UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 10, 2017, at 10:00 a.m.

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1. **17-90509-E-7** **RAWNEESHA ROYA** **CONTINUED MOTION FOR RELIEF**
PR-1 **Pro Se** **FROM AUTOMATIC STAY**
6-29-17 [17]

MEADOW LAKES, LLC 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*), Chapter 7 Trustee, and Office of the United States Trustee on June 29, 2017. By the court's calculation, 14 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 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.

Meadow Lakes, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1401 Lakewood Avenue, #117, Modesto, California ("Property"). The moving party has provided the Declaration of Maria Rightnour to introduce evidence as a basis for Movant's contention that Rawneesha Roya ("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 commenced an unlawful detainer action in California Superior Court, County of Stanislaus and provided a copy of the Complaint. Exhibit C, Dckt. 20.

JULY 13, 2017 HEARING

At the hearing, Debtor and Movant's counsel met and reported to the court that they had agreed to a stipulated order for relief conditioned upon Debtor making rent payments (every two weeks) during the next months and vacating the Property within thirty days. Dckt. 31. Movant's counsel was instructed to prepare a stipulated order, which Debtor was to approve (by countersigning the proposed order) before it is lodged with the court.

The court continued the hearing on this Motion to 10:00 a.m. on August 10, 2017.

DISCUSSION

No further pleadings have been filed with the court since the July 13, 2017 hearing. A stipulated order for relief has not been proposed to the court.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property 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).

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).

The court shall issue an order terminating and vacating the automatic stay to allow Meadow Lakes, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1401 Lakewood Avenue, #117, Modesto, California, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Meadow Lakes, 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Meadow Lakes, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1401 Lakewood Avenue, #117, Modesto, California.

2. 17-90454-E-7 PHYLLIS YOUNG — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 Jessica Dorn — 6-27-17 [17]

CAB WEST, LLC VS.

Final Ruling: No appearance at the August 10, 2017 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, Chapter 7 Trustee, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 44 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.

Phyllis Young ("Debtor") commenced this bankruptcy case on May 27, 2017. Cab West, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Focus, VIN ending in 1602 ("Vehicle"). The moving party has provided the Declaration of Laurel Baldwin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor.

The Laurel Baldwin Declaration provides testimony that "Debtor has voluntarily surrendered possession of the property to Movant and Movant remains in possession of the property at this time." Dckt. 19, at 2:17–18.5. The Declaration states that $5,522.00 is due under the lease agreement still. *Id.* at 2:19.5–21.

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 $5,522.00, as stated in the Laurel Baldwin Declaration, while the value of the Vehicle is determined to be $0.00, as stated on Schedule B by Debtor because she intends to surrender the Vehicle, as confirmed on the Statement of Intention. Dckts. 1 & 15.

DISCUSSION

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 because Debtor has elected to surrender the Vehicle. 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.

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 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 the Automatic Stay filed by Cab West, 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 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 2016 Ford Focus ("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. **12-92570-E-12** **COELHO DAIRY** **MOTION FOR RELIEF FROM**
BMJ-1 **Thomas Gillis** **AUTOMATIC STAY**
6-20-17 [637]

WESTAMERICA BANK 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.

Notice Provided. The Proof of Service filed with the Motion is blank, consisting of only a cover sheet. However, on July 21, 2017, the Plan Administrator/Debtor filed its opposition to the Motion indicating that it has been served. Dckts. 647, 648. Then, on August 2, 2017, Plan Administrator/Debtor filed a supplemental opposition. Dckts. 553–56.

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 Parties having addressed this Motion in detail, the court proceeds with the hearing on the Motion.

The Motion for Relief from the Automatic Stay is denied.

Coelho Dairy ("Plan Administrator/Debtor") commenced this bankruptcy case on September 28, 2012. Westamerica Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4500 Langworth Road, Modesto, California ("Property"). Movant has provided the Declarations of John Waste and Rhonda Speelman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. FN.1.

FN.1. Movant combined each of the declarations with its exhibits as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(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.

The Rhonda Speelman Declaration states that two loans were made to Debtor: one for $725,000.00 on March 30, 2006, and another one for $200,000.00 on November 22, 2010. The Declaration states that Movant has been receiving partial payments of $5,390.23 on a monthly basis, which is not enough to cure defaults. For the $725,000.00 loan, the Declaration states that the current unpaid balance is $71,115.88, and for the $200,000.00 loan, the Declaration states that the current unpaid balance is $23,259.70. The total unpaid balance is alleged to be $94,375.58.

