UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 4, 2022 at 10:00 a.m.

FINAL RULINGS

1. **20-90210-E-11** **JOHN YAP AND IRENE LOKE**
21-9016 **RHS-1** **Arasto Farsad**

YAP ET AL V. PNC FINANCIAL SERVICES GROUP, INC. ET AL

ORDER TO SHOW CAUSE WHY COURT DOES NOT AMEND MOTION FOR DEFAULT JUDGMENT TO CORRECT CLERICAL ERROR IN THE STREET ADDRESS STATED IN SAID ORDER 7-14-22 [35]

Final Ruling: No appearance at the August 4, 2022 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor-Plaintiff, Debtor's Attorney, Defendants as stated on the Certificate of Service on July 15 and 16, 2022. The court computes that 19 and 20 days' notice has been provided.

The court issued an Order to Show Cause based on the clerical error in the street address stated in the Order Granting Motion for Default Judgment.

The Order to Show Cause is sustained and the court shall enter an order amending the Order granting the Motion for Default Judgment.

On June 16, 2022, the court conducted a hearing on the Motion for Entry of Default Judgment filed by Plaintiff-Debtors John Yap and Irene Loke against Defendants PNC Financial Services Group, Inc. and Dreambuilder Investments, LLC, determining that the deed of trust securing Defendants' claim was void. In the posted Tentative Ruling and as stated in the Civil Minutes from the hearing (Dckt. 32), the court identified the Property at issue to be 1106 Lovell Avenue, Campbell, California.

The information for identifying the Property was obtained from paragraph 2 of the Complaint filed by Plaintiff-Debtors. Complaint, ¶¶ 2, 4; Dckt. 1. The court's order granting the Motion for Default

Judgment identified the Property as 1106 Lovell Avenue, Campbell, California, as well as the parcel description of APN: 406-07-019. Order, Dckt. 34. The Order directs Plaintiff-Debtors to lodge a proposed judgment with the court.

On June 23, 2022, counsel for Plaintiff-Debtors lodged a proposed duplicate order granting the Motion for Default Judgment, but identified the Property as 1006 Lovell Avenue, Campbell, California. No motion to modify the court's prior order has been filed and the proposed order lodged with the court is not drawn as an "amended order." It may be that the court's entry of the order "passed in the night" the lodging of the proposed order from Plaintiff-Debtors.

When the court noted the address difference, it dug a little further into the pleadings. In the Complaint, Plaintiff-Debtors also identifies the Property as 1006 Lowell Avenue, Campbell California. Complaint, ¶ 19 and on the first page of the Complaint. However, on the first page of the Exhibits filed in this case, the Property is identified as 1106 Lovell Avenue, Campbell, California. Dckt. 26. A copy of the Deed of Trust at issue is not provided as an exhibit in support of the Motion for Entry of Default Judgment or as an exhibit to the Complaint. Only the Declaration of Plaintiff-Debtors' counsel has been filed in support of the Motion for Entry of a Default Judgment, and the address of the Property is identified as 1106 Lovell Avenue, Campbell, California. Declaration, ¶ 3 and on the first page of the Declaration; Dckt. 25.

The Complaint makes reference to the court having valued the Defendants' secured claim in Plaintiff-Debtors' bankruptcy case (20-90210). In the bankruptcy case, a Motion to Value the Secured Claim of PNC Financial Services Group, Inc./Dreambuilder Investments, LLC, was prosecuted by Plaintiff-Debtors. 20-90210; Motion to Value, Dckt. 33. The Motion to Value identifies the Property securing Defendants' claim as 1006 Lovell Avenue, Campbell, California. *Id*.; p. 2:2-5. A copy of the recorded Deed of Trust securing Defendants' claim was filed as Exhibit 5 in support of the Motion to Value Defendants' Secured Claim. *Id*.; Dckt. 36. Additionally, Exhibit 6 is a letter reporting of the acquisition of the original lender's assets, including this Secured Claim; and Exhibit 7 is a communication from Dreambuilder Investments, LLC stating that it has acquired the debt secured by the Property. *Id*.

The information on the recorded Deed of Trust; *Id*.; Exhibit 7, Dckt. 36; includes the following:

A. The Property securing Defendants' Claim is 1006 Lovell Avenue, Campbell, California. *Id*., ¶ 1.

B. The Deed of Trust was recorded on May 17, 2007, Document No. 19433714. *Id*.; recording cover page to Deed of Trust.

C. The legal description for the Property, attached as Exhibit A to the Deed of Trust, includes the parcel number APN: 406-07019.

However, the Motion to Value the Secured Claim contains the address identification error of 1106 Lovell Avenue, Campbell, California. *Id*.; Dckt. 244.

