

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

June 10, 2025 at 1:30 p.m.

1. [25-20819-E-13](#) **JEFFREY VAN DEN OEVER** **MOTION FOR RELIEF FROM**
[KMM-1](#) **Pro Se** **AUTOMATIC STAY**
5-2-25 [\[22\]](#)

HARLEY-DAVIDSON 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.

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 (*pro se*) on May 2, 2025. 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Harley-Davidson (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Harley-Davidson FLHRXS Road King SPE, VIN ending in 4602 (“Vehicle”). The moving party has provided the Declaration of Jenifer Ford to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jeffrey James Van Den Oever, Sr. (“Debtor”). Decl., Docket 25.

Movant argues Debtor has not made post-petition payments for the months of February 28, 2025 through March 28, 2025, each in the amount of \$653.55. Decl. 2:23-27, Docket 25.

The Chapter 13 Trustee filed a Non-Opposition on May 16, 2025. Docket 33.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 26. 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 \$31,780.54 (Declaration 4:8), while the value of the Vehicle is determined to be \$15,655, as stated on the J.D. Power Valuation Report.

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 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 Harley-Davidson (“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 Motion is granted, and 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 2019 Harley-Davidson FLHRXS Road King SPE, VIN ending in 4602 (“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.

No other or additional relief is granted.

2. [25-21925-E-13](#)
[SKI-1](#)

PATRICIA MELMS
Peter Macaluso

SANTANDER BANK, N.A. VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
TO CONFIRM TERMINATION OR
ABSENCE OF STAY
4-30-25 [9]**

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 on April 30, 2025. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

The Motion to Confirm Absence of 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.

<p>The Motion to Confirm Absence of the Stay is granted.</p>

Creditor Santander Bank, N.A., as servicer for Santander Consumer USA Inc. (“Movant”), moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(c)(4). Movant seeks confirmation from the court that no automatic stay in effect on personal property identified as a 2019 Chevrolet Camaro, vin ending in 1342 (“Vehicle”) is not in effect because this is Debtor’s third case in the same year with the previous two cases both being dismissed. Mot. 2:5-20, Docket 9.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 27, 2025. Docket 24. Debtor agrees there is no automatic stay in the case; however, Debtor states she has been gifted funds in the amount of \$11,115.62 from her son, so she seeks denial of this Motion and that Movant accept the funds and return the Vehicle to Debtor.

DISCUSSION

11 U.S.C. § 362(c)(4) states:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. . .

Debtor has had the following cases dismissed within the past year:

- A. Case No. 24-21153
 - 1. Filed: March 25, 2024
 - 2. Chapter 13
 - 3. Dismissal Date: November 23, 2024
 - 4. Reason for Dismissal: delinquency in plan payments and failure to confirm a plan;
- B. Case No. 25-20845
 - 1. Filed: February 26, 2025
 - 2. Chapter 13
 - 3. Dismissal Date: March 10, 2025
 - 4. Reason for Dismissal: failure to timely file documents.

Therefore, no automatic stay has gone into effect regarding Debtor's third case within the past year, this current case, which was filed on April 23, 2025.

Debtor proposes to pay the full amount owed on the Vehicle using a gift from her son.

At the hearing, **XXXXXXX**

**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, as Movant is in possession of the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:26-28.~~

~~_____ 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 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 Confirm Absence of the Automatic Stay filed by Santander Bank, N.A., as servicer for Santander Consumer USA 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** that the relief is granted pursuant to the Motion, the court confirming that there is no automatic stay in effect in this case, case no. 25-21925, pursuant to 11 U.S.C. § 362(c)(4).~~

~~_____ **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.~~

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION 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.

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 (*pro se*) on April 21, 2025. By the court’s calculation, 50 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 is granted.

The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2003-RP1 (“Movant”) seeks relief from the automatic stay with respect to Kenneth Gene Wilkinson’s (“Debtor”) real property commonly known as 3961 Nugget Lane, Placerville, California 95667 (“Property”). 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 125.

Movant argues Debtor has no interest in the Property because on September 26, 2024, one day prior or to the filing of the instant bankruptcy case, a foreclosure sale of the Property was conducted and ownership of the Property was transferred to Movant. Mot. 4:7-9; Decl. ¶ 10, Docket 125. Movant provided the properly authenticated Trustee’s Deed Upon Sale as Exhibit 9, Docket 127. The Trustee’s Deed Upon Sale shows the sale took place on September 26, 2024. *Id.* at 71.

