

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 14, 2024 at 10:00 a.m.

1. [23-24529-E-7](#) **ROCHELL MINOR** **AMENDED MOTION FOR RELIEF FROM**
[KKY-1](#) **Arete Kostopoulos** **AUTOMATIC STAY**
COMMUNITY FIRST CREDIT UNION **2-28-24 [32]**
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 creditor on February 28, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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.

This Motion was originally set for hearing on March 12, 2024, on the court’s 1:30 p.m. Chapter 13 Relief From Stay Calendar. Movant, with the conversion of this case, filed an Amended Motion setting it for hearing on the March 14, 2024 Chapter 7 Relief from the Stay Calendar. The Court stated the Ruling below at the March 12, 2024 Calendar.

The court will rehear this Matter on the 10:00 a.m. March 14, 2024 Calendar to address any oppositions or related points which a party in interest may want to present, this having been set pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Community First Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Subaru Crosstrek, VIN ending in 4471 (“Vehicle”). The moving party has provided the Declaration of Jennifer Conroy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rochell Minor (“Debtor”). Decl., Docket 34.

Movant argues Debtor defaulted on payments and the Vehicle was repossessed on December 15, 2023. *Id.* at ¶ 5. Movant presents evidence that Debtor missed 10 monthly payments at \$629.85 each. *Id.* at ¶ 9. On January 12, 2024, debtor’s counsel informed the Credit Union that debtor is no longer interested in keeping the Vehicle. *Id.* at ¶ 6.

Debtor has not filed an opposition in this matter.

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 \$37,433.29 (Declaration, Dckt. 34 ¶ 11), while the value of the Vehicle is determined to be \$25,000 as stated in Schedules A/B and D filed by Debtor. Docket 1, p. 10.

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); 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, 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).

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. However, because Movant has submitted evidence that Movant is already in possession of the car and Debtor does not intend to keep the vehicle, the court will waive the Rule 4001(a)(3) fourteen-day stay.

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.

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.

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 Community First 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Subaru Crosstrek, VIN ending in 4471 (“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.

NORTH VILLAGE DEVELOPMENT,
INC. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, all creditors and parties in interest, and Office of the United States Trustee on February 28, 2024. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

NOTICE AS A MOTION UNDER LBR 9014-1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(1).

The Motion for Relief from the Automatic Stay was sufficiently set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2), if the court deems it having been noticed pursuant thereto. 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.

**INITIAL POINTS RE:
PLEADINGS FILED AS ONE DOCUMENT
AND PROPER NOTICING OF HEARING**

North Village Development, Inc. (“Movant”) filed the Motion, supporting Memo, and Exhibits in this matter as one document. Docket 62. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Also, as stated above, the Notice of Hearing does not expressly state that whether written or oral opposition must or may be presented at the hearing. Considering the language in the Notice, the court believes it fairly states that opposition may be presented orally at the hearing.

At the hearing, counsel for Movant addressed these points, **XXXXXXX**

The Motion for Relief

Movant seeks relief from the automatic stay with respect to the real property commonly known as 300 Crescent Drive, Apartment 241, Vacaville, Solano County, California (“Property”). The moving party has provided the Declaration of Bobbie Sloan to introduce evidence as a basis for Movant’s contention that Thomas Meadows (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 64. Movant presents evidence that it is the owner of the Property. *Id.*; Exhibit A, Docket 62.

Movant explains that Debtor is not a party to the Lease Contract filed as Exhibit A, Docket 62. *Id.* at ¶ 3. Rather, the parties on the lease were Sharon Calalang and Movant. *Id.* Movant filed and won an unlawful detainer action against Ms. Calalang for not paying rent, and when Ms. Calalang attempted to return possession to Movant, Debtor prevented Movant from obtaining possession by unlawfully living in the Property. *Id.* at ¶ 8. Debtor has not paid any rent monies whatsoever. *Id.* at ¶ 6. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant has provided a copy of the Lease Contract (Exhibit A, Docket 62) to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no right to possession in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Nikki Farris, the Chapter 7 Trustee, filed a statement of non-opposition on March 6, 2024.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant's grounds for the request are that, "Debtor has no lease or other agreement permitting Debtor to be in possession of the [Property]. Debtor obtained possession of the [Property] by fraud and Debtor is not making any monthly rental payments. . . Debtor obtained possession by remaining in possession of the Property after the lawful tenant vacated. . ." Motion, Docket 62 p. 5:17-25.

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 Village Development, 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 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 300 Crescent Drive, Apartment 241, Vacaville, Solano County, California ("Property").

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.