

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 4, 2024 at 1:30 p.m.

1. [24-22050-E-13](#)
[PGM-1](#)

JOSE GARCIA
Peter Macaluso

**MOTION TO EXTEND AUTOMATIC
STAY O.S.T.
5-29-24 [17]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, attorneys of record who have appeared in the case, creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on May 29, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 4, 2024. Dckt. 26.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----
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<p>The Motion to Extend the Automatic Stay is granted, and the court extends the Stay on an interim basis through and including July 19, 2024. The Final Hearing on the Motion shall be conducted at 2:00 p.m. on July 2, 2024.</p>
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Jose Antonia Garcia (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor’s second bankruptcy petition pending in the past year. Debtor’s prior bankruptcy case (No. 23-23473) was dismissed on May 2, 2024, after Debtor as Debtor was delinquent in plan payments and failed to file tax returns. *See* Minutes, Bankr. E.D. Cal. No. 23-23473, Dckt. 67, May 1, 2024. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed due to financial hardship and general life struggles. Specifically, Debtor provides testimony that he was recently left unemployed after the company he worked at for 34 years terminated his position. Decl., Docket 21 1:24. His son was also living with him during the last case. Debtor’s son is an adult with five dogs who was not contributing to help in the bankruptcy and who was getting in legal trouble. *Id.* at 2:5-7. Debtor made the tough choice to have his son move out. *Id.* Debtor explains his circumstances have changed since his last filing, stating he has good employment and plans to rent out rooms of his home soon. *Id.* at 2:14-22.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor’s cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently demonstrated the case was filed in good under the facts of this case and the prior case for the court to extend the automatic stay. Debtor has submitted compelling testimony clearly explaining why his previous case was dismissed and how the current case can succeed. Debtor has expressed his earnest efforts in successfully reorganizing under Chapter 13.

The Motion is granted, and the automatic stay is extended for all purposes and parties, on an interim basis through and including **July 19, 2024**. The final hearing on this Motion shall be conducted at **2:00 p.m. on July 2, 2024**.

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 Extend the Automatic Stay filed by Jose Antonia Garcia (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that the automatic stay is extended pursuant to 11 U.S.C. § 363(c)(3)(B), through and including **July 19, 2024**, pending the court issuing a final order after the final hearing on this Motion.

IT IS ORDERED that the final hearing on this Motion shall be conducted at **2:00 p.m. on July 2, 2024**. Debtor shall provide notice of the continued hearing on or before **June 7, 2024**, with written oppositions, if any, filed and served on or before **June 24, 2024**; and replies, if any, may be presented orally at the hearing.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 26, 2024. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay as to the Debtor is granted; and Relief from the Co-Debtor Stay is granted.

Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust ("Movant") seeks relief from the automatic stay with respect to a lease of an asset identified as a 2021 Mercedes-Benz, VIN ending in 9767 ("Vehicle"). The moving party has provided the Declaration of Star Faz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tracie Yvette Albertie, ("Debtor").

Movant argues Debtor has not made 3 post-petition payments, with a total of \$1,920.90 in post-petition payments past due. Decl., Docket 21.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on May 21, 2024. Docket 27.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$30,032.48. Decl., Docket 21.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 365(p)(1): Executory Contracts and Unexpired Leases

Pursuant to §365(p)(1) of the Bankruptcy Code, “[i]f a lease of personal property is rejected or not timely assumed by the trustee under section (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.” 11 U.S.C. § 365(p)(1). “Section 1303 vests in the Chapter 13 debtor the identical rights and powers conferred upon a liquidation trustee under section 363, relating to the use, sale and lease of property of the estate.” 11 U.S.C. § 1303; 8 HENRY J. SOMMER & RICHARD LEVIN, *COLLIER ON BANKRUPTCY* ¶ 1303.01 (16th ed. 2024). Pursuant to Section 365(p)(3) of the Bankruptcy Code, “[i]n a case under ... chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.” 11 U.S.C. § 365(p)(3).

Debtor’s Chapter 13 Plan was confirmed by a court order on March 20, 2024. Order Confirming Plan 2:14, Docket 16. Section 4.02 of the Plan does not list any executory contract or unexpired lease assumed by the Debtor, which renders the Mercedes-Benz Lease “rejected” for the purposes of §365(p). Ex. D, Docket 25. Given that the Lease is rejected, “the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.” 11 U.S.C. § 365(p)(3).

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the Vehicle is not provided for in the Plan, and the Vehicle continues to deteriorate.

Federal Rule of Bankruptcy Procedure 4001(a)(3) Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, due to the account being three months delinquent, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:14-16, Docket 19.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Mercedes-Benz, VIN ending in 9767 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

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. [22-22252-E-13](#)
[AP-1](#)

THERESA SHELTON
Thomas Amberg

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-1-24 [\[32\]](#)

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the June 4, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 1, 2024. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay as to the Debtor is granted; and Relief from the Co-Debtor Stay is granted.

