

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

May 23, 2023 at 1:30 p.m.

1. [23-90111-E-11](#) **MICHAEL HOFMANN** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
1 thru 2 **3-20-23 [[1](#)]**

Notes:

5/14/23 - Complaint, Notice of Removal Filed, Adv. Case No. 23-09006

The Status Conference is continued to xxxxxxx

MAY 18, 2023 STATUS CONFERENCE

Michael Hoffman, the Debtor/Debtor in Possession, commenced this voluntary Chapter 11 Subchapter V case on March 20, 2023. On Schedule A/B Debtor lists having a joint tenant interest in the following properties (the court computes the percentage of Debtor's interest based on the stated dollar value of his interest as a percentage of the stated total dollar value of the property:

13330 Valley Home Road, parcel -049	\$42,600	8% Joint Tenant Interest
13330 Valley Home Road, parcel -051	\$28,000	8% Joint Tenant Interest
13330 Valley Home Road, parcel -055	\$12,000	8% Joint Tenant Interest

Dckt. 32. For personal property, Debtor's assets of significant value are a vehicle, bank account deposits, a setoff against siblings/Trust, and another setoff for non-payment of rent. Debtor also lists having a 49% interest in a business, but that its value is unknown. *Id.*

On Schedule I Debtor lists substantial monthly income, but on Schedule J substantial necessary monthly expenses. Some items of note with respect to Schedule J include:

A. No expense for rent or mortgage.

- B. No expense for property taxes or homeowner's/renter's insurance
- C. Water, sewer, and garbage expense of \$30 a month.
- D. Electricity, heat, natural gas expense of \$0.00 a month.
- E. No expense for phone, cell phone, cable, or satellite services.
- F. \$2,000 a month for food and housekeeping for a family unit of just the Debtor.
- G. Gas, vehicle maintenance, repairs, and registration for his vehicle of \$300 a month. If Debtor has purchases a maintenance policy for his Mercedes Benz, after allow \$25 a month for registration, that would leave \$250 a month for gas. At \$4.50 a gallon, that allows Debtor to purchase 55 gallons a month. Assuming an average of 25 miles to the gallon, that give Debtor a driving range of 335 miles a week.
- H. An expenses to "LLC" of \$4,000 a month.

Schedules I and J; Dckt. 32 at 33-36.

On the Statement of financial affairs Debtor lists substantial gross income for wages/commission for 2022 and 2021, but little for the first three months of 2023. *Id.* at 38-39.

In response to Question 17 on the Statement of Financial Affairs, Debtor discloses having paid Freedom Debt Relief monthly payments in the amount \$20,000.00 in the year preceding the filing of this case. (It may be that this is a typo and the monthly payment were less than \$20,000.00 and in the aggregate total \$20,000.00.) *Id.* at 42.

In response to Question 27 on the Statement of Financial Affairs, Debtor states that he is current an LLC member or LLP member in Valley Home Rice Co. and Acres Verde Foundation. *Id.* at 44. Valley Home Rice Company is listed on Schedule A/B, but Acres Verde Foundation is not.

Notice of Removal

On May 14, 2023, Debtor/Debtor in Possession filed a Notice of Removal removing the pending post-judgment State Court Litigation *Hoffman v. Hoffman, and related Cross complaint, et al*, California Superior, for the County of Stanislaus, Case No. 2200623 to this court. In the removal filings Debtor/Debtor in Possession has provided a copy of the Second Amended Interlocutory Judgment entered in the State Court Action. Exhibit 71, docketing pending in adversary proceeding to be opened.

The Second Amended Interlocutory Judgment includes that it determines the percentage ownership interests in the 13330 Valley Home Road property (8 1/3% for Debtor/Debtor in Possession); a monetary surcharge of (\$90,576.81), plus additional interest, for Debtor/Debtor in Possession's occupancy of the residential portion of the Property; against Debtor/Debtor in Possession on his cross complaint against Sharon, Gary, and the Brichettoes; judgment in favor of Debtor/Debtor in Possession for the interference of contract claim; judgment for the Brichettoes for partition of the Property, with such Property to be sold and the monies divided; Debtor/Debtor in Possession is entitled to a \$142,122 credit if he leave the grain tanks on the Property or a \$62,269 credit if he removes them; and Sharon, Gary, and the Brichettoes are the

prevailing parties and costs are awarded, in addition to being awarded attorney's fees to be paid by Debtor/Debtor in Possession. Additional relief is granted between the other parties to the State Court Action that does not directly include Debtor/Debtor in Possession.

Also included is the State Court's detailed thirty-three (33) page Ruling.

In the Notice of Removal Debtor/Debtor in Possession provides information concerning his removal of the post-judgment State Court Action, there remaining the enforcement of the partition of the Property, which includes (identified by paragraph number used in the Notice of Removal):

3. Sharon and Gary Hofmann, petitioners in the state court action and creditors in this matter, seek to enforce the final state court judgment by selling estate property while other creditors, one secured, one claiming to be secured, seek to be paid from the proceeds of the sale of estate property.

4. The claim of the creditor claiming to be secured, Debtor's former spouse, is based on an abstract of judgment for support that is incongruous with an earlier, separate, notarized agreement she entered into with Debtor regarding said claim.

5. If the matter is remanded back to state court, some creditors will be paid outside the framework of the Bankruptcy Code, thus allowing certain creditors, some with dubious claims, to obtain payment from estate assets to the detriment of other creditors. Removal of this action is, therefore, proper under Section 1442 of Title 28 of the United States Code because a claim in this civil action arises under the Bankruptcy Code.

Debtor/Debtor in Possession Status Report

On May 15, 2023, the Debtor/Debtor in Possession's Supplemental Status Report was filed. Dckt. 67. The Debtor/Debtor in Possession reports that Michael Hudson breached the purchase agreement for the sale of the residence ordered by the State Court judge pursuant to the State Court Judgment.

Then, after this case was filed, other parties moved in the State Court for an Amended Order for the Sale of the Residence.

Debtor/Debtor in Possession asserts that when the buyer for Michael Hudson's property, the sale of which was a condition of the sale of the Residence Property to Michael Hudson, he, as one of the sellers was not given notice thereon and deprived of his right to cancel the sale to Michael Hudson.

Debtor/Debtor in Possession also reports that his former spouse is wrongly asserting a \$501,693.31 claim pursuant to a 1998 dissolution judgment, asserting that it is secured by a 2013 abstract of judgment. Debtor/Debtor in Possession asserts that the dollar amount is incorrect and that it is not secured (but does not state why he asserts that a 2013 abstract of judgment does not create a lien on real property that Debtor owns).

MAY 23, 2023 STATUS CONFERENCE

At the Status Conference, XXXXXXXXXXXX

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|----|--------------------------------------|--|---|
| 2. | <u>23-90111</u> -E-11
<u>DB-1</u> | MICHAEL HOFMANN
Brian Haddix | CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-23-23 [16] |
|----|--------------------------------------|--|---|

GARY HOFMANN ET AL. 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 in Possession, Debtor/Debtor in Possession's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2022. 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/Debtor in Possession, creditors, the Chapter 11 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, opposition was presented by the Debtor/Debtor in Possession in Possession.

The Motion for Relief from the Automatic Stay is granted

CONTINUANCE OF MAY 18, 2023 HEARING

The court has prepared the following tentative ruling to be addressed at the May 18, 2023 hearing. However, due to a last minute schedule change, the judge to whom this case is assigned is unable to conduct the May 18, 2023 hearings. Chief Bankruptcy Judge Frederick Clement is hearing the matters for the May 18, 2023 calendar, and was prepared to conduct this hearing.