CORRECTION OF CLERICAL ERROR

Federal Rule of Civil Procedure 60, as incorporated into Federal Rule of Bankruptcy Procedure 9024 permits parties to seek relief from a final judgment or order. Under Federal Rule of Bankruptcy

Procedure 60(a), if the court made a clerical error in issuing the order or judgment, then it may be corrected. There is no stated time period for such a correction to be made.

As shown in the court's ruling on the Motion for Entry of Default Judgment and the prior matters in the Bankruptcy Case, the court is issuing a ruling on the Lovell Avenue, Campbell, California, Property. There have been multiple clerical errors by Plaintiff-Debtors in this Adversary Proceeding and the Bankruptcy Case concerning the address, mistyping 1106 rather than 1006, but in the substance of the pleadings the correct property and the correct Deed of Trust, as well as the creditors against whom the various types of relief have been sought.

As discussed in 12 Moore's Federal Practice - Civil § 60.11, a "clerical mistake" is one described as (emphasis added):

> [a] Mistake Is "Clerical" if it Misrepresents Court's Actual Intention
>
> **Rule 60(a) applies when the record indicates that the court intended to do one thing but, by virtue of a clerical mistake or oversight, did another.** The mistake to be corrected must be clerical or mechanical, because **Rule 60(a) does not provide relief from substantive errors in judgment** (see [3], below). The Seventh Circuit expressed this idea clearly when it observed that:
>
> If the **flaw lies in the translation of the original meaning to the judgment, then Rule 60(a) allows a correction**; if the judgment captures the original meaning but is infected by error, then the parties must seek another source of authority to correct the mistake.
>
> . . .
>
> [b] Transcription Errors and Mathematical Mistakes Are Typical "Clerical" Mistakes
>
> The typical clerical mistake is one that occurs in transcribing the judgment. For example, one court intended, in its original judgment, to simply recite the stipulation of the parties concerning attorney's fees but, in doing so, misstated the amounts agreed to for fees. That type of error in expression was remediable under Rule 60(a).
>
> Computational errors are another classic example of a mechanical or clerical mistake. One employment discrimination judgment was erroneous because the judgment inadvertently undercounted the plaintiff's period of unemployment by two weeks and three days. This counting error resulted in a considerably smaller damage award than the court intended, and the court properly used Rule 60(a) to correct its error.
>
> **Simple transposition errors resemble computational mistakes, and are almost always correctable as clerical mistakes under Rule 60(a)**. An illustrative example of transpositional error appeared in a case in which all of the documentary evidence and testimony referred unambiguously to damages in the amount of $296,686.89. However, a special interrogatory submitted by the court to the jury asked about damages in the sum of $269,689.89. This was a simple, unintended

transposition of the second and third digits. The court was within the scope of Rule 60(a) when it corrected the verdict in its judgment to reflect the correct amount of damages.

Numerous other examples of these types of "clerical" mistake could be cited:

> •If a consent decree calls for interest at the legal rate, and the clerk inadvertently fills in the blank for the legal rate of interest with what is, in fact, the contract rate, that mistake may be corrected under Rule 60(a).
>
> •An inaccurate description of the metes and bounds of property to which an easement applied may be corrected under Rule 60(a) when the record indicates that terms of the order were different from the relief that the bankruptcy court intended to award when it entered the order.
>
> •If a judgment should, as an undisputed matter of law and fact, reflect that the defendants are jointly liable for the entire amount of the judgment, and the verdict fails to reflect that only because the court's jury instructions were ambiguous on point, the court may correct the verdict in the judgment under Rule 60(a).
>
> •If a summary-judgment order in a class action inadvertently refers to the wrong subpart of Rule 23 applicable to the plaintiff class, this may be corrected by means of Rule 60(a).
>
> •When the clerk fails to timely docket one party's opposition to a motion to dismiss, thus resulting in the issuance by the court of an erroneous order of dismissal, that dismissal order may be set aside under Rule 60(a).
>
> •A district court may, under Rule 60(a), correct its clerical error in designating a post-summary-judgment dismissal as "without prejudice," to reflect that the dismissal is actually "with prejudice."

In *Klingman v. Levinson*, 877 F.2d 1357, 1361 (7th Cir. 1989), while saying that a Rule 60(a) correction can include an "oversight or omission," such must be one in which the court intended to do something but just failed to do it. In *Huey v. Teledyne, Inc.*, 608 F.2d 1234, 1237 (9th Cir. 1979), the Ninth Circuit states that the Rule 60(a) "correction" is to make the order "conform to its [the court's] earlier ruling."

