S.C. § 362(d)(2)

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). Based upon

the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle 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).

However, there is no automatic stay in this case that applies to the vehicle that is owned by Cool Roofing Systems, Inc.

At the hearing, Movant explained **XXXXXXXXXX**

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 Ally Bank (“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 without prejudice.

FINAL RULINGS

3. [20-90044-E-7](#)
[ADR-1](#)

GINNED WILLIAMS
Pro Se

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
2-8-20 [\[26\]](#)

KOCHAR BIPAN KUMAR VS.

Final Ruling: No appearance at the March 12, 2020 Hearing is required.

Local Rule 9014-1(f)(2) Motion—Final Hearing.

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 February 8, 2020. By the court's calculation, 19 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 granted.
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Kochar Bipan Kumar ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2501 Orchard Park Way, Modesto, California ("Property"). The moving party has provided the Declaration of Duke Leffler to introduce evidence as a basis for Movant's contention that Ginned Williams ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant has not provided a copy of the lease, notice of default, or the unlawful detainer action. Instead, Movant provides the Declaration of Duke Leffler, who states that he is the property manager for the Property and custodian of records of the management and income for the Property. Declarant testifies under penalty of perjury that Movant is the owner of the Property.

Unfortunately, Mr. Leffler does not testify that he is the owner, but somebody else is. He does not testify as to how he has personal knowledge of this, but it appears that he heard someone tell him that somebody owns the Property.

No lease is provided that he could authenticate. No notice of default is provided. No unlawful detainer complaint has been provided.

The only “evidence” presented as to why Movant should be given relief from the stay are the factual and legal conclusions made by Mr. Leffler.

Continuance of Hearing

At the February 27 hearing, the court continued the hearing to allow Movant to file supplemental documents relating to the lease and notice of default.

Supplemental Declaration and Exhibits

On March 2, 2020, Movant filed the Supplemental verified Declaration of Steve Zagaris. Dckt. 39. In support of his Declaration, Movant filed four exhibits: (1) Rental Agreement between Movant and Debtor; (2) Notice of Termination of Tenancy and Notice to Vacate; (3) and its Proof of Service; and (4) Extension Agreement.

Through this declaration, Zagaris declares under penalty of perjury, that he is the agent of the owner, Movant Kochar Bipan Kumar. He asserts Movant is the owner of the real property commonly known as 2501 Orchard Park Way, Modesto, California. Declarant properly authenticates the Rental Agreement and Notice of Termination.

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).

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.

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.

While the original documents did not provide a basis for waiving the fourteen day stay, the court continued the hearing. This has afforded Debtor additional time to respond, as well as having caused delay for Movant. Cause has been shown to waive 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 Kochar Bipan Kumar (“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 2501 Orchard Park Way, Modesto, California.

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.