However, on May 14, 2023, the Debtor/Debtor in Possession filed a Notice of Removal of the State Court Action for which relief is sought in the present Motion to be allowed to enforce post-judgment orders therein. It having been removed, the complexity of this Bankruptcy Case and the related newly opened Adversary Proceeding for the removed State Court Action grew substantially. The judge to whom this case is assigned concluded that it is necessary for that judge, and not the Chief Judge covering the May 18, 2023 calendar, to conduct this hearing.

The court provides the Parties with the following tentative ruling which will be re-posted for the continued hearing on May 23, 2023. The Parties can consider the issues addressed therein, how they impact on the post-judgment enforcement of the Removed State Court Action in this Court, if it is not remanded, and how the relates to any Chapter 11 Plan that is to be diligently prosecuted by the Debtor/Debtor in Possession.

REVIEW OF MOTION

Sharon and Gary Hofmann (“Movants”) seeks relief from the automatic stay with respect to Michael Erich Hofmann’s (“Debtor/Debtor in Possession”) 8.33% interest in residential real property located at 13330 Valley Home Road, Valley Home, California (“Property”). On the Petition, Debtor/Debtor in Possession lists his residence as 13330 Valley Home Rd, Oakdale, California. In the Motion, this property is identified as being in Valley Home, California. The Supplemental Brief clarifies the discrepancy by stating Valley Home is an unincorporated area in Stanislaus County. Supplemental Brief, Dckt. 47 fn. 3. County assessment records designate the address to be in Valley Home, not Oakdale. *Id.*

At the prior hearing on the Motion, the court allowed for supplemental briefing due to Movants’ failure to provide evidence as well as the need of additional briefing for the court to determine the interplay between the Bankruptcy Code, final judgments of a State Court, and property rights under State Law. Civil Minutes, Dckt. 43. Movants have since authenticated their exhibits of state court records through the Declaration of Meghan Baker, Partner at Movants’ Counsel’s firm. Declaration, Dckt. 40.

Movants argue relief is needed to perform obligations under final state court orders in a partition action of the Property. The State Court Order requires Debtor/Debtor in Possession to sell their 8.33% interest in the Property, as well as requires Movants’ to sell their combined 91.66% interests. Exhibit D, Dckt. 22.

Movants’ Supplemental Brief, Dckt. 47, provides the court with additional factual grounds for relief, which are summarized as:

- (1) Debtor/Debtor in Possession’s Interest in the Property - Debtor/Debtor in Possession has a 8.33% interest in the residential real property located at 1330 Valley Home Road, Valley Home, California.
- (2) State Court Litigation - There was state court litigation brought by Movants to determine parties’ interests in the Property and request a judgment for rent that Debtor/Debtor in Possession refused to pay to Movants. The State Court issued an interlocutory judgment which confirmed Debtor/Debtor in Possession’s 8.33% interest and found a partition by sale is equitable. Additionally, the State Court

awarded judgment which brought the total principal amount Debtor/Debtor in Possession owes to Movants to \$223,457.62.

(3) State Court Appeal - Debtor/Debtor in Possession appealed the interlocutory judgment and the Fifth District Court of Appeal affirmed the State Court Judgment in most parts.^{FN. 1.}

FN. 1. The court notes, the Fifth District Court of Appeal reversed only one part of the interlocutory judgment in which they reduced the amount of credit the new owners received for their improvements on the Property. *Hofmann v. Hofmann*, No. F079977, 2021 Cal. App. Unpub. LEXIS 4583, at *117 (July 15, 2021).

(4) State Court Proceedings to Sell the Home - Debtor/Debtor in Possession refused to participate in a consensual sale of the Property. Debtor/Debtor in Possession made an all cash offer to purchase the home. However, the State Court found Debtor/Debtor in Possession had not shown proof of funds, and on February 28, 2023, approved the sale to a third party. Escrow was scheduled to close by March 31, 2023.

(5) Debtor/Debtor in Possession's Refusal to Leave the Property - Movants sought assurances that Debtor/Debtor in Possession would vacate by March 21, 2023. On March 15, 2023, Debtor/Debtor in Possession gave notice they would not be vacating the Property prior to the close of escrow. On March 17, 2023, Movants notified Debtor/Debtor in Possession they would seek an order for writ of possession to compel Debtor/Debtor in Possession to vacate the Property. The request was set for hearing on March 21, 2023. On March 20, 2023, Debtor/Debtor in Possession filed for bankruptcy.

(6) Legal Grounds for Relief - Movants argue they are entitled to relief based on the following legal grounds:

- a. The State Court Judgment is final and binding on the bankruptcy court.
- b. Debtor/Debtor in Possession's Creditor's interests are limited to Debtor/Debtor in Possession's 8.33% interest.
- c. Movants are not adequately protected due to Debtor/Debtor in Possession's failure to maintain the Property.
- d. *Tucson Estates* Factors weigh in favor of the court abstaining from deciding the underlying property right issues. *In re Tucson Estates, Inc.*, 912 F.2d 1162 (9th Cir. 1990).

Supplemental Brief; Dckt. 47.

The court notes, the *Tucson Estates* Factors include factors in which a court may abstain in favor of state court adjudication of an issue. These factors are summarized as follows:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of nondebtor/debtor in possession parties.

Tucson Estates, 912 F.2d at 1167 (citing *In re Republic Reader's Serv., Inc.*, 81 Bankr. 422, 429 (Bankr. S.D. Tex. 1987)) [this court reformatting the forgoing by breaking out each of the twelve elements into separate subparagraphs for ease of review].

At this point, the state court proceeding as been removed to this court. The Parties will address with the court whether they desire to proceed in this court or any parties will seek to have the State Court Action remanded.

Movants argue they are entitled from relief from the stay for “cause” pursuant to 11 U.S.C. § 362(d)(1) on the grounds that a final state court ordered compelled the sale of the Property and that Debtor/Debtor in Possession’s interest in the Property is not necessary for an effective reorganization. Supplemental Brief, Dckt. 47 at 5.

Debtor/Debtor in Possession's Response to Motion and Movant's Supplemental Brief

Debtor/Debtor in Possession filed an initial Opposition to the Motion and Declaration. Dckts. 37, 38. Debtor/Debtor in Possession states the enforcement of the judgment will prejudice the Debtor/Debtor in Possession in that:

1. Movants have locked Debtor/Debtor in Possession out of the sale process despite Debtor/Debtor in Possession offering to purchase the home for a competitive price. Opposition, Dckt. 37 at ¶ 1.
2. There are contingencies associated with the current sale that the current buyer has failed to meet. *Id.*
3. The Property is necessary for an effective reorganization because it is the proper location for their rice business. *Id.* ¶ 5.
4. Movants are adequately protected because Debtor/Debtor in Possession is maintaining the property, paying property taxes and insurance, and seeking to pay Movants in an amount more than the current sale. *Id.* ¶ 6.

At the prior hearing, Debtor/Debtor in Possession's counsel asserted that Movants were adequately protected by the value of the Property. Counsel for the Debtor/Debtor in Possession indicated that the Debtor/Debtor in Possession sought to retain the Property in which he has 8.33% interest that is now property of the Bankruptcy Estate.

Debtor/Debtor in Possession filed a Response to Movants' Supplemental Brief on April 27, 2023. Dckt. 58. Debtor/Debtor in Possession insists cause for relief does not exist, "especially because of the breach of the California Residential Purchase Agreement and the Contingency for Sale of Buyer's Property addendum while the automatic stay was in effect." Response, Dckt. 58 at 1:22-25.

