

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

June 6, 2024 at 10:00 a.m.

FINAL RULING

1. [23-90524-E-7](#) **WHOLESOME NUT COMPANY,** **MOTION FOR RELIEF FROM**
[GAL-1](#) **INC** **AUTOMATIC STAY**
 Steven Altman **5-9-24 [28]**

**TOYOTA INDUSTRIES COMMERCIAL
FINANCE, INC. VS.**

Final Ruling: No appearance at the June 6, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, Trustee’s Attorney, and Office of the United States Trustee on May 9, 2024. By the court’s calculation, 28 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Relief from the Automatic Stay is granted.
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Toyota Industries Commercial Finance, Inc. (“Movant”) seeks relief from the automatic stay with respect to the following assets:

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1. 2012 Toyota Forklift 8FGU25, Serial No. 8FGU25-61285,
 - a. \$3,884.79 arrearage. Decl. ¶ 5, Docket 37.
2. 2012 Toyota Forklifts 8FGU25, Serial No. 8FGU25-71259,
 - a. \$3,884.79 arrearage. *Id.*
3. 2015 Toyota Forklift 8FGU25, Serial No. 8FGU25-71286,
 - a. \$4,529.71 arrearage. *Id.* at ¶ 12.
4. 2015 Toyota Forklift 8FGU25, Serial No. 8FGU25-74735,
 - a. \$7,841.08 arrearage. *Id.* at ¶ 19.
5. 2016 Toyota Forklift 8FGU25, Serial No. 8FGU25-65643, and
 - a. \$4,958.37 arrearage. *Id.* at ¶ 26.
6. 2017 Toyota Forklift 8FGU25, Serial No. 8FGU25-83087.
 - a. \$5,452.43 arrearage. *Id.* at ¶ 33.

(“Forklifts”). The moving party has provided the Declaration of Joanna Lopez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Wholesome Nut Company, Inc. (“Debtor”).

On each of the six Forklifts, Debtor is in possession of the Forklifts under a lease arrangement. *See* Exhibits, Dockets 31-36. Movant has perfected its interest in the Forklift by filing UCC-1 Financing Statements as to each separate Forklift. *Id.* Movant argues Debtor is delinquent in payments on each of the forklifts since April 23, 2024, which includes pre and post-petition payments. Declaration ¶¶ 5, 12, 19, 26, & 33; Dckt. 37.

DEBTOR’S RESPONSE

Debtor filed a Response on May 23, 2024. Dckt. 41. Debtor asserts that most of its assets and leased equipment were actually destroyed in a fire that occurred in late 2020. *Id.* at ¶ 2. Debtor also reported its president, Anthony Mello, is attempting to locate insurance loss documents to see if Movant’s property was not destroyed, but most of the books were also lost in the fire. *Id.* at ¶¶ 3-4. Debtor does not oppose the Motion. *Id.* at ¶ 1.

TRUSTEE’S RESPONSE

The Chapter 7 Trustee did not file an opposition or other response to this Motion. However, the Chapter 7 Trustee has made her Report of No Distribution by the May 14, 2024 Docket Report. This documents that the Trustee has determined there are no assets to administer and from the Trustee’s view the case is ready to close.

DISCUSSION

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.

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 Forklifts, 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.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. However, with Debtor not opposing relief, the court will waive 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 Toyota Industries Commercial Finance, Inc. (“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 Forklifts, under its security agreement, loan documents granting it a lien in the following assets:

1. 2012 Toyota Forklift 8FGU25, Serial No. 8FGU25-61285,
2. 2012 Toyota Forklifts 8FGU25, Serial No. 8FGU25-71259,
3. 2015 Toyota Forklift 8FGU25, Serial No. 8FGU25-71286,
4. 2015 Toyota Forklift 8FGU25, Serial No. 8FGU25-74735,
5. 2016 Toyota Forklift 8FGU25, Serial No. 8FGU25-65643,
and
6. 2017 Toyota Forklift 8FGU25, Serial No. 8FGU25-83087.

("Forklifts"), and applicable nonbankruptcy law to obtain possession of and nonjudicially sell the Forklifts.

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.