UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 4, 2024 at 10:00 a.m.

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1. 23-24610-E-11 RDW-1 | **LAFLEUR WAY, LLC** | **Peter Macaluso** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **3-13-24 [48]**

CARSON AVENUE PARTNERS, LLC
VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Subchapter V Trustee, parties requesting special notice, and Office of the United States Trustee on March 13, 2024. 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 11 Subchapter V 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 Denied Without Prejudice.

Carson Avenue Partners, LLC, its successors and/or assignees ("Movant") seeks relief from the automatic stay with respect to Lafleur Way, LLC's ("Debtor") real property commonly known as 2421 Marconi Ave., Sacramento, California 95821 ("Property"). Movant has provided the Declaration of Robert Abbasi to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 51.

Creditor informs the court that Debtor is not the borrower on the note secured by the Property, but rather the borrower is Marconi Holdings, LLC ("Borrower"). *Id.* at ¶ 4. Borrower defaulted under the terms of the note, and when Movant scheduled its foreclosure sale for March 15, 2024, Movant received a Notification of the Bankruptcy Filing with a Grant Deed recorded on March 1, 2024 purporting to show the Property had been transferred from Borrower to Debtor, with all of the property of the Debtor now being in the Bankruptcy Estate in this case. *Id.* at ¶ 13. This transfer was done without Movant's knowledge or approval.

However, Creditor and Debtor (not the fiduciary Debtor in Possession) filed a Stipulation with the court on March 20, 2024. Docket 59. Debtor (not the fiduciary Debtor in Possession on behalf of the Bankruptcy Estate) asserts it has no rights in the Property whatsoever and does not oppose relief. *Id.* at ¶ 10. Debtor (not the fiduciary Debtor in Possession) asserts it is unaware of any purported transfer of the Property, implying the transfer was fraudulent.

The court notes that the Responsible Representative for the fiduciary Debtor in Possession does not provide a declaration under penalty of perjury for the statements made in the Stipulation between Movant and the Debtor. (Nor does a representative of the Debtor provide a declaration under penalty of perjury for which is stated in the Stipulation.)

The court further notes that the Stipulation between Debtor and the Movant begins with the statement that those two parties, through their respective counsel, stipulate to such terms. However, the Stipulation is not signed by either party as a Stipulation (whether by their representative counsel or their respective agents/managers). Rather, the attorneys sign only approving it as to "Form and Content." [Fn.1.]

FN. 1. By this Stipulation, counsel for the Debtor in Possession appears to also being doing work for the Debtor. As counsel is well aware, he can be allowed and the Debtor in Possession or Plan Administrator be authorized to pay only legal services provided to the Debtor in Possession.

Thus, it appears that the Stipulation has not been executed by an authorized representative of either Movant or Debtor, but merely their attorneys who approve the form and content.

Movant argues the total amount due under the note is now $561,672.33, but does not clearly inform the court which payments have been missed. Declaration, Dckt. 51 ¶ 9. A review of Debtor Schedules reveals this Property is not scheduled.

From the information provided by Movant and the Debtor in Possession, it appears that there may well be fraud afoot by third-parties in connection with these bankruptcy proceedings. It appears that an entity identified on the Grant Deed (Exhibit D; Dckt.52) may be an active participant in this activities. It is the entity identified as the one to which the recorded Grant Deed is to be returned. Home Asset Recovery is listed as having an address of 2108 N Street, STE 8635, Sacramento California. [Fn.2.]

FN. 2. The court notes that Exhibit D is not a scanned document, but appears to be a picture snapped on someone's smart phone. From the angle take, it makes of the text less legible, including the correct spelling for the "Palmieri Law" firm.

At the top of the Grant Deed in the upper left hand corner, it states that the recording is requested by "Palmieri Law." There are several attorneys with the name Palmieri in California that show up on an internet search.

Taken at face value, the Bankruptcy Estate is now the "proud owner" in a 1/3 interest in the Marconi Avenue Property. Taken at face value, there may be gross fraud occurring in connection with this federal court proceeding.

This appears to be the type of matter that the U.S. Trustee for Region 17, as part of their duties within the Department of Justice, would investigate, bring together clear documents, and then provide that information to the U.S. Attorney for Region 17 so that the U.S. Attorney can further investigate, with the other agencies or departments that work with the U.S. Attorney in this type of situation, to uncover the improper activities being undertake in connection with this federal court proceeding.

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 $561,672.33 (*Id.*), while the value of the Property is not evident. The Property is not scheduled, and Creditor does not otherwise provide a valuation of the Property. However, the Property was assessed to have a value of $5,439,848 by the Sacramento County Department of Finance on January 1, 2023. Exhibit E, Docket 52 p. 34. As one generally knows, the assessed value does not equate to the fair market value of the property unless it relates to a property that was recently sold.