Debtor/Debtor in Possession argues the sale of the Property was contingent on buyer Michael G. Hudson ("Buyer"), selling their property. Debtor/Debtor in Possession states that the proposed purchaser of Buyer's home backed out of escrow, which caused Buyer to take their house off market.

After this bankruptcy case was filed, Buyer put their house back on market, and on April 7, 2023, an offer of Buyer's home was accepted. Debtor/Debtor in Possession states this was a "critical breach" of the Purchase Agreement because Buyer had a duty to notify Movants and Debtor/Debtor in Possession, collectively, "Sellers," of the cancellation of escrow. Debtor/Debtor in Possession claims not informing Debtor/Debtor in Possession of the breach deprived Debtor/Debtor in Possession of their right to cancel the sale of the Property.

Movants' Reply

Movants filed a Reply to Debtor/Debtor in Possession's Response on May 4, 2023. Dckt. 63. Movants argue that Buyer removed the contingency on March 15, 2023, and the contingency was solely the benefit of Buyer. As evidence to support that Buyer removed the contingency, Movants direct the court to Buyer's Declaration, in which Buyer states, "[o]n March 15, 2023, I removed the contingency

from my offer to purchase the Property, as our own home was in escrow at that point.” There is no evidence for how Buyer removed the contingency, and whether Buyer provided notice to Debtor/Debtor in Possession.

Movant provides the court with well settled California case law in that a buyer may waive a condition precedent solely for their benefit. As the Second District Court of Appeal has stated:

Where all of the material factors of a real property transaction are present, and a seller would not be prejudiced by removal from the agreement of a condition inserted solely for the benefit of the buyer, it would be a gross injustice to the buyer to allow the seller to escape legal responsibility because the courts would not permit a waiver of the condition.

Reeder v. Longo, 131 Cal. App. 3d 291, 296-97 (1982).

DISCUSSION

Contingency Clause

The “Contingency for Sale of Buyer’s Property” portion of the Purchase Agreement, Exhibit D, Dckt. 59 at 53, states Buyer’s purchase of the Property was contingent upon Buyer selling their own property. The Contingency Agreement is summarized, in relevant part, below:

1. Buyer has 17 days after Acceptance with Sellers to enter into a contract for the sale of their property. Once accepting the contract for sale of their property, Buyer has 2 days, but not more than 17 days after Acceptance with Sellers, to deliver escrow evidence to Sellers.
2. Buyer will sign a listing agreement for Buyer’s Property within 1 day after Acceptance.
3. Buyer has until no later than 3 days prior to the scheduled close of escrow of Sellers’ Property to close escrow. Once Buyer’s property closes, Buyer can no longer use the contingency to cancel the Agreement.
4. **Status of Sale of Buyer’s Property**
 - a. Buyer agrees to keep Sellers informed about the status of the transaction for the sale of Buyer’s property.
 - b. Within 2 days after Sellers’ written request, but no earlier than the applicable time to remove contingencies in the contract for sale of Buyer’s property, Buyer shall deliver to Sellers evidence of the removal of identified contingencies.

5. **Cancellation of Sale of Buyer's Property**

- a. If either party subject to the sale of Buyer's property gives the other a notice of cancellation of contract, Buyer will, **within 2 days**, deliver to Sellers a written notice of that cancellation.

6. **Removal of Contingencies**

- a. This contingency can only be removed in writing, even by Buyer, unless:
 - i. Buyer provides verification of sufficient funds to close escrow without the sale of Buyer's Property.

7. **Sellers' Right to Cancel**

- a. If after first giving buyer a Notice to Perform, or written Notice to Remove Buyer Contingencies and Provide Proof of Funds, Buyer fails to perform certain actions.
- b. If Buyer fails to deliver evidence of removal of contingencies in the sale of *Buyer's* property.
- c. If Buyer gives notice to Sellers of a cancellation of contract for Buyer's Property.

Debtor/Debtor in Possession states, "while the automatic stay was *pending*, [Buyer] breached the terms of the [Contingency Agreement] an addendum to the [Purchase Agreement] informing the Seller's that a proposed purchaser backed out of the sale." Response to Supplemental Brief, Dckt. 58 at 3. Debtor/Debtor in Possession states that Buyer's breach "deprived the Bankruptcy Court of an important fact concerning the status of the transaction concerning estate property while the automatic stay was pending." *Id.*

Buyer, however, states they waived the contingency requirements on March 15, 2023. Dckt. 49. Buyer, nor Movant, provides evidence of how this waiver was effectuated.

Had Buyer not waived the contingency, there could be an argument that Buyer breached the Contingency Agreement by not providing notice of cancellation of the contract between Buyer and the purchaser of their home. Then, Sellers would have had the right to cancel the Purchase Agreement, although there is no such evidence that this would have occurred. There would be a question as to whether this breach were material, as Buyer re-listed their property and within a few weeks had accepted another offer.

However, the Motion is to grant relief from the automatic stay. 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).

Relief from Stay

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the Debtor/Debtor in Possession and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

At the heart of this Motion is the Debtor/Debtor in Possession having a fractional interest in the Property to be sold. Debtor/Debtor in Possession’s co-tenants have prosecuted a partition action in the State Court. The result of that is the order for the residence at 13330 Valley Home Rd, Valley Home, California (“Property”) to be sold and the sales proceeds to be “partitioned,” it not being practical to give Debtor/Debtor in Possession 8.33% of the physical space in the residence. Debtor/Debtor in Possession does not dispute the validity of the state court’s order. Response, Dckt. 58. Additionally, Debtor/Debtor in Possession’s Schedules concedes that they only own a fractional interest of 8.33% interest, as described in the Second Amended Interlocutory Judgment. Schedule A/B, Dckt. 32; Exhibit B, Dckt. 20.

Movant contends they are not adequately protected in that the Property is “in unlivable conditions as a result of Debtor/Debtor in Possession’s possession” Supplemental Brief, Dckt. 47 at 15. Movant provides evidence of deterioration in the Property, including roof, mold, and dry rot issues. Declaration of Real Estate Broker, Dckt. 46. Additionally, Debtor/Debtor in Possession has lived in the Property since 1982 and has never paid rent more than \$500 per month, and stopped paying rent altogether in 2015. Supplemental Brief, Dckt. 47 at 7.

The issues appear to have been litigated already, and a partition order has already been issued by the state court. Second Amended Interlocutory Judgment, Exhibit B, Dckt. 20. Additionally, Movant’s have already been granted an *Ex Parte* Application to approve the sale of the Property to a third party buyer, Michael Hudson. Amended Order Granting *Ex Parte* Application, Exhibit D, Dckt. 22.

Movant is only seeking relief to complete the sale of the Property and otherwise comply with state court orders. Additionally, after the sale of the Property, the proceeds will still remain property of the estate.

As the court has noted in the prior civil minutes, there are issues concerning asserted and apparent property rights bearing on this Motion. The court does not determine property rights and interests in a motion for relief from the stay (Fed. R. Bankr. P. 7001 requires an adversary proceeding, unless the parties otherwise agree). The determination of the interplay between the Bankruptcy Code, the final judgments of State Court, and the property rights under State Law would be determined would be subject to a separate proceeding.

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.

The Motion states with particularity grounds upon which the request for waiver of the fourteen day stay is based. These include the delays in sale, Debtor/Debtor in Possession's failure to comply with the orders of the State Court, and a sale of the Property pending.

