

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

April 17, 2025 at 10:00 a.m.

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

ERIK JAGER AND JOSEFINA
CORRAL

Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY

3-20-25 [\[47\]](#)

MARINA ADMIRALTY COMPANY 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, creditors, and Office of the United States Trustee on March 20, 2025. By the court's calculation, 28 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. At the hearing, -----

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The Motion for Relief from the Automatic Stay is granted.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not

April 17, 2025 at 10:00 a.m.

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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)(l).

REVIEW OF MOTION

Marina Admiralty Company (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 10420 Northwest Passage #304, Marina Del Rey, California 90292 (“Property”). The moving party has provided the Declaration of Danny Quintanilla to introduce evidence as a basis for Movant’s contention that Erik Jager and Josefina Corral (“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. 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 Los Angeles and received a judgment for possession. Decl. 3:1-5, Docket 49. But the Superior Court vacated the judgement upon being informed of Debtor’s bankruptcy petition on January 17, 2025. *Id.*

Movant has provided a properly authenticated copy of the recorded Lease Agreement to substantiate its claim of ownership. Exhibit, Docket 51; Decl. 1:23-25, Docket 49. 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 Marina Admiralty Company (“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 10420 Northwest Passage #304, Marina Del Rey, California 90292.

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.

LEIRA 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.

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, creditors, and Office of the United States Trustee on March 25, 2025. By the court’s calculation, 23 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. At the hearing, -----
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The Motion for Relief from the Automatic Stay is granted.
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Ivan J. Kass and Marcia A. Kass, Trustees of the Declaration of Trust dated November 15, 2005 as to an undivided 62% interest and Leira Holdings LLC as to an undivided 38% interest (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 7307 Lowell Way, Goleta, California 93117 (“Property”). The moving party has provided the Declaration of Henry Le to introduce evidence as a basis for Movant’s contention that Erik Jager and Josefina Corral (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property.

Movant asserts it is the original and current payee of a Promissory Note secured by a Deed of Trust, which encumbers the Property. Decl. 2:13-25, Docket 59; Exhibit 2, Docket 58. Movant asserts the original borrower of the Promissory Note and Deed of Trust was in material default on monthly mortgage payments. Mot. 2:13-18, Docket 56. When the borrower did not cure the default, Movant scheduled a foreclosure sale on January 29, 2025. *Id.*; Exhibit 2, Docket 58. But on the day of the sale, the borrower transferred a fractionalized interest in the Property to Debtor via a grant of deed. Decl. 3:1-8, Docket 59. The transfer was done without Movant’s knowledge or consent. *Id.*

Debtor filed for bankruptcy on January 17, 2025, and provided a notice of the bankruptcy to Movant on the day of the foreclosure sale. Decl. 2:26-28, Docket 59. As a result, Movant believes Debtor's transfer of the Property was done to hinder, delay, and defraud Movant from foreclosing the property.

Movant provides evidence that the original borrower defaulted on the note, and as of February 1, 2025, \$46,286.62 was due under the terms of the note. Decl. ¶ 9, Docket 59.

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)(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.* For instance, here, Debtor received a transfer of a fractionalized interest in the Property for no consideration, which may indicate that the conduct was done in bad faith.

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.

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 Debtor receiving a fractional interest in the Property for no consideration and filing bankruptcy the month the foreclosure sale was to occur. And the evidence indicates that Debtor has acted with the intent to hinder or delay Movant by filing for bankruptcy just days after the transfer, and sending notice to Movant on the very day the foreclosure sale began.

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.

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. ^{FN.1.}

FN. 1. This bankruptcy filing is yet another in a growing number of the purported “debtors” being in Southern California, but one of them being in Modesto for some business or family reason. When the court checked using the Lexis-Nexis data base the Social Security Numbers listed by the two Debtors under penalty of perjury, they did not match up the Debtors. For the real properties listed on Schedules A/B, Dckt. 20, a Lexis-Nexis data base search does not list them as being on title for the properties.

The court does not use any of this Lexis-Nexis information in ruling on this Motion. Rather, the court notes it is an identified problem with filings being made in the Modesto Division and something that is being reviewed by the court and appropriate officials.

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. Specifically, Movant claims an additional waiting period may give Debtor an opportunity to file another bankruptcy case to further hinder, delay, and defraud Movant or other creditors. And Movant also claims that additional time may result in another unauthorized transfer by Debtor. The court finds this persuasive.

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 Ivan J. Kass and Marcia A. Kass, Trustees of the Declaration of Trust dated November 15, 2005 as to an undivided 62% interest and Leira Holdings LLC as to an undivided 38% interest (“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 7307 Lowell Way, Goleta, California 93117 (“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.

