

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 18, 2024 at 1:30 p.m.

1. [23-20512-E-13](#)
[ARS-1](#)

VONZIEL HARRISON
Thomas Amberg

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-16-24 [52]**

**GLOBAL CAPITAL CONCEPTS,
INC. 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 not Provided. There is no Certificate of Service filed in this matter. The court is unable to determine which parties were served. Local Bankruptcy Rule 7005-1 requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

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 denied.

Global Capital Concepts, Inc. (“Movant”) seeks relief from the automatic stay with respect to Vonziel Harrison’s (“Debtor”) real property commonly known as 1635 Grand Avenue, Sacramento, Ca 95838 (“Property”). Movant has not provided any Declaration or other evidence in support of its Motion. Movant has only provided unauthenticated Exhibits showing its right to enforce the debt.

Movant argues its loan came due in 2018 in the amount of \$100,000, and Debtor never made this payment. Motion. 2:27-3:4, Docket 52. Debtor’s Plan called for a sale of the Property by March of 2024, using those proceeds to pay off all creditors in full. Plan § 7, Docket 12. A sale has not occurred.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 4, 2024. Dckt. 60. Debtor asserts that procedural errors bar granting relief. First, Debtor was never served, as the court noted. Second, Movant has not submitted any evidence in support of its Motion. Debtor argues these are sufficient grounds for denying the Motion. Opp’n ¶ 7, Docket 60.

Alternatively, Debtor asks that a briefing schedule on the matter be set as Debtor’s counsel is currently traveling and unable to properly attend to the matter. *Id.*

Debtor submitted his own Declaration in support. Docket 61. Debtor explains that there was a firm purchase agreement in place to sell the Property for \$320,000. *Id.* at ¶ 4. However, when it came time to close, Debtor learned the party which he purchased the Property from did not have clear title in the Property to convey. *Id.* at ¶ 3. Debtor is pursuing a quiet title action in order to consummate the sale. *Id.* at ¶ 5.

CHAPTER 13 TRUSTEE’S NONOPPOSITION

David Cusick, the Chapter 13 Trustee (“Trustee”) filed an Nonopposition on June 4, 2024. Dckt. 63. Trustee asserts that Debtor is currently delinquent \$600 in plan payments, and Debtor has not sold the Property by the required deadline. Trustee does not oppose the Motion.

DISCUSSION

The court also notes that though this Bankruptcy Case was filed February 21, 2023, Movant has not filed a proof of claim or sought to receive payment through this Bankruptcy Case. (Additionally, Debtor has not filed a Proof of Claim for Creditor.) Creditor’s debt, only for purposes of this Motion for Relief, is determined to be \$100,000 (Ex. A 4, Deed of Trust, Docket 55) while the value of the Property is determined to be \$320,000, which was the amount Debtor had agreed to sell the Property. Debtor’s Schedules A/B list the Property having a value of \$450,000. Schedule A/B 3, Docket 11.

Looking at Debtor’s confirmed Chapter 13 Plan, a person named “James Devisscher” is listed as the holder of a Class 4 Claim that was not in default as of the commencement of the Bankruptcy Case and which is to be paid directly by Debtor and not through the Bankruptcy Plan. Plan; § 3.10; Dckt. 12. That Plan was confirmed on April 27, 2023. Order; Dckt. 23. No proof of claim was filed by “James Devisscher.”

Movant has failed to provide the court with any evidence in support of the Motion. The Motion contains various allegations and contentions – none of which are supported by any evidence. Movant has

filed four exhibits in support of the Motion – none of which are authenticated as required by Federal Rule of Evidence 901.

Looking at the unauthenticated exhibits, Exhibit A is promissory note for which a “James D. De Visscher” is identified as the payee. Dckt. 55. Exhibit B is titled “Allonge to Promissory Note” and is dated September 20, 2023. *Id.* It is signed by a Demetra Devisscher, identified as the sole heir to the deceased James DeVischer. The Allonge states that all right, title, and interest in the Note and Deed of Trust are assigned to Global Capital Concepts, Inc.

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, as well as failing to sell the Property by the required deadline. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

However, Debtor has submitted testimony and a Response indicating a sale is in the works. Debtor must succeed on the quiet title action in order to go forward with a sale. If the sale can be completed, then there will be sufficient funds to pay all creditors in this case.

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).

Here, there appears to be equity in the Property. The Property is to be sold for approximately \$320,000, which, after applying Movant’s lien and unpaid property taxes, leaves over \$100,000 in equity in the Property. Furthermore, this whole Chapter 13 Plan revolves around the sale of the Property, meaning the Property is necessary for an effective reorganization/rehabilitation. There is no basis for relief under 11 U.S.C. § 362(d)(2).

It is also significant that Movant fails to provide any testimony to support the allegations in the Motion and has left all of its exhibits unauthenticated. This just may be an oversight by Movant and counsel, being used to practicing in non-federal courts where they believe “evidence is optional” and all one needs to do is make allegations. The court notes that Movant’s counsel was admitted to practice in the Eastern District of California on May 9, 2024. U.S. Dist Court, E.D. Cal Website, Attorney Lookup. Alternatively, it may be that none of Movant’s principals are willing to provide such testimony under penalty of perjury.

Additional Grounds Asserted in Opposition

In the Opposition it is asserted that the sale of the Property has been delay because the seller of the Property to Debtor, James Devisscher, did not have full ownership and Debtor is now dealing with a clouded title. Opposition, ¶ 5; Dckt. 60. It is further asserted that Debtor is working to clear title, but has taken significantly longer than anticipated. *Id.*

Debtor has provided her testimony in support of her Opposition, and her testimony with respect to the clouded title includes (identified by paragraph numbers in the Declaration):

3. Prior to purchasing the property, I rented it from James Devisscher. Mr. Devisscher eventually agreed to sell me the property, only for me to find out later that he did not have clear title to the property.
- ...
5. I am currently working to secure an attorney to represent me in a quiet title action. I will be filing a supplemental declaration relating to this as soon as I have more information.

Dec.; 61.

In her Declaration, Debtor does not identify the other persons asserting interests in the Property or describe the interests they assert to have the Property. Additionally, Debtor has not provided a copy of a title report showing the clouds on title.

The Motion, unsupported by evidence and upon consideration of the evidence submitted in opposition, is denied.

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 Global Capital Concepts, 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 Motion is denied.

FINAL RULING

2. [18-25581](#)-E-13
[DPC-13](#)

DANIELLE DELGADO
Mary Ellen Terranella

MOTION TO DISMISS CASE
5-10-24 [\[192\]](#)

Final Ruling: No appearance at the June 18, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 10, 2024. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice, the Bankruptcy Case having been converted to one under Chapter 7 on June 9, 2024 (Dckt. 196).

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Danielle Delgado (“Debtor”), is delinquent \$4,630.01 in plan payments. Debtor is in month 68 of a 68 month Plan, so the full delinquent amount plus the May payment of \$480 must be made to complete the case. Mot. 1:25-2:1.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 194.

Debtor has not filed an Opposition.

DISCUSSION

Delinquent

Debtor is \$4,630.01 delinquent in plan payments, which represents multiple months of the \$480 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, on June 9, 2024, the Debtor filed her election to convert this case to one under Chapter 7. Dckt. 196.

The Bankruptcy Case having been converted, the Motion to dismiss is denied without prejudice.

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 Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), 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 to Dismiss is denied without prejudice.