

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

**March 13, 2025 at 10:00 a.m.**

1. [25-90025-E-7](#)  
[RDW-1](#)

**ERIK JAGER AND JOSEFINA  
CORRAL**  
Pro Se

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
2-7-25 [\[25\]](#)**

**CAFL 2022-RTL1 ISSUER, 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.

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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, borrower, and Office of the United States Trustee on February 10, 2025. By the court's calculation, 31 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.**

CAFL 2022-RTL1 ISSUER, LLC ("Movant") seeks relief from the automatic stay with respect to Erik Jager and Josefina Corral's ("Debtor") real property commonly known as 421 Harding Street, Newport Beach, CA 92661 ("Property"). Movant has provided the Declaration of Tom French to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 29.

Movant argues Debtor is not the borrower on the loan. Decl. ¶ 5, Docket 29. In fact, the borrower is Global LA Investing LLC ("Borrower"). *Id.* Borrower had defaulted under the terms of the loan

**March 13, 2025 at 10:00 a.m.**

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and foreclosure was scheduled for January 17, 2025, the same day this case was filed. *Id.* at ¶¶ 12, 14. There proceeded to be a number of property interest transfers made from Borrower to Debtor in this case, and to debtors in another case, case no. 25-10109. *Id.* at ¶ 11. These transfers were unauthorized. Movant accordingly moves for relief pursuant to 11 U.S.C. § 362(d)(1) and (4).

## **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 \$2,323,316.25 (Declaration ¶ 14, Docket 29), while the value of the Property is unknown as the Property is not scheduled.

### **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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### **11 U.S.C. § 362(d)(4)**

#### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor’s inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 7 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by transferring interests in the Property without Movant's consent prior to bankruptcy.

The evidence shows Debtor received an interest in the Property just prior to filing bankruptcy. The transfer from Borrower to Debtor was not authorized. In fact, there appear to be multiple transfers to multiple debtors, which the court concludes amount to a scheme to delay or hinder Movant.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 7 case cannot have been for any bona fide, good faith reason in light of the multiple unauthorized transfers.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

### **Attorneys' Fees Requested**

#### **Request for Attorneys' Fees**

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014 (though the court has allowed for such a request to be made as part of a motion for relief from the stay when a specific amount is requested and it is supported by evidence).

### **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 the bankruptcy is part of a scheme to delay collection efforts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:1-10..

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 CAFL 2022-RTL1 ISSUER, 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, and 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 421 Harding Street, Newport Beach, CA 92661 (“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.

**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

**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.

2. [25-90029-E-11](#)  
[HB-1](#)

**RANCHO FRESCO TURLOCK  
INC.  
David Johnston**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
TO CONFIRM TERMINATION OR  
ABSENCE OF STAY  
2-13-25 [17](#)**

**MASACAJA HOLDINGS, 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.

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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, creditors and parties in interest, administrative claimants, and Office of the United States Trustee on February 13, 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.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Landlord and creditor Masacaja Holdings, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 210 W. Main Street, Suites B, C, and D, Turlock, California 95832 ("Property"). The moving party has provided the Declarations of Jordan A. Lavinsky and Matthew Swanson to introduce evidence as a basis for Movant's contention that Rancho Fresco Turlock Inc. ("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. ¶ 1, Docket 20. 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 Stanislaus and received a judgment for possession, with a Writ of Possession having been issued by that court on January 7, 2025. Exhibit 5, Dckt. 19.

Debtor has not filed an Opposition to the Motion. Movant filed a supplemental pleading on March 6, 2025, asking the court again to grant relief as Debtor has no interest in the leasehold. Docket 32.

However, Debtor/Debtor in Possession did file a Status Conference Statement asserting that it was not served with the unlawful detainer complaint (a matter to be addressed in that State Court). Dckt. 30. Additionally, that the Debtor/Debtor in Possession intends on pursuing a Plan of reorganization.

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 Movant is unable to begin mitigating its loss with Debtor occupying the Property, 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 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 Masacaja Holdings, 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 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 210 W. Main Street, Suites B, C, and D, Turlock, California 95832.

