

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

August 8, 2024 at 10:00 a.m.

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1. <a href="#">24-90369</a> -E-7 <a href="#">RDW</a> -1	BEN WINTER AND MARCELA SANDOVAL Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 7-16-24 <a href="#">[21]</a>
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COASTAL CAPITAL GROUP, LLC  
VS.

DEBTORS DISMISSED: 07/19/24

**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).**

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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*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 16, 2024. By the court's calculation, 23 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 pursuant to 11 U.S.C. § 362(d)(4) is granted.**

August 8, 2024 at 10:00 a.m.

- Page 1 of 10 -

Coastal Capital Group, LLC (“Movant”) seeks relief from the automatic stay with respect to Ben Winter and Marcela Sandoval’s (“Debtor”) real property commonly known as 12045 Foster Road Unit 1 Norwalk, California (“Property”). Movant has provided the Declaration of Chris Tomaszewski to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 23.

Movant seeks relief pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4). Movant alleges in the Motion:

1. Movant’s borrower, Richard L. Alvarez (“Borrower”), has failed to make payments pursuant to the Loan. Mot. 2:9-10.
2. Debtor and Borrower engaged in bad faith and a scheme to hinder, delay, and defraud Movant by transferring the Property multiple times without authorization and filing multiple bankruptcies to frustrate foreclosure efforts. *Id.* at 2:11-21.
3. In the event that the Court continues the Automatic Stay, Movant will seek adequate protection of its secured interest pursuant to 11 U.S.C. Sections 361 and 362, including a requirement that Debtor reinstate all past arrearage. *Id.* at 2:22-24.
4. Movant will seek attorney’s fees and costs incurred in bringing this Motion pursuant to the Note and deed of trust or pursuant to 11 U.S.C. § 506(b). *Id.* at 2:25-27.
5. Movant additionally prays for an order waiving the 14-day stay described in Bankruptcy Rule 4001(a)(3). *Id.* at 4:3-4.

The instant case was dismissed on July 19, 2024, as Debtor failed to timely file any of the required Schedules or related documents. Dckt. 31.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

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

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of July 19, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

#### **11 U.S.C. § 362(d)(4)**

##### **Prospective Relief from Future Stays**

However, Movant also seeks prospective relief from the automatic stay as to the Property under 11 U.S.C. § 362(d)(4). 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, the Property has been subject of multiple transfers and bankruptcy cases.

In the Motion, the following grounds which are identified as a basis for relief pursuant to 11 U.S.C. § 363(d)(4) are stated with particularity (Fed. R. Bankr. P. 9013):

Movant also seeks relief pursuant to 11 U.S.C. § 362(d)(4), binding on the Property for a period of two (2) years. The Property was transferred to the Debtor Marcela Sandoval by Borrower the day prior to the bankruptcy filing. The transfer was made without the prior written consent of Movant. There are also multiple (2) bankruptcy filings relating to the Property. This is the latest filing in a scheme to hinder, delay and defraud Movant.

Motion, p. 2:17-21; Dckt. 21.

The Motion, Declaration, and Exhibits flesh out the details with respect to the transfer and prior filing. These include:

- A. Borrower, Richard L. Alvarez, executed a Note that is secured by a deed of trust in the Property on March 6, 2023. Motion, ¶ 6; Exhibit 1; Dckts. 21, 24.
- B. Borrower defaulted under the terms of the Note, and Movant scheduled a foreclosure sale for June 19, 2024. Dec., ¶ 10; Dckt. 23.
- C. On June 3, 2024, a few weeks before the scheduled foreclosure sale, Borrower executed a grant deed and transferred an interest in the Property to Anthony Berdahl. *Id.*; See Ex. 3 at 31, Docket 24.
- D. Anthony Berdahl and Elena Berdahl then filed bankruptcy on June 4, 2024, just one day after Borrower transferred an interest in the Property to Anthony Berdahl. Dec., ¶ 10; Dckt. 23.
- E. That bankruptcy case, case no. 24-90303, was dismissed quickly on June 24, 2024, for failing to timely file documents. See case no. 24-90303, Dckt. 17.
- F. Movant then rescheduled the foreclosure sale for July 9, 2024. Dec., ¶ 11; Dckt. 23.
- G. Borrower transferred the entire interest in the Property to Debtor in this case Marcela Sandoval on June 28, 2024 by grant deed. *Id.*; See Ex. 5 at 40, Docket 24.
- H. Debtor Marcela Sandoval and Ben Winter then filed this instant bankruptcy case on July 1, 2024, approximately one week before the second scheduled foreclosure sale. Dec., ¶ 11; Dckt. 23.
- I. This case was similarly quickly dismissed for failing to timely file documents. Docket 31.