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2005-3, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2005-3 (“Movant”) seeks relief from the automatic stay with respect to Theresa Shelton’s (“Debtor”) and Gary Shelton Sr.’s (“Co-Debtor”) real property commonly known as 1620 Villa Way, El Centro, CA 92243 (“Property”). PHH Mortgage Corporation services the underlying mortgage loan and note for the property for the Movant. Movant has provided the Declaration of Diego Rojas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 37.

Movant is properly in possession of an Adjustable Rate Note in the principal sum of \$204,250.00, which was made payable to Novastar Mortgage, Inc and executed on July 15, 2005. Mot., 2:5-8, Docket 32. The Note is secured by a recorded deed of trust encumbering the Property. *Id.* at 2:5-11.

On May 29, 2016, Co-Debtor executed an agreement to modify the loan. *Id.* at 2:16-17. Afterwards, on September 2, 2022, Debtor commenced the instant case by filing a voluntary petition under Chapter 13 of the Bankruptcy Code. Docket 1. Debtor did not disclose an interest in the Property on her Schedule A. Mot. 2:16-200, Docket 32; *see* Schedule A/B, 11-16.

On October 28, 2022, an Order Confirming Chapter 13 Plan was entered in the case, but fails to include the loan or Property. Mot., 2:21-23, Docket 32; *see* Plan, Docket 3.

Movant argues Debtor has not disclosed her interest in the Property or her liability on the Note and has confirmed a Plan which does not address these issues. Mot. 2:24-26, Docket 32.

DEBTOR’S & CHAPTER 13 TRUSTEE’S NON-OPPOSITION

Both Debtor and David P. Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on May 2, 2024 and May 21, 2024, respectively. Docket. 39, 40. Debtor asserts that she no longer had an interest in the Property, as it is her former spouse’s home and she does not live in it. Docket 39. The Chapter 13 Trustee asserts that Debtor’s plan payments under the proposed Plan are \$301.00 for 60 months and the Debtor is current per the terms of the plan. Non-Opp’n 1:17-19, Docket 39; *see* Plan, 1, Docket 3. Debtor did not provide for Creditor in the proposed plan due to Debtor’s divorce. Statement of Fin. Affairs, 39, Docket 1. The Trustee checked and confirmed the divorce was filed on February 13, 2008. Non-Opp’n, 1:25-28, Docket 40. PHH Mortgage filed a secured claim on November 10, 2022 for \$125,214.12 relating to the Property. *Id.* at 2:1-2.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$204,250.00 (Decl., Docket. 37), while the value of the Property has not been provided by Debtor or Movant.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The

court determines that cause exists for terminating the automatic stay, Debtor opting to not provide for this secured claim in her Plan or Schedules. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant is not adequately protected by treatment under the Plan. Mot., 3:28-4:1, Docket 32.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2005-3, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2005-3 (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1620 Villa Way, El Centro, CA 92243 (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

ALLY BANK VS.

Final Ruling: No appearance at the June 4, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2024. By the court’s calculation, 46 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay as to the Debtor is granted; and Relief from the Co-Debtor Stay is granted.

Ally Bank (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2020 Nissan Altima, VIN ending in 1057 (“Vehicle”). Mot. 2:20-22, Docket 19. The moving party has provided the Declaration of Paul Tangen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Allison Natalie Johnson (“Debtor”). Decl., Docket 21.

Movant argues Debtor has not made two post-petition payments, with a total of \$1,130.72 in post-petition payments past due. Decl. 2:19-21, Docket 21. Movant also provides evidence that there are approximately 8 pre-petition payments in default, with a pre-petition arrearage of \$4,922.88. Decl. 2:17-19, Docket 21.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on May 21, 2024. Docket 25.

Kelley Blue Book Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. C, Docket 22. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$30,146.57 (Decl. 3:1-2, Docket 21), while the value of the Vehicle is determined to be \$16,868, as stated in the Kelley Blue book Valuation Report. Ex. C, Docket 22.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). The court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and the statement of non opposition having been made by David Cusick (“the Chapter 13 Trustee”) (Docket 25), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

11 U.S.C. § 1301(c): Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be

irreparably harmed if relief from the co-debtor stay were not granted because of the continued depreciation of the collateral. Decl. 3:7-11, Docket 21.

**Federal Rule of Bankruptcy Procedure 4001(a)(3):
Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, on account of the continued depreciation of the collateral, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:20-22, Docket 21.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Ally Bank (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2020 Nissan Altima, VIN ending in 1057 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

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.

