

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 17, 2021 at 10:00 a.m.

1.	<u>21-21259-E-7</u> PREETI CUSTER <u>SW-1</u> Mohammad Mokarram A-L FINANCIAL CORPORATION VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-27-21 <u>[15]</u>
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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’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 27, 2021. 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 7 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.
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A-L Financial Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Kia Forte Ex, VIN ending in 8400 (“Vehicle”). The moving party has provided the Declaration of Duane Moses to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Preeti Pranita Custer (“Debtor”).

Movant argues Debtor's insurance coverage on the Vehicle has been terminated or cancelled, and that Debtor's failure to maintain adequate insurance is a default under the terms of the Motor Vehicle Contract. Declaration, Dckt. 17.

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. 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).

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's June 3, 2021 Docket Entry Statement.

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 \$15,568.49 (Declaration, Dckt. 17). Debtor values the Vehicle at \$18,000.00, as stated in Schedules A/B and D filed by Debtor. According to Movant's Valuation Report, the Vehicle is valued at 20,643.00. Exhibit D, Dckt. 18.

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, the court determines that there is no equity in the Vehicle

for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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.

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.

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 Preeti Pranita Custer (“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 2019 Kia Forte Ex, VIN ending in 8400 (“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 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.

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, Chapter 7 Trustee, and Office of the United States Trustee on May 18, 2021. By the court’s calculation, 30 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.

Nazia Jabeen Iqbal (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 2517 Westernesse Rd., Davis, California (“Property”). The moving party has provided the Declaration of Nazia Iqbal as evidence for Movant’s asserting that Mohammed Iqbal, the Chapter 7 debtor (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property.

Movant testifies that she and her father obtained the property in 1980, placing title in the Zafar and Kaneezan Iqbal Living Trust (Movant’s father and Movant). Declaration, ¶ 3; Dckt. 16.

Movant then states that the Property was transferred out of the Trust on November 17, 2016. *Id.* ¶ 3. However the Trust to Movant Grant Deed was not recorded until February 9, 2017, with a copy provided as Exhibit A. *Id.* at 4. The Trust to Movant Grant Deed, Exhibit A (Dckt. 16 at 3), has a notarized date of November 17, 2016, but was not recorded until February 8, 2017.

Movant then states that in 2017, as being necessary in the “financing process,” Movant then transferred the Property to her husband, Muhammad Malik, as Trustee of the Quba Trust. *Id.* ¶ 5. A copy of the Movant to Quba Trust Grant Deed is provided as Exhibit B, Dckt. 15 at 6.

Movant then testifies that when the financing was not available if the Property was in the Trust, Movant and her husband were told (not identified by whom the instructions were given) to

transfer title to joint tenancy. Declaration, ¶ 6; Dckt. 16. A copy of the Trust to Joint Tenancy Grant Deed is provided as Exhibit C, Dckt. 15 at 10. This Grant Deed was recorded on March 15, 2019, two years after the property was transferred into the Quba Trust for the “financing process.”

Movant further testifies that when the “financing was done,” her husband deeded the Property back to Movant, with the Joint Tenancy to Separate Tenancy Grant Deed being recorded on September 20, 2019. Declaration, ¶ 7; Dckt. 16. A copy of this Grant Deed is provided as Exhibit D, Dckt. 15 at 14.

Movant’s Declaration continues, testifying that she provides care for her parents since 2010. Declaration, ¶ 8; Dckt. 16. That there was some family turmoil and “theft of property from my parents by another sibling,” so her father set Movant up to take care of his financial and healthcare decisions through a power of attorney dated September 21, 2016. *Id.*

Movant testifies that she has been battling with her siblings over this transfer of property and control since then, with multiple court proceedings. *Id.*, ¶ 9. Movant makes reference to Elder Abuse proceedings being upheld against her siblings. *Id.*

Movant asserts that Debtor and Movant’s sister moved into the Property in September 2019 without the consent of her Father and while Movant was out of town. *Id.* ¶ 12.

Movant testifies that there are no leases or other agreements giving Debtor any right to occupy the Property. *Id.* ¶ 16.

On February 13, 2020, Movant served a 60 Day Notice to Quit possession of the Property on Debtor. *Id.* ¶ 25. An unlawful detainer proceeding was commenced, but delayed from having a hearing until April 9, 2021. *Id.* ¶¶ 26-28.

Movant testifies that on the eve of the April 9, 2021 hearing, Debtor commenced this bankruptcy case, staying the unlawful detainer proceeding. *Id.* ¶ 29.