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 Sharon and Gary Hofmann ("Movants") 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 modified as applicable to Michael Erich Hofmann ("Debtor/Debtor in Possession") to allow Movants, its agents, representatives and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with enforcing state court orders in *In Re Estate of Erich Hofmann Testamentary Trust*, Case No. 2200623 and proceed with a partition sale of the real property commonly known as 13330 Valley Home Road, Valley Home, California ("Property").

IT IS FURTHER ORDERED that any proceeds generated from Debtor/Debtor in Possession's interest in the Property shall be disbursed to the Michael Erich Hofmann, the Subchapter V Debtor/Debtor in Possession, as the fiduciary of the Bankruptcy Estate, with such monies to be deposited into a segregated federally insured bank account from which no monies will be disbursed without further order of the court (i.e., a blocked account).

Upon receipt of the 8.33% of the sales proceeds and deposit in the segregated account, the Debtor/Debtor in Possession shall file with the court documentation of said deposit and the segregated account, and serve such documentation on the Subchapter V Trustee and the U.S. Trustee.

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.

FINAL RULINGS

3. [21-23539-E-13](#)
[DVW-1](#)

DEREK WOLF
Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
10-19-21 [\[11\]](#)

U.S. BANK, NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the May 23, 2023 Hearing is required.

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

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 October 19, 2021. 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 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. The court continued the hearing, opposition and rely briefs were filed, and the final hearing set for December 14, 2021.

The hearing on the Motion for Relief from the Automatic Stay is removed from the calendar pursuant to the *ex parte* request of the Movant and this matter is stayed, subject to being reset to the calendar by Movant.

MAY 23, 2023 HEARING

On May 18, 2023, U.S. Bank, N.A., Trustee, “Movant,” filed a pleading titled “Withdrawal of Notice of Hearing on Restored Motion for Relief From Automatic Stay.” Dckt. 174. In it Movant requests that the court vacate the hearing set for May 23, 2023.

The court reads this as an *Ex Parte* Motion for the court to vacate the Renoticed Hearing and Stay this proceedings as was previously ordered by the court. Order, Dckt. 135. This is not an *ex parte* motion by Movant to dismiss the underlying Motion.

The Parties have been working on resolving these issues and rescinding the restored hearing would be consistent with such resolution.

The court vacates the hearing and reorders an order staying these proceedings. The matter may be reset to the calendar by either Movant or Debtor to litigate the merits of the motion.

REVIEW OF MOTION AND PRIOR PROCEEDINGS IN THIS CONTESTED MATTER

U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust (“Movant” or “Creditor”) seeks relief from the automatic stay with respect to Derek Wolf’s (“Debtor”) real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California (“Property”). Movant has provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor’s fourth consecutive bankruptcy case, Movant conducted its foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of (\$25,150.25) in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

As the Civil Minutes for this Motion document, this matter has been a long and winding trail of issues, points, and ongoing disagreement. During this process Debtor has obtained counsel, a Plan confirmed, a Plan defaulted, and a related dispute now to be adjudicated in an Objection to Claim over the amount of the debt and application of payments.

Credit for the length of these proceedings does not go solely to the Parties, but the court has contributed significantly. Part of this has focused on insuring that Debtor, first attempting to prosecute this case in pro se and now with counsel, was afforded not only the opportunity to present and have his rights with respect to this Motion properly adjudicated, but that he also understood the process and that he has been afforded such opportunity, what the outcome from this litigation.

As this Contested Matter developed, it appeared to the court that a core dispute Debtor has asserted over the amount of the claim and proper application of payments should be “easily determined” through a “simple spreadsheet” computing the claim and payments made since the 2015 loan modification.

Trustee’s Non-Opposition

Trustee initially filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee non-opposition was based on Debtor, in *pro se*, not getting documents filed.

Summary Relief From Stay Proceeding

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). This was restated recently by the Bankruptcy Appellate Panel in *Harms v. Bank of N.Y. Mellon (In re Harms)*, 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019), including:

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim" *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Though the court has discussed, and prodded the parties to address, some substantive matters such as proper computation of the secured claim and document the computation of the claim through a "simple spreadsheet," those issues are not adjudicated in this Motion for Relief From the Stay.

REVIEW OF FILE

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed by Debtor in *pro se*. Dckt. 24. The Plan provides for monthly payments by Debtor of \$1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id.*

The only claim provided for in the Debtor's *pro se* Plan was Movant's, for which Debtor is to pay \$500 a month toward the \$29,254.55 arrearage and \$1,016.32 for the post-petition monthly payment. These two payment total \$1,516.32, which is slightly more than the \$1,500 a month play payment.

As addressed in the prior Civil Minutes, there appeared to be some significant financial feasibility issues with such Plan. The court noted that on Schedule J filed by Debtor in *pro se*, it included the statement, "If Rushmore will finally be fair and recognize my Mod Package that they have on file." In retrospect, this appears to be a reference to the 2015 Loan Modification.

REQUESTED ANNULMENT OF STAY

At the first hearing on this Motion Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

JANUARY 25, 2022 HEARING

Debtor's newly obtained counsel appeared at the January 25, 2022 hearing on this Motion. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be \$25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining \$25,000+ of exempt proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

MARCH 25, 2022 Hearing

At the hearing on the Motion to Confirm, the Trustee reported that Debtor had not provided all of the information. After an extensive discussion in connection with the Motion to Confirm, the court concluded that for this case Debtor was at the "put up or shut up phase." He has promised to make certain payments, he is curing the default (a cashier's check in Debtor's counsel's hand) and has provided to make the payments electronically. Debtor should be allowed to show he can perform the plan in this case and not have it dismissed out from under him. The court granted the Motion to Confirm the Chapter 13 Plan, as it was amended at that hearing.

However, it also appears, as requested by counsel and the creditor seeking relief from the stay, that Debtor's performance bears close watching. Additionally, Debtor may benefit from knowing that there is a motion to dismiss and a motion for relief from stay pending, which he is fending off by performing the Plan.

SUPPLEMENTAL PLEADINGS FILED AND EVOLUTION OF ISSUES

The Parties have filed various pleadings and supplemental pleadings as the court brought them through the trail of this Contested Matter. The court summaries them as follows.

Debtor's Opposition

On November 19, 2021, Debtor, in *pro se*, filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for \$91,600.00 that Keep Your Homes California granted him in 2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

Movant's Response

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states the Debtor has had the opportunity in his three prior bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so.

Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only \$61,131.14, and NOT the entire \$91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of \$91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

The Court has now continued this hearing several times. As event have transpired, Debtor has confirmed a plan, and then defaulted on the plan.

Trustee's Status Report

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent \$1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

Movant's Supplemental Pleadings for January 11, 2022 Hearing

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

5. Debtor states that he received a \$91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.

6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.

8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:

a. The sum of \$61,131.14 was received and applied to Debtor's loan in 2018.

b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the \$91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.

9a. In the Declaration the obligation under the loan and application of the \$91,700 is stated as follows:

Principal Balance 1 st Lien	(\$170,465.08)		(\$36,400.00)	Deferred Principal 2 nd Lien
Application of March 20, 2018 \$97,700				
Due Date June 2015	\$7,292.61			
Due Date March 2016	\$1,620.58			
Due Date May 2016	\$1,639.91			
Due Date July 2016	\$4,904.70			
Due Date January 2017	\$4,904.70			
Due Date July 2017	\$4,465.50			
Due Date December 2017	\$4,465.50			
Due Date May 2018	\$256.35			
Due Date May 2018	\$1,019.00			

Due Date May 2018	\$61,131.14		
Total Monies Applied	\$91,699.99		

11. The \$91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than \$25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11.