Items 3 thru 4

Set by order of the court filed 3/31/25 to be conducted in conjunction with the continued Motion for Relief from Automatic Stay. Debtor ordered to appear [telephonic appearance permitted].

Amended Reaffirmation Agreement changes: signatures at pages 2, 3, and 4.

An agreement to reaffirm a debt owed to 21st Century Mortgage Corporation, which is secured by a 1972 KIT Manufactured Home having a value of \$35,710.95, was filed by Robert Lewis (“Debtor”). A hearing on this reaffirmation was conducted pursuant to order of the court.

No additional evidence was presented by Debtor in support of the reaffirmation. The interest rate of 10.668% under the terms of the reaffirmation agreement has not been modified from the original contract rate. The amount of the debt to be reaffirmed is (\$35,710.95) which has not been reduced from the pre-petition claim.

Debtor having income of \$2,418 and expenses of (\$2,577), the presumption of undue burden pursuant to 11 U.S.C. § 524(m) arises in connection with this reaffirmation agreement. The proposed monthly payment is \$442.98 for 225 months. Based on the income and expense information there is **XXXXXXX** a demonstrated ability of Debtor to pay this obligation to be reaffirmed.

The court having reviewed the reaffirmation agreement, the reaffirmation agreement **not** having been certified by an attorney for Debtor, evidence provided, the value of the collateral, the interest rate, the amount of the obligation, the income and expenses of Debtor, the presumption of 11 U.S.C. § 524(m) **not arising** and **XXXXXXX**, and finding that the proposed reaffirmation is **XXXXXXX** in the best interests of Debtor and does **XXXXXXX** create an undue hardship for Debtor, the reaffirmation agreement is **XXXXXXX**

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).

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.

The Motion for Relief from the Automatic Stay is XXXXXXX.

April 17, 2025 Hearing

The court continued the hearing on this Motion as the Reaffirmation Agreement was being signed by the Parties. The reaffirmation Agreement was filed with the court on March 24, 2025. Docket 31. At the hearing, XXXXXXX

REVIEW OF THE MOTION

21st 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.

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, Movant reported that the Reaffirmation Agreement has been signed and an image of it was sent to Movant, however the image was blurred and could not be filed. Movant has requested a clean copy of the Reaffirmation Agreement to be provided, but it has not yet been received by the Debtor.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on April 17, 2025.

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 21st 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 hearing on the Motion for Relief from the Automatic Stay is **XXXXXXX**.

MARTHA MORALES 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)(3) 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, creditors, and Office of the United States Trustee on March 25, 2025. The court set the hearing for April 17, 2025. Order, Docket 26.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.
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Martha Leticia Magana Morales (“Movant”) seeks relief from the automatic stay with respect to Peter Garcia and Carmen Acosta’s (“Debtor”) real property commonly known as 530 S. Resh St., Anaheim, California 92805 (“Property”). Movant has provided a Declaration under her name, which contains five signatures of different witnesses, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 25. ^{FN.1.}

FN. 1. Movant filed the Motion, Declaration, and Exhibits in this matter as one document. 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). Movant, who is *pro se*, is gently 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.

Movant argues Debtor has engaged in a pattern of fraudulent bankruptcy filings to hinder or delay Movant from collecting rent on the Property. Mot. 1:23-27, Docket 25. Movant further claims that the named Debtors do not reside at the Property, and that the actual individuals in possession of the Property have engaged in a pattern of fraudulent bankruptcy filings. *Id.*

On March 26, 2025, the court ordered Movant's motion for relief to be heard on April 17, 2025. Order 2:14-18, Docket 26. In the order, the court noted that the two Debtors named in this bankruptcy case are not linked to the Social Security Number listed by them under penalty of perjury. *Id.* at 4-6; *see* Petition, Docket 6.

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.

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.* In this matter, the named Debtors are not the real occupants of the Property, which indicates there was a fraudulent transfer of assets. Additionally, according to Movant's pleadings, the real occupants have a documented history of multiple eviction proceedings:

- A. Case No. 8:24-bk-10881-T (U.S. Bankruptcy Court, Central District of California)
- B. Case No. 30-2024-01376647-CL-UD-CJC (Superior Court of Orange County)
- C. Case No. 30-2024-01358764-CL-UD-CJC (Superior Court of Orange County)
- D. Case No. 30-2024-01449392-CL-UD-CJC (Superior Court of Orange County)
- E. Case No. 30-2024-01371815-CL-CI-CJC (Superior Court of Orange County)
- F. Case No. 23LBUD02584 (Superior Court of Los Angeles County)
- G. Case No. 30-2024-01449392-CL-UD-CJC (Superior Court of Orange County)

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.