More recently, in *Tattersalls, Ltd. v. Dehaven*, 745 F.3d 1294, 1298 (9th Cir. 2014), the Ninth Circuit discussed the scope of Rule 60(a) being broader than mere "quintessential 'clerical' errors where the court errs in transcribing the judgment or makes a computational mistake." These are to make corrections in what was intended by the trial judge, but just not said clearly in the order/judgment. Examples provided by the Ninth Circuit in Tattersalls include: (1) the record and the judge's recollection show that a dismissal was intended to be without prejudice, though not clearly stated such in the ruling; (2) correct a blanket order dismissing twenty-two cases where the record showed that the judge intended to dismiss just one, (3) to correct and clarify that the judge's ruling was to cancel three trademarks and not just one that was stated in

the judgment, and (4) allowing a trial judge to "correct" a ruling to include sufficient details as to the basis of the ruling. *Id*. at 1298. The Ninth Circuit than summarizes the scope of Rule 60(a) relief as:

> Surveying our and other courts' decisions relating to the allowable uses of Rule 60(a), we concluded that the Rule "allows a court to clarify a judgment in order to correct a failure to memorialize part of its decision, to reflect the necessary implications of the original order, to ensure that the court's purpose is fully implemented, or to permit enforcement." *Id.* at 1079 (internal quotation marks omitted). The "touchstone" of Rule 60(a) in all these cases is "fidelity to the intent behind the original judgment." *Id.* at 1078.

Id.

Here, the Motion for Entry of Default Judgment and the Complaint both correctly identify the Property by address, and then give an incorrect street address due to a clerical error by Plaintiff-Debtors' counsel. The court then made a clerical error in not using the correct address of the two stated in the Complaint and in the Motion for Entry of Default Judgment. However, the Property at issue is clearly identified and the Deed of Trust at issue is clearly identified. It was the court's stated ruling that it was addressing the legal validity of the Defendants' Deed of Trust on the Plaintiff-Debtors' only real property located on Lovell Avenue in Campbell, California.

The error in transcribing the street address number as 1106, rather than the correct street address number as 1006, is a clerical error of the court. This clerical error is correctable as provided in Federal Rule of Civil Procedure 60(a) as incorporated into Federal Rule of Bankruptcy Procedure 9024.

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 Order to Show Cause 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 Order to Show Cause is sustained and the court shall enter an Amended Order Granting Motion for Default Judgment (amended the existing Order Granting Motion for Entry of Default Judgment, Dckt. 34) to state the address of the real property that is the subject of this adversary proceeding for which the relief is granted to be1006 Lovell Avenue, Campbell, California.

2. **19-90193-E-7** **JOSE/CLAUDIA ACEVES** **MOTION FOR RELIEF FROM**
DCW-3 **Kathleen Crist** **AUTOMATIC STAY**
7-1-22 [156]

CORNERSTONE FINANCIAL
SERVICES VS.

Final Ruling: No appearance at the August 4, 2022 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 7 Trustee, and Office of the United States Trustee on July 1, 2022. By the court's calculation, 34 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 is granted.

Cornerstone Financial Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Freightliner, VIN ending in 1767 ("Vehicle"). The moving party has provided the Declaration of Dawn Stanley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jose S Aceves and Claudia Ruth Aceves("Debtor").

Movant argues Debtor has not made 39 post-petition payments, with a total of $54,522.00 in post-petition payments past due. Declaration, Dckt. 159.

REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Declaration of Dawn Stanley in support of Motion for Relief from Automatic Stay and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Price Digests Valuation Report Provided

Movant has also provided a copy of the Price Digests 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).

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 $24,114.49 (Proof of Claim #12), while the value of the Vehicle is determined to be $55,062.00, as stated on the Price Digests Valuation Report, which is more than the retail value as stated on Schedules A/B and D filed by Debtor.

The court notes Dawn Stanley states in her Declaration the amount owed is $47,738.91. However, Creditor's Proof of Claim (Proof of Claim 12-1) is only for $24,114.49. The court is not clear as to the basis for the $47,738.91 figure that conflicts with the Proof of Claim.

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. 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 equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, relief under 11 U.S.C. § 362(d)(2) is denied.

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.

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. 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 Name of Movant ("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 2011 Freightliner, VIN ending in 1767 ("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 not waived for cause.

No other or additional relief is granted.

3. **22-90198-E-7** **HASSAN WILSON** **MOTION FOR RELIEF FROM**
ADR-1 **Pro Se** **AUTOMATIC STAY**
7-6-22 [15]

JEREMIAH COURTNEY VS
DEBTOR DISMISSED: 07/05/2022

Final Ruling: No appearance at the August 4, 2022 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute 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 Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.