

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
510 19th Street, Second Floor  
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY  
DATE: MAY 8, 2019  
CALENDAR: 9:45 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. 19-11102-A-7 IN RE: ENRIQUE RODRIGUEZ

JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY

4-5-2019 [11]

AMERICREDIT FINANCIAL

SERVICES, INC./MV

R. BELL

JENNIFER WANG/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2017 GMC Yukon vehicle

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Additionally, the trustee has filed a no asset report and, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Americredit Financial Service, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the

default of the respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2017 GMC Yukon vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

2. 18-15109-A-7     **IN RE: DAVID VILLEGAS**  
MEL-1  
MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-10-2019    [31]  
PENNYMAC LOAN SERVICES, LLC/MV  
MEGAN LEES/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Relief from Stay  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted in part, denied in part  
**Order:** Civil minute order

**Subject:** 29249 Lassen Street, Hayward, California

The moving party requests relief from stay under § 362(d)(1), (d)(2), for cause and lack of equity, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder, or defraud the moving party. The court will grant the motion in part and deny the motion in part.

**SECTION 362(d)(4) RELIEF**

Subsection (d)(4) of § 362 authorizes relief from the automatic stay "with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors . . . ." See 11 U.S.C. § 362(d)(4). Such a scheme to delay, hinder, or defraud must involve either: (1) a transfer of any interest in such real property without the secured creditor's consent or the court's approval or (ii) multiple bankruptcy filings affecting such property. *Id.* § 362(d)(4)(A)-(B).

No factual grounds have been provided showing that the debtor took any action to obtain an interest in the real property. The moving

party has not shown that the debtor participated in the unauthorized transfer or had any knowledge of it. The property does not appear on the debtor's Schedule A/B, of which the court takes judicial notice. Fed. R. Evid. 201(c)(1).

Moreover, the transfer of the property interest to the debtor took place in February 2012, whereas this case was filed in December 2018, over six and one-half years after the transfer. The passage of over six and one-half years since the transfer negates the contention that this case is part of a scheme involving the transfer. The passage of over six and one-half years indicates that the transfer and bankruptcy filing events are more likely than not independent of and unrelated to each other. Typically, if the bankruptcy filing were part of a scheme involving the transfer, such events would be much closer in time to one another - such as months and generally no more than one year. A period of over six and one-half years however strongly indicates that the bankruptcy was not planned or even contemplated at the time of the transfer. ECF No. 37 at 70.

The court also notes that the date on the notarization of the title deed, reflecting the transfer to the debtor, is February 12, 2012, coinciding with the February 12, 2012 date on the deed. Hence, the court has no reason to believe that the title deed's date is forged. ECF No. 37 at 70.

Lastly, the moving party has not shown that the grantee named in the copy of the deed attached as an exhibit is in fact the same person as the debtor. The moving party has not excluded the possibility that a person other than the debtor with the same name as the debtor was intended as the grantee. Nor has the moving party shown any evidence that the person named in the deed is the same as the debtor other than that the names are the same. The property may not even be property of the estate.

The court has no basis to conclude that the debtor filed this case in bad faith or as part of a scheme to hinder, delay or defraud any creditor. Relief under section 362(d)(4) will be denied.

#### **SECTION 362(d)(2) RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Thus, prospective stay relief will be granted under section 362(d)(2).

The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

## CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

PennyMac Loan Services, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part as to relief under 11 U.S.C. § 362(d)(2). The automatic stay is vacated for lack of equity under § 362(d)(2) with respect to the property described in the motion, commonly known as 29249 Lassen Street Hayward, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that the motion is denied in part as to relief under 11 U.S.C. § 362(d)(4). No other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs against the debtor for bringing this motion, the request is denied.

3. 19-11019-A-7 IN RE: JOAQUIN CHAVOLLA AND ENEMELI BARBOZA  
CHAVOLLA  
JHW-1  
MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-28-2019 [10]  
TD AUTO FINANCE LLC/MV  
ROBERT WILLIAMS  
JENNIFER WANG/ATTY. FOR MV.