Given the above, there are many questions facing the court as to what has occurred during this case, what is property of the bankruptcy estate, and the absence of the fiduciary Debtor in Possession in the administration of this case.

There appear to be many "players" involved with what may be a fraud on the court. Some of these people and entities can be clearly identified from the face of the Grant Deed. In re-re-reviewing the Grant Deed, the court notes that the Managing Member of Marconi Holdings, LLC signing the Grant Deed is stated to be Darnell Card. However, a quick internet search turns up that Darnell Card is identified as being the "Manager" for Home Asst Recovery Group, LLC, one of the grantees under the Grant Deed. Thus, Mr. Card is dealing and receiving from two sides of the table in connection with the purported transfer of an interest in the Property into the Bankruptcy Estate.

It appears that both the real owners, the purported transferees, and the purported transferors, and their respective agents, need to be the subject of review and possibly being part of these federal court proceedings.

As note above, while there is a document filed as a "Stipulation," none of the Parties have signed it, but it has only been approved as to form and content by their respective attorneys.

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.
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> The Motion for Relief from the Automatic Stay filed by Carson Avenue Partners, LLC, its successors and/or assignees ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** the Motion is denied without prejudice.

FINAL RULINGS

2. **24-20311-E-7** **TERESA PRASAD** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
SKI-1 **Mark Wolff** **2-21-24 [14]**

AMERICREDIT FINANCIAL SERVICES, INC. VS.

Final Ruling: No appearance at the April 4, 2024 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 21, 2024. By the court's calculation, 43 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.

The Motion for Relief from the Automatic Stay is granted.

Americredit Financial Services, Inc., d/b/a GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Chevrolet Box Truck, VIN ending in 7119 ("Vehicle"). The moving party has provided the Declarations of Aaron Rangel (Docket 16) and Jon Eng (Docket 17) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Teresa Edie Prasad ("Debtor").

Movant argues Debtor is actually current as of January 31, 2024, but has provided a Statement of Intention indicating intent to surrender the Vehicle due to an expensive repair that must be done. *See* Exhibit E, Docket 18 p. 15; Docket 1, p. 53 line 1.

Geoffrey Richards, the Chapter 7 Trustee, filed a statement of non-opposition on March 4, 2024. Debtor also filed a statement of non-opposition on February 29, 2024 at Docket 23.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Exhibit D, Docket 18 p. 14. 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).

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 $6,088.87 (Declaration, Dckt. 16 ¶ 6), while the value of the Vehicle is determined to be $27,900 for clean retail, as stated on the J.D. Power Valuation Report.

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 because Debtor's Statement of Intention (Docket 1, p. 53 line 1) indicates Debtor's intent to surrender the Vehicle, and the Chapter 7 Trustee does not oppose the Motion. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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. Because Debtor intends to surrender the vehicle, the court waives the fourteen-day stay of enforcement.

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 Americredit Financial Services, Inc., d/b/a GM Financial ("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 2019 Chevrolet Box Truck, VIN ending in 7119 ("Vehicle") ("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.

3. **23-21332-E-7** **BENJAMEN VERMA** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
KMT-1 **Peter Macaluso** **2-23-24 [100]**

BARRY W. MORSE, INC. VS.

Final Ruling: No appearance at the April 4, 2024 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 7 Trustee, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on February 23, 2024. By the court's calculation, 41 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.

The Motion for Relief from the Automatic Stay is granted.

Barry W. Morse, Inc. ("Movant") seeks relief from the automatic stay with respect to Benjamin Verma's ("Debtor") real property commonly known as 4414 Bantam Way, Elk Grove, CA 95758 ("Property"). Movant has provided the Declaration of Barry Morse to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 102.

On June 22, 2022, Movant loaned Debtor $429,650 secured by the Property. Debtor was to repay the loan in monthly interest payments of $3,934.88 at 10.99% interest, then a balloon payment of all unpaid interest, fees, and costs on July 1, 2025. Decl., Docket 102 ¶ 6. Movant argues Debtor has only made one payment since October 2022 in the amount of $9,850 because the court ordered such distribution. *Id.* at ¶ 8. The amount to pay off Movant's claim is now $507,320.36. *Id.* at ¶ 9. By the court's calculation, Debtor has missed approximately eight post-petition payments at the time of filing this Motion after applying the $9,850 payment toward Movant's claim.

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 $507,320.36. (*Id.*), while the value of the Property is determined to be $650,000, as stated in Amended Schedules A/B and D filed by Debtor. Docket 81, p. 4 line 1.

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.

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 Barry W. Morse, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 4414 Bantam Way, Elk Grove, CA 95758 ("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.
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> No other or additional relief is granted.