Supplemental Pleadings for May 10, 2022 Hearing

On May 6, 2022, counsel for the Chapter 13 Trustee provided a Supplemental Declaration providing testimony concerning Debtor's performance under the confirmed Chapter 13 Plan. Dckt. 13. That testimony, identified by paragraph number in the Supplemental Declaration includes:

3. and 4. The Trustee received initial payments totaling \$1,500 and then payments in March and April 2022 totaling \$2,810.00, with a payment scheduled through TFS in the amount of \$1,100.00 which is anticipated to be received by May 11, 2022.

5. The Trustee computes Debtor to be delinquent \$3,069.00 in plan payments, with an additional payment of \$1,960.00 coming due on May 25, 2022.

The Trustee's counsel also notes that there is an Objection to Creditor's Claim pending, with a hearing set for June 28, 2022.

Supplemental Pleadings for June 1, 2022 Hearing

On May 25, 2022, Movant filed the Declaration of Brian Gaske, an Assistant Vice President for Rushmore Loan Management Services, LLC, the loan servicer. Dckt. 107. With respect to the receipt and applicant of the Save Your Home California monies, he states (identified by paragraph number of the Declaration, with the court paraphrasing unless test is shown with "quotation marks"):

8. \$91,700.00 was received and applied to Debtor's loan in 2018, as identified on Exhibit 1 filed with the Declaration. Also, that Exhibit 1 states the application of payments received by Debtor after May 2018 until the filing of the current Bankruptcy Case.

9. The \$91,700.00 was received on March 20, 2018 and first applied to the payments due June 1, 2015 through April 1, 2018, a period of 35 months in an amount totaling \$29,283.04.

10. After the \$29,283.04 was applied as above, Debtor and the prior loan servicer subsequently (to April 1, 2018) agreed that the principal balance of the loan would be “recast.”

10 (cont.). The “recasting” of the loan was to apply the remaining \$61,481.20 of the Save Your Home California monies to first reduce the principal, which when combined with the payments for June 1, 2015 through April 1, 2018, by \$90,764.24, and then “935.76 for “corporate advances.”

11. After application of the Save Your Home California monies in March of 2018, the principal balance of the loan was reduced from (\$170,465.08) to (\$161,874.80). The court is directed to review Exhibit 1 to see how the application of the \$91,700.00 in March 2018 resulted in a principal reduction of \$8,590.28.

The Declaration directs the court to Exhibit 3 (Dckt. 106) for the Principal Reduction and Recast Agreement (HFA Modification Assistance). With respect a principal reduction and recasting, it’s provisions include (identified by paragraph number of this Agreement:

(2.) Debtor deposits \$61,141.14 with Creditor, which is to be applied to the “president balance due on principal.”

(2. cont.) This payment of \$61,141.14 is to be made as of the effective date of this Agreement.

(3.) Debtor agrees that the terms of the mortgage are modified as follows:

- ◆ (\$100,743.66) is to be paid, with interest, (the Interest Bearing Principal Balance) in monthly installments of \$325.29.
- ◆ The first \$325.29 payment is due May 1, 2018.
- ◆ The final payment will be due August 1, 2054.

Exhibit 1 (Dckt. 106) is a spreadsheet beginning with a March 2018 payment of \$91,700, and showing the application of the payment first to the monthly amounts June 1, 2015, with a starting principal balance of \$170,226.53 through April 1, 2018 with a principal balance of (\$161,874.80) (the monthly principal, interest, and escrow portion of each monthly payment shown).

Modification of Loan

Before looking the numbers on Exhibit 1, the court goes back to the 2014 Loan Modification to which the subsequent 2018 recast and Save Your Home California monies relate.

In POC 2-1 filed by Creditor Debtor’s 2015 Chapter 13 Case, 15-20683, there is attached a Document titled Home Affordable Modification Agreement (“Modification Agreement”). The provisions of the Loan Modification Agreement are summarized as follows:

- A. Dated August 4, 2014.
- B. The Modification Terms are stated in ¶ 3 of the Modification Agreement, and include (identified by the paragraph number in the Modification Agreement):
1. The Loan is modified effective September 1, 2014. ¶ 3.
 2. The first payment due under the loan modification is due September 1, 2014. *Id.*
 - a. The maturity date is August 1, 2054. ¶ 3.A.
 3. Modified Principal Balance is (\$208,994.25) (“New Principal Balance”). ¶ 3.B.
 4. (\$36,400.00) of the New Principal Balance is deferred [Non-Interest Bearing Principal Balance], with no interest or monthly payments. ¶ 3.C.
 5. (\$172,594.25) is the “Interest Bearing Principal Balance” on which interest will accrue and payments will be made by Debtor. *Id.*
 6. The monthly payments and interest rates on the Interest Bearing Principal Balance are, ¶ 3.C.,:
 - a. For Years 1-5 of the Modified Loan
 - (1) Interest is 2%
 - (2) Principal and Interest Payment is \$522.66/month
 - (3) Escrow Payment is \$275.14 (subject to adjustment)
 - b. For Year 6 of the Modified Loan
 - (1) Interest is 3%
 - (2) Principal and Interest Payment is \$607.21/month
 - (3) Escrow Payment is as adjusted
 - c. For Year 7 of the Modified Loan
 - (1) Interest is 4%
 - (2) Principal and Interest Payment is \$607.21/month
 - (3) Escrow Payment is as adjusted
 - d. For Years 8-40 of the Modified Loan
 - (1) Interest is 4.125%
 - (2) Principal and Interest Payment is \$677.80/month
 - (3) Escrow Payment is as adjusted

7. The Modified terms “superseded any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.” *Id.*
8. If a default rate of interest is permitted in the Loan Documents, then in the event of a default, the interest due will be that provided in ¶ 3.C. of the Loan Modification. ¶ 3.F.

POC 2-1 filed by Creditor in the 2015 Chapter 13 Case is signed by John R. Callison, as the Authorized Agent for U.S. Bank National Association. POC 2-1, § 4, states that:

- A. Pre-Petition Arrearage as of the January 30, 2015 filing of Chapter 13 Case 15-20683 was (\$3,177.95).
- B. The Amount of the secured claim was (\$209,166.89).
- C. The Interest Rate was currently 2.00%

Additionally, on the Mortgage Proof of Claim Attachment to POC 2-1 filed in the 2015 Chapter 13 Case it states that:

- A. The principal due on the claim was.....(\$171,888.07)
- B. The interest due as of the filing of the 2015 Case was.....(\$ 859.44)
- C. The Total Principal and Interest Due was.....(\$172,747.51)
- D. Pre-Petition Fees, Expenses, and Charges.....(\$ 1,582.35)

Exhibit 1 Application of Payments

The Spreadsheet begins March 20, 2018, with a principal balance of \$170,467. This appears consistent with the \$172,747.51 non-deferred, Interest Bearing Principal Balance stated in the Loan Modification Agreement effective September 1, 2015.

Receipt of \$91,700.00 is listed as received March 20, 2018. This is then applied first to the June 1, 2015 to April 1, 2018 monthly loan payments asserted to then have been in default. With the curing of the asserted defaults, the Interest Bearing Principal Balance is stated to be \$161,874.80.

After payment of the April 1, 2018 monthly payment, there is computed to be \$61,131.14 of the \$91,700.00 received on March 20, 2018 remaining. These monies are then applied to the April 1, 2018 Interest Bearing Principal Balance, reducing it to \$100,743.66. (There is also a referenced to the “2nd UPB 36,400.00,” which the court interprets to be the non-interest bearing, deferred portion of the principal balance under the 2014 Loan Modification.)