### Final Ruling

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2018 GMC Acadia vehicle

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Additionally, the movant obtained possession of the vehicle pre-petition.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

TD Auto Finance, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of the respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2018 GMC Acadia vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. 19-10623-A-7 IN RE: MAGALY WHITE  
APN-1  
MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-18-2019 [10]  
TOYOTA MOTOR CREDIT  
CORPORATION/MV  
NEIL SCHWARTZ  
AUSTIN NAGEL/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Stay Relief  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Subject:** 2017 Lexus IS200 vehicle

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause shown. 11 U.S.C. § 362(d)(1). The debtor is obligated to make payments to the moving party pursuant to a lease agreement by which the debtor leases the vehicle described above. The debtor has defaulted under such lease agreement; one postpetition lease payment is past due. Additionally, the trustee has filed a no asset report and, in the statement of intention, the debtor has indicated an intent to surrender the vehicle.

The moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Therefore, cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Toyota Motor Credit Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the

default of respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion, .

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2017 Lexus IS200 vehicle, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

5. 19-10345-A-7 IN RE: JOSE ROSETTE AND GLORIA COTA  
DMG-1  
MOTION TO AVOID LIEN OF FIRST INVESTORS SERVICING, INC.  
4-2-2019 [11]  
JOSE ROSETTE/MV  
D. GARDNER

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Denied without prejudice  
**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$11,543.38  
**All Other Liens (consensual):** \$69,700  
**Exemption:** \$175,000  
**Value of Property:** \$164,000

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).



The motion will be denied without prejudice because the debtors have proffered no evidence of their entitlement to the claimed exemption of \$175,000 under Cal. Civ. Proc. Code § 704.730(a)(3). The debtors must establish their entitlement to the exemption, even if no one has timely objected to their exemption claim. *Morgan v. Fed. Deposit Ins. Corp. (In re Morgan)*, 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (stating that "equity requires that the court consider the underlying basis for an exemption in the lien avoidance context").

6. 11-13377-A-7     IN RE: MICHAEL/JOAN LEWIS  
    LNH-2  
    MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
    AGREEMENT WITH MICHAEL PATRICK LEWIS AND JOAN MARY LEWIS  
    4-2-2019    [28]  
    JEFFREY VETTER/MV  
    CURTIS FLOYD  
    LISA HOLDER/ATTY. FOR MV.

#### **Final Ruling**

**Motion:** Approve Compromise of Controversy  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **APPROVAL OF COMPROMISE**

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. The trustee seeks approval to accept from the debtors \$20,000 on account of the estate's claim to the proceeds from the settlement of products liability claims of the debtors. According to the trustee, the \$20,000 will pay in full all claims against the estate, including administrative expenses and general unsecured claims. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

#### CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 31.

7. 19-11181-A-7     **IN RE: DANIEL ECKERT**  
    PK-1  
    MOTION FOR RELIEF FROM AUTOMATIC STAY  
    4-10-2019    [11]  
    NADIM SARKIES/MV  
    LEONARD WELSH  
    PATRICK KAVANAGH/ATTY. FOR MV.  
    NON-OPPOSITION

#### **Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part, denied in part

**Order:** Civil minute order

**Subject:** 8304 Sea Meadow Lane, Bakersfield, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

*TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### AS TO THE DEBTOR

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause."

The debtor filed a non-opposition to the motion. ECF No. 19. This is cause for the granting of relief from stay as to the debtor. Thus, the motion will be granted in part as to the debtor pursuant to 11 U.S.C. § 362(d)(1). The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### AS TO THE ESTATE

The motion will be denied in part as to the estate because the property has equity. The property has a value of \$325,000 and it is encumbered by claims totaling approximately \$296,587. The movant's deed is the only voluntary encumbrance against the property, securing a claim of approximately \$258,331. The only other encumbrance against the property is unpaid property taxes in the approximate amount of \$38,255.98. This leaves approximately \$28,413 of equity in the property.

Given this equity, relief from stay as to the estate under 11 U.S.C. § 362(d)(2) is not appropriate.