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 fact that Debtors are not the occupants of the real property. And the fact that Debtors' Social Security Numbers do not match their identity further shows that there is an attempt to commit fraud in this bankruptcy case.

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.. ^{FN.2.}

FN. 2. This bankruptcy filing is yet another in a growing number of the purported "debtors" being in Southern California, but one of them being in Modesto for some business or family reason. When the court checked using the Lexis-Nexis data base the Social Security Numbers listed by the two Debtors under penalty of perjury, they did not match up the Debtors.

The court does not use any of this Lexis-Nexis information in ruling on this Motion. Rather, the court notes it is an identified problem with filings being made in the Modesto Division and something that is being reviewed by the court and appropriate officials.

11 U.S.C. § 105(a) Bar to Refiling

Pursuant to 11 U.S.C. §§ 105 and 349 the court may issue an injunction prohibiting a debtor from filing or from causing to be filed any subsequent petition for relief under the Bankruptcy Code for a period of two years without first obtaining permission of the Chief Bankruptcy Judge. But because this matter is not a motion for dismissal, and is instead a motion for relief from the automatic stay, the court cannot grant the requested relief here.

11 U.S.C. § 349(a) states:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

This section permits the court ordering a bar to refiling, for cause. *See In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). Collier's Treatise has stated on the subject:

Although the general rule of section 349(a) is that dismissal of a case is without prejudice, the court is given the discretion to order otherwise for cause. Thus, when dismissal is predicated on grounds that would justify barring the debtor from discharge in the dismissed case or in a subsequent case, the court has the power to dismiss a case with prejudice. But even voluntary dismissal can be with prejudice if the facts warrant it. This rule must be limited by the requirement of due process. A summary finding of conduct that would bar a discharge under section 727 and a dismissal on that or any other ground may deny a debtor due process if the summary finding would thereafter have the same effect in a later case as a denial of discharge under section 727. Accordingly, the courts should proceed with caution in this area, and dismiss with prejudice only when the debtor's conduct is particularly egregious. As the Court of Appeals for the Tenth Circuit held in *Hall v. Vance*, dismissal with prejudice is a severe sanction to which courts should resort only infrequently. The court found that it should occur only if there has been both bad faith and prejudice to creditors. Moreover, a dismissal with prejudice should be ordered only after full opportunity for a hearing similar to the opportunity provided on a complaint under section 727 for denial of discharge. It also held that the proponent of dismissal with prejudice has the burden of persuasion.

3 COLLIER ON BANKRUPTCY ¶ 349.02[2].

Here, although Movant may have demonstrated that Debtors engaged in egregious conduct, the court finds the claim without merit because this is not a motion for dismissal where the court can dismiss the case with prejudice. This part of the 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 Martha Leticia Magana Morales (“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 530 S. Resh St., Anaheim, California 92805 (“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.”

No other or additional relief is granted.

FINAL RULINGS

6. [24-90234-E-7](#)
[PPR-2](#)

FABRICIO VASQUEZ
David Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-19-25 [\[91\]](#)

BMO BANK N.A. VS.

Final Ruling: No appearance at the April 17, 2025 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 Office of the United States Trustee on March 19, 2025. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

BMO Bank N.A. (“Movant”) seeks relief from the automatic stay with respect to Fabricio Bernal Vasquez’s (“Debtor”) real property commonly known as 2028 El Toro Way, Modesto, California 95355 (“Property”). Movant has provided the Declaration of Jodi Reisch to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 93.

Movant argues Debtor has not made three post-petition payments, with a total of \$914.09 in post-petition payments past due. Decl. 3:6-14, Docket 93. Movant also provides evidence that it has incurred \$1,549.00 in legal fees and costs in connection with seeking relief from the automatic stay. *Id.* at 1-6.

CHAPTER 7 TRUSTEE’S NON-OPPOSITION

Chapter 7 Trustee, Loris L. Bakken (“Trustee”), filed a Non-Opposition on March 22, 2025.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt owed to Movant secured by this asset is determined to be \$42,712.92 (Decl. 2:24-28, Docket 93), while the value of the Property is determined to be \$564,500.00, as stated in Schedules A/B and D filed by Debtor. Exhibit C at 28, Docket 95. The record reflects that Nationstar Mortgage LLC holds a first position deed of trust in the Property and is owed \$253,484.75 on its note. POC 4-1. There is a second position deed of trust in favor of Tolanzo Corporativo S.A. de C.V. in the amount of \$214,148.95 also encumbering the Property. POC 5-1.

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).

Here, Debtor has not made three post-petition payments. The court thus determines that cause exists for terminating the automatic stay. 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, 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 BMO Bank N.A. (“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 2028 El Toro Way, Modesto, California 95355 (“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 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.