This Spreadsheet then shows only the following amounts received and credited to the Interest Bearing Principal Balance:

10/12/2020	\$1,075.25
10/20/2020	\$ 150.00
11/12/2020	\$2,150.50
12/10/2020	\$1,075.25
4/13/2020	\$3,225.75
5/12/2021	\$2,150.50
7/15/2021	\$1,075.25

After application of this \$10,902.50 to principal, interest, and escrow payments during the period October 10, 2020 to August 2019, the principal balance is computed by Movant to be \$97,832.07

DEBTOR'S OBJECTION TO MOVANT'S PROOF OF CLAIM

On May 2, 2022, Debtor filed an Objection to Claim filed by Movant. Dckt. 95. In the Objection it is alleged that the Proof of Claim must be reduced by a \$91,700.00 grant Debtor received and then adjusted for payments of \$10,752.50, which thereby reduces the current arrearage to \$0.00.

The Debtor's Analysis, Section IV of the Objection to Claim, begins with a "Balance" of (\$209,166.89) for the total claim, with a pre-petition arrearage of (\$3,177.95), when the 2015 bankruptcy case was filed. When one allows for the (36,400.00) non-interest bearing Deferred Principal Balance, this would result in the Interest Bearing Principal Balance being (\$172,766.89) when the 2015 bankruptcy case was filed.

Debtor then tracks the proofs of claims filed by Creditor which states the total claim amount when the various cases were filed by Debtor, which are stated in Debtor's Analysis to be:

Case 15-20683.....January 30, 2015.....(\$209,166.89)

[Between these two dates Debtor lists \$91,699.99 as being paid on Creditor's claim.]

Case 20-21485.....March 1, 2020.....(\$153,169.92) [this shows a reduction of \$55,996.97 in the claim]

[Between these two date Debtor lists \$0.00 as being paid on Creditor's claim.]

Case 20-22852.....June 1, 2020.....(\$159,190.35)

[Between these two Dates Debtor lists \$10,752.50 being paid on Creditor's claim, citing to the Trustee's Final report in Case 20-22852. See 20-22853; Trustee's Final Report, p. 1, Dckt. 231.]

Case 21-23539.....October 1, 2021.....(\$164,860.13)

These payments identified by Debtor total \$102,452.49. Debtor asserts that this documents that the \$91,700.00 Keep You Home California monies were not properly applied.

Debtor further asserts that all of the \$91,700.00 Keep Your Home California monies should have been applied to arrearages, and therefore there should be no arrearage due Creditor.

Debtor further asserts that Creditor has applied the payments to an unauthorized \$11,457.44 for attorney's fees and costs, stating that they were "not authorized by this, or any other court."

The only payments made to Creditor are stated to be those that went through the Chapter 13 Trustee in Debtor's cases and the \$91,700.00.

CONFIRMATION OF DEBTOR'S PLAN

Debtor, with representation of counsel, filed his Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75.

The court issued an order confirming Debtor's First Amended Plan on April 8, 2022. *See* Dckt. 88.

APRIL 26, 2022, HEARING ON MOTION FOR RELIEF

Though the Amended Plan, which addresses prior arrearages, has been confirmed, Debtor is now in default for the March and April 2022 monthly plan payments. Debtor's counsel stated that there is a TFS payment scheduled for April 27, 2022, and he will delivered to the Chapter 13 Trustee a cashier's check for \$850, which will cure the March 2022 default.

Counsel for Movant noted that this hearing has been continued multiple times and Movant has allowed Debtor to prosecute the confirmation of the Amended Plan which was to address the pre and post-petition defaults. Unfortunately, new defaults have occurred. Movant's counsel directed the court to the history of multiple, non-successful Chapter 13 filing by Debtor in this court.

At the hearing Debtor was visibly distressed at the proceedings and his view that Movant is trying to take his property. He has previously argued that Movant will not enter into a loan modification with him. As the court noted, Debtor's counsel is effectively forcing a five year loan modification on Movant though the confirmed Amended Chapter 13 Plan. However, the Debtor must be able to perform the Chapter 13 Plan and make the modified loan payments.

In light of the Chapter 13 Trustee being able to make a distribution to Movant in the near future, the court again continues the hearing. This is to afford Debtor and Debtor's counsel to have the hard economic talk about what Debtor can fund, how it can be funded, and what Debtor may need to do to save his exempt equity value in the Property.

JUNE 1, 2022 HEARING

As noted above, the court does not adjudicate claims objections or other substantive disputes in the context of a relief from stay motion. In these post-confirmation settings, the “cause” question focuses on whether Debtor is prosecuting his/her case – i.e. performing the Chapter 13 plan the debtor got confirmed.

The court has “strayed” into looking at the payments and the nature of the claims objection dispute for several reasons. One, to understand the magnitude of any underlying dispute. Second, and most importantly, to afford Debtor the full opportunity to not only understand the obligation and what the parties are asserting, but to make sure that Debtor understands that he and his counsel have their opportunity to present such issues to the court.

In looking at Debtor’s Analysis of the payments and total claim, the court notes that he lists there being \$91,699.99 in payments to Creditor for the period June 1, 2015 through July 1, 2018.

On Creditor’s Exhibit 1, for the period June 1, 2015 to April 1, 2018, states that \$30,568.85 was applied for the payments due during that period. Then, the remaining \$61,131.14 was applied to the outstanding Interest Bearing Principal Balance of (\$161,875) as of April 2018, reducing it to (\$100,743.66). In addition, there would be the Deferred Non-Interest Principal balance of (\$36,400.00), making the total claim as of April 2018 to be approximately (\$136,400.00).

Debtor then identifies an additional payments of \$10,752.50 being made after April 2018 through the commencement of this current bankruptcy case.

Proof of Claim 2-1 in Current Bankruptcy Case

The current bankruptcy case was filed on October 12, 2021, which is three years and seven months after April 2018. On Proof of Claim 2-1 in the current case, Creditor states the claim has grown to (\$164,860.13). Included in this amount are (\$14,994.93) in attorney’s fees and other costs, and (\$9,628.24) in escrow deficiency and shortage. These total an additional (\$24,623.17) which is added to the claim.

If one subtracts out the (\$24,623.17), which Debtor may dispute, that leaves (\$140,236.83) for the total claim, which includes the (\$36,400.00) Deferred Non-Interest Bearing Principal Balance. Removing this amount from the claim would leave (\$103,836.83) as the Interest Bearing Principal Balance, including accrued interest.

Creditor computes the April 1, 2018 Interest Bearing Principal Balance to be (\$100,743.66) after applying the \$91,700.00 payment.

As discussed above, the interest rates during the April 2018 to October 2021 were 3% and 4%. Doing a rough average of 3.5% per year, the Interest Bearing Principal Balance of (\$100,743.66) would accrue simple interest of (\$3,526.03) a year. Extrapolating that over three years and seven months from April 2018 to the October 2021 filing of the current case, that would total (\$12,634.94) in interest.

If \$10,752.50 in payments were made during the fifteen months of Debtor’s bankruptcy case 20-22852, then that would result in the obligation owing on the Interest Bearing Principal Balance increasing by (\$1,882.54), for a total of (\$103,626.20). When adding the Deferred Non-Interest Bearing

Principal Balance of (\$36,400) to it, the total claim, excluding costs, fees, and expenses, would appear to be around, (\$140,026.20).