J. None of these transfers were authorized by Movant. Dec., ¶ 10, 11, 17; Dckt. 23; Motion, ¶ 2; Dckt. 21.

A copy of the Grant Deed from Richard Alvarez to “Richard L. Alvarez, a single man and Anthony Berdahl, a married man as his sole and separate property as his sole and separate property as joint tenants” is provided as Exhibit 3 (Dckt. 24). This exhibit is authenticated by Chris Tomaszewski, the Managing Director of Movant. Dec., ¶ 10; Dckt. 23. While identifying the Exhibit, the Declarant does not state how he has personal knowledge of what it is or how it came into his possession. There is a fax cover sheet for Exhibit to the “Foreclosure/Bankruptcy Department” stating it is from Richard Alvarez stating that a bankruptcy case has been filed and the foreclosure must be stopped. Dckt. 24 at 29.

For the Alvarez to Berdahl First Grant Deed, it states that the transfer is exempt from fees because it is “recorded concurrently in connection with a transfer of residential dwelling to an owner-occupier.” *Id.* at 31.

Exhibit 4 (Dckt. 24) is a copy of the Second Grant Deed stating that Richard Alvarez, a single man, transfers title to the Property to “Richard L. Alvarez, a single man and Marcela Sandoval, a married woman as her sole and separate property as joint tenants.” There is also a fax cover sheet with Exhibit 4 set to “Foreclosure Bankruptcy Department,” which states it is from Richard Alvarez and that the foreclosure sale must be stopped because a bankruptcy case has been filed.

For the Alvarez to Sandoval Second Grant Deed, it states that the transfer is exempt from fees because is “recorded concurrently” “in connection with” a transfer of residential dwelling to an owner-occupier.” *Id.* at 31.

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 7 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 7 case cannot have been for any bona fide, good faith reason in light of multiple unauthorized transfers of the Property to different individuals, then those individuals filing bankruptcy cases that are quickly dismissed without any real attempts to prosecute a case.

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 does not request any reason for relief from Federal Rule of Bankruptcy Procedure 4001(a)(3) in the Motion.  
Fn.1.

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FN. 1. The court notes that Movant lists reasons for the requested relief in the Memorandum in support; however, this practice is not sufficient. *See* Mem. 8:9-17, Docket 26. The court looks to the grounds stated with particularity in the Motion (Fed. R. Bank. P. 9013) and then supported by evidence in granting relief. Furthermore, in this case, it appears that the Memorandum in support was not even served on interest parties.

However, with respect to the relief requested pursuant to 11 U.S.C. § 362(d)(4), the court finds that the grounds stated in the Motion (Dckt. 21) with particularity, the testimony in the Declaration (Dckt. 23), and the Exhibits (Dckt. 24) clearly state the grounds and relief requested, state the legal basis for the relief, and provide evidence supporting the grounds for the requested relief. The failure to serve the Points and Authorities (assuming that it is not a mere clerical error on the Certificate of Service) is not a significant deficiency and has not been used by the court in making this ruling.  
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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.

**Attorneys' Fees Requested**  
**Request for Attorneys' Fees**

Movant requests that it be allowed attorneys' fees. The Motion points to the deed of trust securing the Note or 11 U.S.C. § 506(b) as authority authorizing collection of its attorneys' fees. No dollar amount is requested for such fees in the Motion.  
Fn.2.

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FN. 2 No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees, there being no time sheets or records submitted.  
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Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

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 Coastal Capital Group, LLC (“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. The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Ben Winter and Marcela Sandoval (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 12045 Foster Road Unit 1, Norwalk, California (“Property”), pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the July 19, 2024 dismissal of this bankruptcy case.

**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 not waived for cause.

No other or additional relief is granted.

# FINAL RULINGS

2. [24-90237-E-7](#)  
[KMM-1](#)

KATRINE KOOCHOF  
Jessica Dorn

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-9-24 [\[22\]](#)

TOYOTA MOTOR CREDIT  
CORPORATION VS.

**Final Ruling:** No appearance at the August 8, 2024 hearing is required.  
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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 9, 2024. 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). 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.**

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2021 Lexus GX 460, VIN ending in 1950 (“Vehicle”). The moving party has provided the Declaration of Donna Delahanty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Katrine Shamiran Koochof (“Debtor”). Decl., Docket 24.

Movant argues Debtor has not made one post-petition payment, with a total of \$1,267.92 in post-petition payments past due. Decl. 3:2, Dckt. 24. Movant also provides evidence that there are three pre-petition payments in default for a pre-petition arrearage of \$3,635.08. *Id.*

**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 25. 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 \$45,786.71 (Decl. 4:4, Dckt. 24), while the value of the Vehicle is determined to be \$43,125, as stated on the J.D. Power Valuation Report. Ex. D., Docket 25.

### 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 / 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). 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.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Toyota Motor Credit Corporation (“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 2021 Lexus GX 460, VIN ending in 1950 (“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.