The court also notes that the trustee has not yet had the opportunity to conduct a meeting of creditors in the case. The initial meeting of creditors is set for May 22, 2019.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under *United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See *Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.)*, 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of approximately \$28,413. This equity cushion is sufficient to adequately protect the movant's interest in the property until the trustee decides whether he will be administering the property for the benefit of the estate. As mentioned, the initial meeting of creditors is due to be held on May 22, two weeks after the May 8 hearing on this motion. Thus, relief from stay as to the estate under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the estate.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Nadim and Nahed Sarkies' motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part as to the debtor and denied in part as to the estate. The automatic stay is vacated with respect to the interest of the debtor in the property described in the motion, commonly known as 8304 Sea Meadow Lane, Bakersfield, California. Relief from the automatic stay as to the interest of the estate in such property is denied as moot given the presence of equity in the property. 11 U.S.C. § 362(d)(1)&(2).

IT IS FURTHER ORDERED that the 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) of the order granting in part stay relief is waived. To the extent the motion is being granted, any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. 19-10886-A-7     **IN RE: FRANCISCO VELAZQUEZ AND RUTH ALVARADO**  
    PK-1  
    CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
    3-13-2019    [9]  
    JOSUE MENDEZ CERDA/MV  
    WILLIAM OLCOTT  
    PATRICK KAVANAGH/ATTY. FOR MV.  
    RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Stay Relief to Complete Unlawful Detainer Action and Execute on Writ of Possession

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Denied

**Order:** Civil minute order

**Subject:** Exercise of state law rights and remedies to obtain possession of real property located at 539 Salem Street Delano, California, including the actions necessary to enforce a pre-petition judgment for possession of the property and execute on a writ of possession

The hearing on this motion was continued from March 27 in order for the debtors to have the opportunity to file opposition to the motion and for the movant to file a reply. The debtors have filed written opposition to the motion and the movant has filed a reply to the opposition. An amended ruling from March 27 follows below.

#### STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The moving party asserts that the subject real property is residential, and that the debtor occupies the property under a lease. Pre-petition, the movant obtained a judgment for possession and writ of possession in an unlawful detainer proceeding in state court. The judgment was obtained on February 19, 2019 and the writ was obtained on February 21, 2019. ECF No. 13 at Exs. D & E. This case was not filed until March 11, 2019.

The debtors contend that: they purchased the property pre-petition, they own the property and have equity in it, and the movant obtained the pre-petition judgment for possession from the state court by fraud.

However, there is no automatic stay to protect the debtors in this case.

The pre-petition judgment for possession adjudicated the parties' ownership interest in the property. And, upon the issuance of the writ of possession, the debtors retained nothing that is protectable by the automatic stay in this bankruptcy case.

We look to state law to determine property interests in bankruptcy proceedings. See *Butner v. United States*, 440 U.S. 48, 54-55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). We conclude that under California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue. See *Vella v. Hudgins*, 20 Cal.3d 251, 142 Cal.Rptr. 414, 572 P.2d 28, 30 (1977).

. . .

The flaw in the bankruptcy court's analysis is that the unlawful detainer proceedings under § 1161a are expressly designed to determine who has superior title to the property, including the right to immediate possession. See *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. As a result, the prevailing party in the unlawful detainer proceeding under § 1161a has "better title" than the evicted resident. *In re Butler*, 271 B.R. at 871. The conclusion that the occupying resident retains an equitable possessory interest is inconsistent with

§ 1161a, which contemplates a final and binding adjudication of legal title and rights of immediate possession. See *Mortg. Guarantee Co.*, 50 P.2d at 836; see also *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. We therefore conclude that because Perl had no remaining interest in the property, legal or equitable, when the bankruptcy petition was filed, the bankruptcy court erred in concluding that Eden Place violated the automatic stay by executing the writ of possession.

The unlawful detainer judgment and writ of possession entered pursuant to California Code Civil Procedure § 415.46 bestowed legal title and all rights of possession upon Eden Place. See *Vella*, 142 Cal.Rptr. 414, 572 P.2d at 30. Thus, at the time of the filing of the bankruptcy petition, Perl had been completely divested of all legal and equitable possessory rights that would otherwise be protected by the automatic stay. See *id.* Consequently, the Sheriff's lockout did not violate the automatic stay because no legal or equitable interests in the property remained to become part of the bankruptcy estate. See *id.*; see also 11 U.S.C. § 541(a)(1) (describing the bankruptcy estate as consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case").

*Eden Place, L.L.C. v. Perl (In re Perl)*, 811 F.3d 1120, 1127–28, 1130 (9th Cir. 2016).