The court's approximation is a little less than the claim as stated by Creditor has claimed in Proof of Claim 2-1 in this case, which, including fees, costs and expenses, is stated to be (\$164,860.13). When (\$14,994.93) for fees, costs, and expenses are backed out, Creditor's claim for the Interest Bearing Principal Balance portion and the Deferred Non-Interest Bearing Balance portion total (\$149,865.20).

This additional (\$9,000.00) amount in Proof of Claim 2-1 over the court's estimate of principal and unpaid interest appears to be the Escrow Deficiency of (\$8,410.82) and Escrow Shortage of (\$1,217.42) listed in Proof of Claim 2-1.

Thus, it does not appear that the claim amount should be reduced further by the \$91,700.00 Keep Your Home California payment and the \$10,752.50 (a more than \$100,000 "adjustment"), but whether the costs, fees, and expenses of (\$14,994.93) should be included in the arrearage to be cured.

As stated above, the court is not making any findings or rulings on the amounts of the claim and any objection thereto, but looking at to help the court and parties clarify what issues may actually be in dispute.

Ruling on Motion for Relief

Debtor's confirmed Chapter 13 Plan requires Debtor to make increased monthly plan payments of \$1,960.00 commencing with the February 2022 payment and each month thereafter during the term of the Plan. Order, Dckt. 88. Under the Plan, the arrearage claimed by Creditor is to be paid \$755.00 a month for fifth seven months (the plan not being fully funded for the first three months). If there is a bona fide dispute over the (\$14,994.92) in costs, fees, and expenses, those represent the tail end months of the Plan.

At the hearing on the Motion, Debtor's counsel reported that he has one payment for \$1,960 and is getting the second payment shortly to cure the default. Debtor is renting more rooms in the house to increase his income, with Debtor moving into the garage.

Debtor has an application for a California grant to cure the arrearage pending.

Counsel for Movant commented that there is no evidence of the payments or other factual assertions. Counsel for Movant requested that specific information be documented, which counsel for Debtor agreed to promptly do.

The Parties agreed to continue the hearing in light of Debtor's efforts to get the Plan back on track and provide the requested information. The hearing is continued to the same date and time which is set for the Objection to Movant's claim, which the parties indicated may be a moot issue.

Trustee's Non-Opposition to Debtor's Objection to Claim

On June 14, 2022, Trustee filed a Non-Opposition to Debtor's Objection to Allowance of Claim. Dckt. 111. Trustee explains that U.S. Bank has filed a Proof of Claim which shows a secured

amount of \$164,860.13 and arrears of \$40,899.99. Trustee has placed a hold on U.S. Bank's claim until the objection has been resolved or the court clarifies how the claim will be paid.

JUNE 28, 2022 HEARING

At the hearing, counsel for the Debtor reported that in light of the advances in this case, the Parties agreed to a continuance.

Creditor's Exhibits

On July 12, 2022, Creditor attached exhibits in support of its "Declaration of Loan Servicer in Support of Motion for Relief" filed "concurrently herewith." Dckt. 119. The court notes, however, "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). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a).

Creditor's declaration indicates the \$91,7000 CalHFA MAC loan proceeds were received on March 20, 2018 and applied to the following contractual payments:

Payment Dates	Total Months	Payment Amount	Total
June 1, 2015 - May 1, 2016	12 months	\$810.29	\$9,723.48
June 1, 2016	1 month	\$819.16	\$819.16
July 1, 2016 - June 1, 2017	12 months	\$817.45	\$9,809.40
July 1, 2017 - April 1, 2018	10 months	\$893.10	\$8,931.00
Total Payments Applied from CalHFA MAC loan	35 months		\$29,283.04

Creditor indicates the remaining \$61,481.20 of the \$91,700.00 CalHFA loan were applied to the principal balance of Creditor's loan. This resulted in a remaining principal balance of \$100,746.66. Additionally, \$935.76 were applied to corporate advances.

The payments are reflected in Creditor's Exhibit 1. Dckt. 119.

JULY 26, 2022 HEARING

At the hearing, the Parties agreed to a final final short continuance in light of the issues having been narrowed and the information provided by creditor.

AUGUST 4, 2022 HEARING AND STAYING OF PROCEEDINGS

The Debtor having dismissed the related Objection to Creditor's Claim and the efforts being made to address Creditor's claim through an amended Chapter 13 Plan, Creditor requested that the proceedings on this Motion be stayed and the matter removed from the Calendar.

The Debtor concurred in this request.

The court orders that these proceedings are stayed and the matter is removed from the calendar. The matter may be returned to the Calendar by Movant if it determines that grounds exist for the requested relief. The court determines that staying this matter, rather than dismissing it without prejudice, is consistent with the efforts of Debtor and Creditor to address this claim, Debtor pursuing an amended plan, and judicial economy.

FEBRUARY 7, 2023 HEARING RESET HEARING ON THE MOTION FOR RELIEF FROM STAY

Movant filed a Notice on January 23, 2023, "restoring" the Motion for Relief. Dckt. 136. Movant states, in their notice, that cause exists to grant the relief from the automatic stay as Debtor is post-petition delinquent for November 1, 2022 and January 1, 2023 mortgage payments. The amount of the default is stated to be \$3,346.35. Movant states the Motion is based on the Declaration filed in Support of Restored Motion. Dckt. 137.

The court order from August 3, 2022, Dckt. 135, states this Motion may be reset if Movant files a supplemental pleading stating additional grounds with particularity.

Movant's Declaration in Support of Restored Motion

Anselm Joseph, Bankruptcy Specialist for Movant, filed a Declaration on January 23, 2023. Dckt. 137. Mr. Joseph states Debtor has again defaulted on their obligations due and owing to Movant by failing to make payments for November 1, 2022 through and including January 2023. Dckt. 137.

He testifies that the last partial payment of \$459.74 was received from the Debtor on December 8, 2022.

At the hearing, counsel for the Debtor appeared, asserting a defense and a "plan" to address any shortfall in payments caused by the increase in the current monthly mortgage payment. Counsel for the Trustee reported that the Debtor is in default in the Plan payments, having not increase the monthly Plan payment when Movant's monthly payment increase due to a change in the escrow account for the secured claim.

Given the Debtor's oral opposition, the court sets a briefing scheduling and set the matter for a continue hearing.

Debtor's Supplemental Opposition

Debtor filed a Supplemental Opposition on February 21, 2023. Dckt. 144. Debtor states they are only \$2,196.00 delinquent in post-petition payments and \$199.67 owing in arrears to Movant. Debtor states their arrearages are not significant enough to justify the relief requested.

Additionally, Debtor requests ability to object to the Amended Proof of Claim, as “costs” were added without court approval. Proof of Claim 2-3.

Trustee’s Nonopposition

Trustee filed a nonopposition on February 27, 2023. Dckt. 150 Trustee states Debtor is currently delinquent \$13,345.14. Trustee reflects the following arrearages owed to Movant:

Post-petition Mortgage Payments.....\$4,255.36

Pre-petition Mortgage Arrears.....\$29.92

Post-petition Mortgage Arrears.....\$526.05.

Trustee requests the Motion be granted, and notes they filed a Motion to Dismiss, Dckt. 146, which is set to be heard on April 5, 2023.

MARCH 7, 2023 HEARING CONTINUED HEARING ON THE RESET MOTION FOR RELIEF FROM STAY

At the hearing, Debtor’s counsel stated that he spoke with his client and reviewed the file. A review of the record, the parties acknowledge that Debtor has been unable to make all the Plan payments, but Debtor has obtained some grants post-petition, without informing the court, and has had the grant money paid to Creditor without obtaining authorization from the court to make payments not provided for in the Plan.