Movant closes, testifying that she needs to remove Debtor and her sister from the Property so that her father can be moved back in, having testified earlier in the Declaration that she had to move him out of the house due to “harassment” by Debtor and her sister. *Id.* ¶¶ 13, 15, 31

Unlawful Detainer

Movant commenced an unlawful detainer action in California Superior Court, County of Yolo on August 11, 2020. Declaration, Dckt. 16, at ¶ 27. This matter was set for hearing on April 9, 2021. The day before the hearing, Debtor filed his bankruptcy petition. *Id.* The Unlawful Detainer case was denied based on a technical failure in the notice served on Debtor. Declaration, Dckt. 27, at ¶ 13. It did not find that Debtor had any interest in the property but it did find that Debtor acknowledged the Movant’s ownership of the real property. *Id.*, see also Dckt. 23, Ex. D.

Debtor’s Opposition

Debtor filed an Opposition on May 28, 2021. Dckt. 22. Debtor opposes the Motion on the

grounds that Movant failed to submit evidence showing that they have a colorable claim for title to and possession of the real property. Dckt. 22, p. 3. Debtor argues that even assuming that Movant established a legal right to the property, granting the relief from stay "would not only be unwarranted, it would be absolutely futile." *Id.* at p. 9. Debtor further argues that Movant has failed to show any actions of the Debtor which would suggest bad faith. *Id.*

Movant's Reply

Movant filed a Reply on June 10, 2021. Dckt. 25. Movant asserts that Debtor misunderstands the law with respect to the Motion for Relief from the Automatic Stay, as Debtor appears to believe that Movant must prove bad faith on his part. Movant's reply alleges a number of acts of perjury in Debtor's statement of facts in his opposition to the Motion.

Movant points the court to Debtor's recently Amended Schedules, where Debtor now claims that he has a legal interest in the Property "through family trust pending list dependency case with creditor," while failing to disclose any rights in a family trust. Movant also notes that Debtor has been part of various lawsuits but has failed to disclose any of those action in the Schedules.

Movant also alleges that Debtor is attempting to commit fraud and should be punished for malicious litigation. Declaration, Dckt. 23. Movant attached an exhibit of Debtor's driver license showing that the correct spelling of his name is Mohammad Mohsan Iqbal, not Mohammed Iqbal. *Id.*, Ex. A. Movant has also attached Debtor's forgery and fraud criminal record. *Id.*, Ex. B. In addition, Movant attached a writing expert's report that concluded Debtor had forged Movant's and her father's signatures. *Id.*, Ex. C.

DISCUSSION

A "simple" motion for relief from the automatic stay does not, and cannot, include an adjudication of the parties respective rights and interest in the property that is the subject of the Motion for Relief. Movant has provided a properly authenticated copy of the Grant Deed to substantiate hers claim of ownership. Movant has presented a colorable claim for title to and possession of this real property. 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 bankruptcy case was filed on April 8, 2021, which coincidentally was the day before the unlawful detainer trial was to commence. The First Meeting of Creditors was conducted on May 17, 2021, and has been continued to June 14, 2021. May 17, 2021 Trustee Docket Entry Report. That continued meeting has been further continued to June 30, 2021. June 14, 2021 Trustee Docket Entry Report.

On Amended Schedule A/B Debtor lists the Property, stating that he is the sole owner thereof. Dckt. 21 at 1. He further states "Legal interest through family trust pending liz [*sic*] pendency case with creditor." *Id.* In response to Question 25 on Amended Schedule A/B, Debtor states that he

has no interests in any trusts. *Id.* at 7.

Here, the summary of the relief requested is stated in the prayer at the end of the Motion:

WHEREFORE, the Movant respectfully requests the following relief:

- a. That the automatic stay of 11 U.S.C. § 362(d) be immediately vacated to allow Movant, Nazia Jabeen Iqbal, to exercise and enforce all non-bankruptcy rights and remedies to obtain possession of the real property commonly known as 2517 Westernesse Rd, Davis, CA 95616 in Yolo County.

Motion, p. 3:24-28; Dckt. 13. Movant “merely” seeks to obtain possession of the Property from Debtor, not the bankruptcy estate, and does not seek to have an adjudication of the rights and interests of the bankruptcy estate in the Property (for which an adversary proceeding would be required, Fed. R. Bankr. P. 7001) and the Chapter 7 Trustee a necessary party.

The court shall issue an order modifying the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property from Mohammed Iqbal, the Debtor, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof. The stay is not modified for there to be an adjudication of the rights and interests of the bankruptcy estate in the Property.

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. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not 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 Nazia Iqbal (“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 modified to allow Movant and its agents, representatives and

successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2517 Westernesse Rd., Davis, California (the “Property”) from Mohammed Iqbal, the Chapter 7 Debtor in this case.

The stay is not modified to any and all rights and interests of the bankruptcy estate in the Property. See 11 U.S.C. § 541(a).

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.