The Chapter 13 Trustee filed a Non-Opposition on May 27, 2025. Docket 146.

Movant filed a Statement of Recent Development on June 2, 2025, in support of the Motion. Movant informs the court that Debtor's District Court action was dismissed without leave to amend because Debtor lacked standing to pursue the claims against Movant. Docket 150 at 2:7-10.

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).

Finality of Nonjudicial Foreclosure Sale

The grounds stated in the Motion include the statement that on September 26, 2024, a foreclosure sale for the Property was conducted and "ownership of the Property was transferred to Movant." Motion, p. 4:7-9; Dckt. 122. The Motion directs the court to Exhibit 9 as support for this statement. Exhibit 9 is a copy of the Trustee's Deed of Sale, which has a recording dated of December 5, 2024. Dckt. 127. The Bankruptcy Code provides that an act to perfect an interest in the debtor's property post-petition is not stayed (11 U.S.C. § 362(b)(3)), so long as the applicable law (here California Law) provides that such perfection is effective to provide superior title to someone obtaining a interest in the property prior to the trustee's deed being recorded. See also 11 U.S.C. §§ 546(b), which limits the bankruptcy trustee's avoiding powers.

California Civil Code § 2924m(c) provides that a sale of residential property under a deed of trust is deemed final fifteen days after the foreclosure sale, unless a tenant buyer or other eligible bidder (which does not include the person obligated on the secured note or a family member thereof; Cal. Civ. § 2924m(a)(2)) has timely submitted a post-sale bid or notice of intention to bid within 15 days of the trustee's sale (Cal. Civ. § 2924m(c)(2)).

For Movant, the nonjudicial foreclosure sale on September 26, 2024, the day before the Bankruptcy Case was filed and the trustee's deed was recorded seventy days later on December 5, 2024 (thereby perfecting title for Movant). California Civil Code § 2924h(c) provides that if the trustee's deed is recorded within 21 calendar days of the foreclosure sale.

It further provides that if an eligible bidder submits bid pursuant to California Civil Code § 2924m, the trustee's sale shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 60 calendar days after the sale or the next

business day following the 60th day if the county recorder in which the property is located is closed on the 60th day.

Cal. Civ. 2924h(c).

From the court's review of the Movant's Motion and Points and Authorities, it is not clear how the trustee's deed recorded on December 5, 2024, is a perfected pre-petition interest in the Property.

On May 13, 2025, another law firm representing Movant filed an Objection to Confirmation of the Debtor's Chapter 13 Plan. Obj.; Dckt. 135. In it Movant asserts it has a secured claim in the amount of (\$277,124.94) and that Debtor was improperly trying to value that claim at \$0.00. *Id.*; p. 2:12-3:9.

On December 3, 2024, Movant filed Proof of Claim 1-1 asserting that it held, as of December 3, 2024, a pre-petition claim in the amount of (\$277,124.94). POC 1-1, § 8. Proof of Claim 1-1 states that the debt is secured by real estate, the lien having been perfected by a Mortgage/Deed of Trust. POC 1-1, § 9. Proof of Claim 1-1 is signed under penalty of perjury by the other law firm representing Movant in this Bankruptcy Case.

At the hearing, **XXXXXXX**

~~—————The court determines that cause exists for terminating the automatic stay, specifically, that Movant now legally owns the Property and Debtor no longer has a legal interest in the Property. 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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights; and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.~~

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, as Debtor is impressibly occupying Movant's Property, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 4:21-26.

~~—————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.~~

Co-Debtor Stay

~~—————Additionally, Movant seeks relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has stated who the co-debtor would be in this case, only stating:~~

~~————— Movant also moves the Court to terminate the co-debtor stay of 11 U.S.C. § 1301(a) on the grounds that Movant’s interest in the Property will be irreparably harmed by the continuation of the co-debtor stay.~~

~~Mot. 4:18-20. These are insufficient grounds for the court to find that Movant would be irreparably harmed, especially as no co-debtor is identified.~~

At the hearing, **XXXXXXX**

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 Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2003-RP1 (“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 Motion is ~~granted, and 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 3961 Nugget Lane, Placerville, California 95667 (“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 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.

KAMALJIT S. TAKHAR VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and all creditors and parties in interest on May 20, 2025. By the court's calculation, 21 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 xx 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, -----

The Motion for Relief from the Automatic Stay is granted.

