

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

April 26, 2018, at 10:00 a.m.

1. **18-90175-E-7** **IMANI WILSON**
ADR-1 **Pro Se**

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE
PROTECTION
3-20-18 [\[12\]](#)**

**THE GOLDEN 1 CREDIT UNION
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, and Office of the United States Trustee on March 19, 2018. By the court's calculation, 24 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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April 26, 2018, at 10:00 a.m.

Anna Meneses (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 3848 Cougar Place, Modesto, California (“Property”). The moving party has provided the Declaration of Anna Meneses to introduce evidence as a basis for Movant’s contention that Imani Wilson (“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. Further, that Debtor, as a renter of Movant’s property defaulted in the rent payments, was served with a three-day notice, failed to cure the default, and the lease was terminated.

The Anna Meneses Declaration states that there are two pre-petition payments in default, with a pre-petition default in rent payments total \$2,300.00.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on March 30, 2018. Dckt. 27. FN.1. Debtor presents several arguments and statements that the court addresses in this section.

FN.1. Debtor filed the Opposition, 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). Debtor is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the requested relief. 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 separate an omnibus electronic document into separate electronic documents that can then be used by the court.

First, Debtor states that she received a three-day notice to quit on February 27, 2018. *Id.* at 1. After receiving that notice, Debtor alleges that she exchanged text messages with Movant believing that they agreed for Debtor to pay March’s rent in full, plus a partial payment to the missed payments. *Id.* No evidence of that conversation has been presented. Debtor alleges that no payment schedule was ever set for the delinquent payments, ignoring that she had received a three-day notice. *Id.*

Debtor states that she received an additional three-day notice on March 19, 2018, but was not able to pay because she had not received disability pay from her employer. *Id.* Debtor claims that she was surprised to receive the second notice because she believed that Movant had agreed to accept a payment for March rent and the late rents. *Id.* Debtor also references that she received three-day notices on March 16 and on March 17. *Id.* at 2.

Debtor alleges that she suffers medical conditions that cause her to miss work on doctors’ recommendations for significant amounts of time (e.g., September through March). *Id.* at 1. Debtor appears

to state that her medical issues trace back to 1999, but she also alleges that they are new. *Id.* at 1, 2. The court is not persuaded that nearly two decades of medical issues are a new situation that Debtor has not adjusted to.

Debtor also makes legal assertions about the law today containing an “actual knowledge” requirement, but Debtor does not explain why that phrase is supposed to be significant, she does not explain what it relates to, she does not provide any citations for the court’s review, and she has not presented any evidence that she has legal training to qualify her to present legal arguments. *Id.* at 1.

Debtor admits that she has not made any post-petition rent payments. *Id.* at 2.

APRIL 12, 2018 HEARING

At the hearing, Debtor presented further argument, and the court set the matter for a final hearing at 10:00 a.m. on April 26, 2018. Dckt. 34, 37.

MOVANT’S SUPPLEMENTAL DECLARATION

Movant filed a Supplemental Declaration on April 17, 2018. Dckt. 40. Movant seeks to counter points raised at the April 12, 2018 hearing by Debtor. Movant argues first that Debtor contacted her in February 2018 asking for time to pay past due rent but stating that everything would be paid by March 9, 2018. *See* Exhibit 2, Dckt. 41.

Movant argues that the missing amounts were not paid by March 9, 2018. Movant states that she waited four days, and on March 13, 2018, issued a Three Day Notice to Pay Rent or Quit. After that Notice was issued, Movant states that Debtor neither paid nor quit the premises.

Movant states that the parties were not able to agree to a settlement after the April 12, 2018 hearing.

DEBTOR’S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on April 19, 2018. Dckt. 43. Debtor admits that she sent the text messages that Movant describes, but she further states that she was placed on disability after those messages were sent so that she was not receiving the income she expected. Debtor admits that she had arranged to pay the full delinquent amount by March 9, 2018, but she claims that she was not able to do so after being placed on disability again.

Debtor states that she has hired an attorney and will be attempting to convert this case to Chapter 13.

DISCUSSION

Movant has provided a copy of the rental agreement between Movant and Debtor as well as a pre-petition 3 Day Notice to Pay or Quit. 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-MaTK, 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 her agents, representatives, and successors, to exercise rights to obtain possession and control of the real property commonly known as 3848 Cougar Place, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 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). While not all in the Motion, the court continued the original hearing to afford Debtor additional time to address the Motion, as well as negotiate with Movant. At the prior hearing, the court stated that if the relief was granted, the fourteen-day stay of enforcement would be waived, without requiring supplemental pleadings on that point by Movant.

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 Anna Meneses (“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 Anna Meneses and her agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3848 Cougar Place, Modesto, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

2. [18-90189](#)-E-7 **DALE/PAMELA TRUJILLO** **MOTION FOR RELIEF FROM**
 BPC-1 **Byron Nelson** **AUTOMATIC STAY**
 4-12-18 [12]

THE GOLDEN 1 CREDIT UNION
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 April 12, 2018. By the court’s calculation, 14 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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<p>The Motion for Relief from the Automatic Stay is granted.</p>

The Golden 1 Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2011 Hyundai Santa Fe, VIN ending in 9986 (“Vehicle”). The moving party has provided the Declaration of Jesus Vasquez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Dale Trujillo and Pamela Trujillo (“Debtor”).

The Vasquez Declaration provides testimony that Debtor defaulted on payments pre-petition and has indicated on the Statement of Intent that the Vehicle will be surrendered. He states that the Vehicle was surrendered on April 4, 2018.

The Declaration also seeks to introduce evidence establishing the Vehicle's value. Though the Kelley Blue Book Valuation Report is attached as an Exhibit, it is not properly authenticated.

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Jesus Vasquez to be that he obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 \$11,793.01, as stated in the Vasquez Declaration, while the value of the Vehicle is determined to be \$8,421.00, as stated in the Kelley Blue Book Valuation Report.

DISCUSSION

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.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 specifically argued grounds in the Motion, but the court determines that Debtor surrendering the Vehicle is an adequate fact 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. Counsel should not rely on the court to *sua sponte* create arguments for Movant.

No other or additional relief is granted by the court.

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 the Automatic Stay filed by The Golden 1 Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Hyundai Santa Fe (“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.