**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.

3. [24-90730-E-7](#)  
[DVW-1](#)

**ROBERT LEWIS**  
**Pauldeep Bains**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
1-29-25 [12]**

**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).**

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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.

<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b>
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### **March 13, 2025 Hearing**

The court continued the hearing on this Motion as Debtor was in the process of signing the Reaffirmation Agreement, and the Parties agreed to a continuance to allow Debtor to finalize the agreement.

As of the court's review of the docket on March 10, 2025, nothing new has been filed with the court. At the hearing, XXXXXXX

## REVIEW OF THE MOTION

21<sup>st</sup> 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 February 20, 2025 hearing, creditor's counsel reported that the Debtor signed pages two and three of the Reaffirmation Agreement, but has not signed off on page 4. Counsel for the Creditor requested that the hearing be further continued to allow the Debtor the opportunity to finalize the Reaffirmation Agreement and get it filed.

### **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 21<sup>st</sup> 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 Motion for Relief from the Automatic Stay is  
**XXXXXXX.**

THE IRVINE COMPANY LLC VS.

Item 4 thru 5

**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).**

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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 February 26, 2025. 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 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, -----

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

The Irvine Company, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 446 Enclave Cir. #302, Costa Mesa, Ca 92626 ("Property"). The moving party has provided the Declaration of Kristen Hansen to introduce evidence as a basis for Movant's contention that Henry Haas and Michelle Haas ("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 entered into a lease with the Debtor. Decl. ¶ 1, Docket 1; Ex. 1, Docket 34. 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 September 30, 2024. Exhibit 3, Dckt. 35. This bankruptcy case halted that action.

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 the Irvine Company, 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 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 446 Enclave Cir. #302, Costa Mesa, Ca 92626.

**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. [25-90079-E-7](#)  
[SW-1](#)

**HENRY/MICHELLE HAAS**  
**Pro Se**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
2-13-25 [16](#)**

**TRYON STREET ACQUISITION  
TRUST I 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.

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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*) and all creditors and parties in interest on February 13, 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.**

Tryon Street Acquisition Trust I ("Movant") seeks relief from the automatic stay with respect to Henry Haas and Michelle Haas' ("Debtor") real property commonly known as 3319 Floyd Terrace, Los Angeles, California 90068 ("Property"). Movant has provided the Declarations of Philip J. Boroda and Matthew D. Dameron to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Dockets 20, 21.

Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), (2), and (4). Movant argues Debtor filed the case in bad faith as part of a scheme to prevent Movant's foreclosure. Mot. 2:9. In addition, Movant presents evidence that the actual borrower under the terms of the loan, Pearl City ("Borrower"), defaulted under the terms of the loan documents by failing to pay certain real property tax installments in connection with the Property as well as payment installments. Decl. ¶¶ 4-5, Docket 21.

Movant further presents evidence that there is no equity in the Property, and it is not necessary for an effective reorganization, the total secured debt being \$1,754,395.56 (Decl. ¶ 16, Docket 21) and the value of the Property being scheduled at \$1,760,000. Schedule A/B, Docket 15.

## **DISCUSSION**

### **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.

### **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). The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984).

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, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### **11 U.S.C. § 362(d)(4)**

#### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* The court is aware of the following case to affect the Property:

A. Case No. 24-90816

1. Filed: December 30, 2024
2. Chapter 7
3. Dismissal Date: February 4, 2025
4. Reason for Dismissal: Failure to timely file documents

According to Movant, Pearl City, the borrower, then transferred an interest to the Debtor in the current case on January 27, 2025, without Movant's authorization. Mot. 2:19.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 7 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases and transferring interests in the Property without Movant's authorization.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 7 case cannot have been for any bona fide, good faith reason in light of the multiple cases affecting the Property and unauthorized transfers.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

**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 the case is part of a scheme to delay and hinder Movant's recovery of the Property, 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 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 Tryon Street Acquisition Trust I ("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, 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 3319 Floyd Terrace, Los Angeles, California 90068 ("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.

**IT IS FURTHER ORDERED** that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

**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.