Kamalajit S. Takhar ("Movant") seeks relief from the automatic stay with respect to Harry Michael Chaffee's ("Debtor") real property commonly known as 16028 and 16048 Bridge Street, Meridian, CA 95957 ("Property"). Movant has provided his own Declaration and the Declaration of his attorney, Terrance Kilpatrick, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decls., Dockets 26, 27.

Movant argues Debtor has not made two post-petition payments for the months of April and May of 2025. Mot. 6:26. Movant also provides evidence Debtor has failed to pay property taxes in the amount of \$5,634.83. Declaration 3:1-3, Docket 26.

Movant seeks further relief pursuant to 11 U.S.C. § 362(d)(4), arguing this case is part of a scheme to hinder or delay collection by Debtor filing multiple cases. Mot. 8:16-21.

Movant requests adequate protection payments of \$1,973.86 if this Motion is not granted. *Id.* at 8:25-28.

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 \$248,977.36 (Declaration ¶ 13, Docket 26), while the value of the Property is determined to be \$182,920.50, as stated in Schedules A/B and D filed by Debtor.

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 reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

11 U.S.C. § 362(d)(4)

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval

or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* In this case, there is one other case filed that affects the Property:

- A. Case No. 24-24159
 - 1. Filed: September 18, 2024
 - 2. Chapter 13
 - 3. Dismissal Date: April 16, 2025
 - 4. Reason for Dismissal: Failure to timely file documents and a Chapter 13 plan.

What is striking here, however, is Debtor filed this present case on April 2, 2025, while the prior case was still ongoing. Debtor appears to have filed this present case in response to Judge Clement granting Movant's Motion for Relief From Stay in the prior case. *See* Case No. 24-24159, Order, Docket 52.

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of multiple and concurrent filings made to frustrate Movant's collection efforts.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

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, based on Debtor's unjustified delay and frustration efforts, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 9:2-12.

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 Kamalajit S. Takhar ("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 Motion is granted, and 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 16028 and 16048 Bridge Street, Meridian, CA 95957 ("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 above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

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.

**BRUGGMAN V. UNITED STATES
DEPARTMENT OF EDUCATION**

Plaintiff's Atty: Carl R. Gustafson
Defendant's Atty: Jeffrey J. Lodge

Adv. Filed: 3/4/25
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:
Continued from 5/1/25. The Parties requested a continued Status Conference date in June 2025.

Discovery Plan filed 5/19/25 [Dckt 11]

The Status Conference is XXXXXXX.

JUNE 10, 2025 STATUS CONFERENCE

As of the court's June 8, 2025 review of the Docket, no answer had been filed by Defendant. However, a Discovery Plan has been filed by Defendant Department of Education. In the Discovery Plan, it is requested:

- A. The Parties are engaging in settlement discussions and an alternative dispute resolution facilitator may be beneficial after discovery has commenced.
- B. The following deadline dates are requested:
 - 1. Fact Discovery cutoff: December 10, 2025.
 - 2. Expert discovery cutoff: January 10, 2026.
 - 3. Rebuttal Expert cutoff: February 10, 2026.
 - 4. The Parties request that the court not set a pretrial conference, but a continued Status Conference in March 2026.

Dckt. 11.

It is unclear to the court how this Adversary Proceeding is being prosecuted. No answer has been filed, with the deadline as stipulated by the Parties to file an answer or other responsive pleading expired on May 20, 2025. See Stipulation; Dckt. 7.

At the Status Conference, **XXXXXXX**

MAY 1, 2025 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The Complaint filed by Steven bruggman, the Plaintiff-Debtor, Dckt. 1, asserts claims for determination that student loan debt is dischargeable.

Extension of Time to Answer

On March 27, 2025, a Stipulation for Extension of Time for the Department of Education to file an answer was filed with the court. Dckt. 7. The Parties have agreed to extend the response date to May 20, 2025. The Parties request a continued Status Conference date in June 2025.

The Status Conference is continued to 1:30 p.m. on June 10, 2025 (Specially Set Day and Time). The Status Conference will be conducted in the Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California, with Telephonic Appearances permitted.

As of June 1, 2025, there will no longer be any hearings, proceedings, or any other Bankruptcy Court matters conducted at what has been the Modesto Division Courthouse. That Courthouse has been permanently closed as of June 1, 2025, with all of the formerly Modesto Division Cases transferred to the Sacramento Division. All hearings and proceedings in the Bankruptcy Case and Adversary Proceedings after May 31, 2025, will be conducted in the Sacramento Division Courthouse at 501 I Street, Sixth Floor Courtroom 33, Sacramento, California, with Telephonic Appearances permitted.