

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

April 17, 2018, at 1:30 p.m.

1. **17-25403-E-13**      **BYLLIE DEE**  
**VVF-1**                      **Bert Carter**

**MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
3-20-18 [[121](#)]**

**APOLLO AUTO FINANCE VS.**

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

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The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Relief from the Automatic Stay is denied without prejudice.**

Apollo Auto Finance ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. §3262(d)(1), the "for cause" grounds. On March 26, 2018, the court entered an order dismissing this Chapter 13 Case. Order, Dckt. 145. The automatic stay terminated with the dismissal of this case. 11 U.S.C. § 362(c)(2) and § 349(b)(3). The Motion is rendered moot, there being no stay from which to be granted relief.

On page 3 of the four page Motion, Movant also requests that the court also order that further relief should be granted and the:

"Order be binding and effective in any bankruptcy case commenced by the Debtor for a period of 180 days, so that no further automatic stay shall rise in that case as to the subject Vehicle for the following reasons:

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1. Case No. 15-42180-13 was filed in Oakland Division on July 13 2015 and dismissed on May 9, 2016,
2. Case No. 15-43169-13 was filed in Oakland Division on October 15, 2015 and dismissed on November 4, 2015,
3. Case No. 16-41813-13 was filed in Oakland Division on June 29, 2016 and dismissed on July 15, 2016, and
4. Case No. 16-42054-13 was filed in Oakland Division on July 22, 2016 and dismissed on November 17, 2017.”

Motion, p. 3:18-28; Dckt. 123.

No legal authorities are presented for the relief requested. No legal basis being provided to the court, the additional “relief” requested is denied.

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for relief from the automatic stay is denied without prejudice..

**IT IS FURTHER ORDERED** that the portion of the Motion requesting that this court issue an order determining that the automatic stay in any further cases filed by Debtor within 180-days is null and void is denied.

2. [17-27931](#)-E-13 CHARLENE LINDAUER  
EAT-1 MACALUSO  
Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
3-16-18 [\[36\]](#)

WELLS FARGO BANK, N.A. VS.

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

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 16, 2018. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Charlene Macaluso's (aka Charlene Lindauer dba Capital Five dba Capital Five Finance) ("Debtor") real property commonly known as 5415 Ashby Lane, Granite Bay, California ("Property"). Movant has provided the Declaration of Ken Khounlivong to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ken Khounlivong Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of \$12,579.39 in post-petition payments past due.

#### CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 28, 2018. Dckt. 47. The Chapter 13 Trustee asserts that Debtor is delinquent \$726.66 under the proposed plan. Debtor has paid a total of \$363.33 to date and does not provide for Movant's claim in the Plan.

## DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$1,070,169.46, including Movant's first deed of trust, as stated in the filed Proofs of Claim. The value of the Property is determined to be \$600,000.00, as stated in Schedules A and D.

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.

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because co-debtor signed the Deed of Trust waiving any current or potential interest in the Property. Movant asserts that even though co-debtor is not a borrower on the Note or Deed of Trust, Movant still requests relief from the stay.

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 Wells Fargo 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., 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 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 real property commonly known as 5415 Ashby Lane, Granite Bay, California.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Michael Macaluso of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

No other or additional relief is granted.

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the court's Order Setting Hearing was served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on April 8, 2018. By the court's calculation, 9 days' notice was provided. The court set the hearing for April 17, 2018. Dckt. 51.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 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 -----.

<b>The Motion to Dismiss is <span style="color: red;">XXXXX</span>.</b>
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Charlene Macaluso ("Debtor") moves to have her case dismissed voluntarily, no reason given. Dckt. 50. On March 16, 2018, Wells Fargo Bank, N.A., filed a Motion for Relief from the Automatic Stay. 11 U.S.C. § 109(g) states that a when a motion for relief is filed and followed by a request from the debtor for the case to be dismissed voluntarily, then that debtor is prevented from filing a new bankruptcy case for a period of 180 days.

Here, Debtor filed her request for voluntary dismissal after a motion for relief from the automatic stay was filed. If the court grants Debtor's request, then the Bankruptcy Code prevents her from re-filing a bankruptcy case for a period of 180 days.

The court also notes that a motion to dismiss is filed by the Chapter 13 Trustee is pending for May 30, 2018. *See* Dckt. 33.

At the hearing, Debtor stated that she understands the consequences of dismissing this case voluntarily and reaffirms that she wishes this case to be dismissed. FN.1.

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FN.1. 11 U.S.C. § 109(g) provides in pertinent part (emphasis added):

(g) Notwithstanding any other provision of this section, **no individual** or family farmer **may be a debtor** under this title who has been a debtor in a case pending under this title **at any time in the preceding 180 days if—**

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) **the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay** provided by section 362 of this title.

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The Motion is **XXXXXXXXXXXX**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by Charlene Macaluso (“Debtor”) 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 to Dismiss is **XXXXX**.

4. [18-20368](#)-E-13      **WILLIAM CARLISLE**  
PP-2                      **Ronald Holland**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
3-8-18 [[56](#)]**

**CAROL CARLISLE VS.**

**Final Ruling:** No appearance at the April 17, 2018 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.