Debtor’s counsel was ignorant of the grants obtained and monies paid, other than saying that “his client believes it is” Debtor has not provide his attorney with any of the grant application paperwork, the documentation that the grant was awarded, or that the grant monies were paid. As the court noted at the hearing, Debtor’s counsel will contact the California agency identified by Debtor as having made the grant to get the documentation and confirmation of payments made under the grant and to whom the monies were disbursed. The court emphasized that such documentation and information must be obtained, and if the agency would not do it based on the Debtor’s authorization to communicate with his attorney, then a subpoena could be issued by the federal judge.

Creditor’s counsel confirmed that grant money had been received by Creditor, and she believed that Creditor applied it to the arrearage. As the court noted, doing so would apply to be in contravention of the Plan and that Creditor was “curing the arrearage” and still demanding the cure payments for the arrearage, which no longer existed, by the Plan payments.

The hearing concluded with the Parties agreeing to a continuance to obtain the necessary information and come to an agreement with what had been received by Creditor. The court also suggested to both attorneys that it appears time that counsel have a heart to heart talk with their clients

about their respective client's obligation in bankruptcy and that acting in contravention of the confirmed plan was not proper.

Debtor's Supplemental Opposition

Debtor filed a supplemental opposition on April 11, 2023. Dckt. 163. Debtor states based on Movant's 3rd Amended Proof of Claim, Proof of Claim 2-3, the amount necessary to cure any default is \$755.64. Debtor states they have paid \$566.97 and plan to resolve the remaining arrears of \$199.67 in a modified plan. Upon the court's review of the docket, no proposed modified plan has been filed.

CONTINUANCE OF APRIL 23, 2023 HEARING

Derek L. Wolf, the Debtor, and U.S. Bank, National Association, Trustee, the Movant, filed their Joint *Ex Parte* Motion requesting the court continue the hearing on this Motion to May 23, 2023. Dckt. 165. They report that the Parties are continuing to engage in meaningful discussions and are addressing the application of monies received by Movant.

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 to Annul Automatic Stay or in the Alternative In Rem Relief From Automatic Stay filed by US Bank, NA ("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 proceedings in this Contested Matter are stayed and the matter is removed from the calendar.

IT IS FURTHER ORDERED that this Contested Matter may be reset to the court's Calendar by Movant if it determines that grounds exist for the requested relief or by Debtor to obtain a filing decision in this Contested Matter if necessary. No further filing fee is required.

If the Parties have determined that this Motion is to be dismissed, they may file their stipulation doing so or an *ex parte* motion for an order dismissing the Motion.

Final Ruling: No appearance at the May 23, 2023 Status Conference is required.

Attorney: David C. Johnston

Notes:

5/22/2023 Status Report filed by Debtor in Possession [**Dckt. 203**]

The Post-Confirmation Status Conference is continued to 2:00 p.m. on July 13, 2023.

MAY 23, 2023 POST-CONFIRMATION STATUS CONFERENCE

On May 22, 2023, the Debtor/Debtor in Possession filed an updated Status Report. Dckt. 2023. The updated information includes the following:

- A. A Modified Plan will be filed to address that the claim for lease for rejection damages by Fresno Truck Center were not provided for in the now confirmed Plan because the rejection was made by the confirmation of the Plan and the Creditor's claim was subsequently filed.
- B. The Modified Plan will also address the direct payments to creditors by the Debtor/Debtor in Possession as Plan Administrator and not through the Subchapter V Trustee.

The Subchapter V Debtor/Debtor in Possession addressing (a bit belatedly) the concerns identified by the Subchapter V Trustee, continuance of the Status Conference is proper.

MAY 18, 2023 POST-CONFIRMATION STATUS CONFERENCE

In reviewing the Docket, the court notes that nothing has been filed since the April 6, 2023 Post-Confirmation Status Conference. As shown in the Minutes below from two prior Post-Confirmation Status Conference, the Subchapter V Trustee states that the Subchapter V Debtor/Debtor in Possession is making direct payments to creditors on their claims and not through the Subchapter V Trustee.

No updated Status Report has been filed by the Debtor/Debtor in Possession for the May 18, 2023 Status Conference, and none have been filed since the February 11, 2021 confirmation of the Plan in this case.

The Civil Minutes from the Confirmation Hearing state that there were four of the thirteen classes of claims that voted to confirm the Plan. Dckt. 130. No other ballots were cast in the other nine classes of claims, and for the four accepting classes, no ballots were cast against confirmation. *Id.*

The Bankruptcy Code provides in 11 U.S.C. § 1194(b) that if the Plan is confirmed under 11 U.S.C. § 1191(b), then the Subchapter V Trustee will make all payments to creditors under the Plan, unless the Plan proves otherwise. 11 U.S.C. § 1191(b) provides that if the requirements for confirmation provided in 11 U.S.C. § 1129(a)(8) [all impaired classes accept], (a)(10) [at least one impaired class votes to accept if there are any impaired classes of claims], and (a)(15) [distribution amount if a holder of an unsecured claim objects].

As shown in the Civil Minutes for the confirmation of this Subchapter V Plan, no all impaired classes voted to accept the Plan and it was confirmed pursuant to 11 U.S.C. § 1129(b).

The judge to whom this case is assigned will not be able to attend the May 18, 2023 Status Conference due to a last minute schedule change. Rather than having the judge covering the May 18, 2023 calendar conduct the Status Conference, the court continues it to 1:30 p.m. on May 23, 2023, specially set to the Sacramento Division Courthouse – Telephonic Appearances Permitted.

The court does this so that it may address with the SubChapter V Trustee and counsel for the Debtor/Debtor in Possession whether the payments are being made through the SubChapter V Trustee, the Plan needs to be modified to provide for the Debtor/Debtor in Possession to make the payments, or the Subchapter V Trustee and Debtor/Debtor in Possession now agree that payments are to be made directly by the Debtor/Debtor in Possession.

If the Subchapter V Trustee and the Debtor/Debtor in Possession have resolved this payment issue, they may file a joint status report advising the court of such resolution and the basis therefore, which joint status report may also request that the court continue the Post-Confirmation Status Conference.

APRIL 6, 2023 POST-CONFIRMATION STATUS CONFERENCE

Since the January 26, 2023 Status Conference, the court has entered an order approving interim fees and expenses for David M. Souza, the Subchapter V Trustee. Order; Dckt. 195. No updated Status Report has been filed by the Debtor/Debtor in Possession Plan Administrator.

At the Status Conference, counsel for the Debtor Plan Administrator reported that the disputed claim over the truck leasing claim are still the subject of ongoing discussions.

The Trustee reported that Debtor Plan Administrator has been making the Plan payments directly to creditors with secured claims, and not making them through the Subchapter V Trustee.

JANUARY 26, 2023 POST-CONFIRMATION STATUS CONFERENCE

No updated status reports have been filed and no post-confirmation fee applications have been filed. By the end of March 2022, the final orders were entered on the Debtor/Debtor in Possession Plan Administrator's objections to claims. There has been nothing filed in connection with the administration of this case and the Confirmed Plan since March 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the dispute over rejection damages is ongoing with Fresno Truck Center, dba Lee Financial Services.

The court continues the Status Conference to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.

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 Post-Confirmation Status Conference having been scheduled for May 23, 2023, the court having reviewed the file and Updated Status Report filed by the Debtor/Debtor in Possession, the narrow scope of issues and the identified need for the Debtor in Possession to now prosecute a modified plan, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on July 13, 2023.**