In other words, "when a debtor is completely divested of all legal and equitable rights in property prior to the filing of its petition, the automatic stay is inapplicable and there is no need for a creditor to seek relief from the automatic stay." *Cty. of Imperial Treasurer-Tax Collector v. Stadtmueller (In re RW Meridian LLC)*, 564 B.R. 21, 28 (B.A.P. 9th Cir. 2017).

The court will not permit the debtors to attack the state court's judgment for possession here. The Rooker-Feldman doctrine precludes this court from revisiting or setting aside the state court's judgment for possession. Nor will this court act as a court of appeal for the state court.

The debtors asserted ownership interest in the property within the unlawful detainer action. The state court entered a judgment for possession, nonetheless. The state court also entered a writ of possession. ECF No. 13 at Exs. D & E.

Hence, while the debtors may be in possession of the property, they have no legal or equitable rights to the property, including even equitable possession of the property.

As the movant obtained a judgment for possession and writ of possession pre-petition (on February 19 and 21, respectively) with respect to the debtors, the automatic stay does not protect the debtors and their current possession of the property. This case was not filed until March 11. Accordingly, as there is no automatic stay with respect to the debtors' possession of the property, the

request for relief from stay to enforce the judgment for possession and execute on the writ of possession will be denied as unnecessary.

Nothing permits the court to issue an order confirming the absence of the automatic stay. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this motion does not implicate section 362(c). If the movant needs a declaration of rights, an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001(2).

#### **11 U.S.C. §§ 362(b)(22) and 362(l)**

Under 11 U.S.C. § 362(b)(22), the filing of a petition does not operate as a stay under § 362(a)(3) "of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor." 11 U.S.C. § 362(b)(22).

Subsection (b)(22) of § 362 is subject to § 362(l), which provides that:

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

Given the pre-petition judgment for possession awarded to the movant, section 362(b)(22) is triggered. It is another reason for the absence of an automatic stay here. The court relies on the state court's judgment for possession in the movant's favor, in concluding that the movant is a lessor and the debtors are tenants for purposes of section 362(b)(22).

Section 362(l) does not apply because the debtors have not invoked it. They answered "No" to bankruptcy petition's question 11, "Do you rent your residence?" In any event, more than 30 days have elapsed since the March 11 bankruptcy petition filing.

## CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Josue Cerda's motion for relief from the automatic stay has been presented to the court. Having considered the motion and responses and replies,

IT IS ORDERED that the motion is denied.

9. 18-15094-A-7 IN RE: ANTHONY RAMOS AND NORMA ESQUIVEL  
NLG-1  
MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-21-2019 [18]  
SUN WEST MORTGAGE COMPANY,  
INC./MV  
R. BELL  
NICHOLE GLOWIN/ATTY. FOR MV.

### Final Ruling

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part, denied in part as moot

**Order:** Civil minute order

**Subject:** 5901 Quebec Avenue, Bakersfield, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

### AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism



for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and there is no equity in the property. The court also notes that the trustee filed a no asset report. The motion will be granted as to the estate, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Sun West Mortgage Company, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 5901 Quebec Avenue, Bakersfield, California. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

10. 19-11394-A-7 IN RE: GURDEEP/RANJODH BILLAN  
FRB-1  
MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-24-2019 [14]  
FARM CREDIT WEST, FLCA/MV  
RILEY WALTER  
GERRICK WARRINGTON/ATTY. FOR MV.

#### **Tentative Ruling**

**Motion:** Stay Relief  
**Notice:** LBR 9014-1(f)(2); no written opposition required  
**Disposition:** Granted  
**Order:** Civil minute order

**Subject:** 20 acres of farmland (pistachio orchards) in Northeast Madera County near Raymond, California (APN 031-091-027-000)

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. In re Casgul of Nevada, Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and there is no equity in the property. The movant has produced evidence that the value of the property is \$150,000, whereas the encumbrances against the property total approximately \$222,235. ECF Nos. 21, 22, 25 Ex. 7. The movant's lien is the only encumbrance against the property. The court also notes that the debtors have executed a stipulation with the movant for the lifting of the stay. ECF No. 25 Ex. 8. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Farm Credit West, FLCA's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 20 acres of farmland, APN 031-091-027-000, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.