PLAN ADMINISTRATOR/DEBTOR'S RESPONSE

Plan Administrator/Debtor filed a Response on July 21, 2017. Dckt. 647. Plan Administrator/Debtor denies that there is any amount owing on pre- or post-petition arrears. Plan Administrator/Debtor asserts that the balance of the loan is less than $89,773.98. *Id.* at 2:5.5–6.5. Plan Administrator/Debtor also claims that the Property is worth more than five million dollars, is where the dairy and Plan Administrator/Debtor's residence are located, and is necessary for Plan Administrator/Debtor complete an effective reorganization.

Plan Administrator/Debtor notes that a motion for relief from the automatic stay has been filed in this case before, and Plan Administrator/Debtor points to the Trustee's opposition to that motion that documents payments made to Movant. *See* Dckt. 609. Specifically, Plan Administrator/Debtor cites that the Trustee "calculated the arrearage to be [$107,804.60] which represents 20 post[-]petition payments of $5,390.23 per month for the period beginning October 2012 and ending May 2014." Dckt. 647, at 2:23.5–26 (citing Dckt. 609, at 1:22–23). Plan Administrator/Debtor also argues that the Trustee has already stated on the record that the arrears have been paid. *Id.* at 2:26–28–3:1–3.

Plan Administrator/Debtor argues that the Property does not need to be appraised again because the debt is less than $90,000.00 and because the Property is worth five million dollars.

Plan Administrator/Debtor believes that any alleged arrearage relates to post-petition late charges and to Movant's attorney fees. Also, Plan Administrator/Debtor believes that this matter is best suited for alternative dispute resolution.

Supplemental to Opposition

Plan Administrator/Debtor addresses issues relating to how Movant has asserted late charges, contending that late charges of $109.92 per month were assessed for what Plan Administrator/Debtor asserts would be a $105.74 month shortfall—if the court concurs in Movant's contentions. It is also asserted that Movant sat silently, never raising the issue that it asserted the monthly plan payment was incorrectly computed. Supplemental Declarations of Mr. Coelho and Thomas Gillis are presented. Dckts. 654 and 655,

respectively. Mr. Gillis testifies that he proposed paying the asserted defaults over the "life of the loan," which was not accepted by Movant. In neither of Mr. Coelho's two opposition declarations does he provide any testimony as to how the obligation owed to Movant is computed, the payments made, and how the obligation is correctly computed. Dckts. 648, 654. Mr. Coelho does state his personal conclusion that the obligations owed to Movant have been reduced to $89,773.98. Declaration ¶ 2, Dckt. 648. This is consistent with the $94,375.58 stated by Movant's witness.

Supplemental Reply Declaration for Movant

On August 3, 2017, John Waste, as attorney for Movant, filed his Supplemental Declaration. Dckt. 658. He correctly points out that under the applicable law and motion practice rules (Local Bankruptcy Rule 9014-1(f)(1)), Plan Administrator/Debtor is not permitted to file serial reply documents without leave of the court. No such leave has been sought from this court.

Attached to the Reply Declaration as exhibits are an e-mail claim in which Mr. Waste argues that Mr. Gillis' contention that he did not receive the letter filed as Exhibit D to the Original Waste Declaration is not true. It is asserted that a Lynda Phillips, an assistant to Mr. Waste, e-mailed a copy of the letter to Mr. Gillis. No declaration of Ms. Phillips is provided for such factual contention.

In the April 4, 2017 letter, the receipt of which is in dispute, Mr. Waste affirmatively states that the obligations owing on the two loans that make up Movant's claim in this case have been reduced to $67,295.04 and $24,169.78 as of March 20, 2017. Exhibit D, Dckt. 639. The total amount due to Movant, including all asserted defaults, totaled $91,464.82 as communicated by Mr. Waste as counsel for Movant.

DISCUSSION

This is the second time that Movant has asserted to the court that it is entitled to relief from the automatic stay because arrears owed to it have not been cured. *See* Dckt. 621. At the prior related hearing on March 17, 2016, the court addressed pleadings from Movant, Debtor, and the Chapter 12 Trustee, including replies to one another. The court observed that the underlying dispute giving rise to motion for relief was about interest rate calculation in the Plan.

At the first hearing, the court was not presented with any spreadsheet detailing "defaults, computation of monies due, and payments received." Dckt. 621, at 4. Now, as then, the parties have relied primarily upon narrative discussions of the financial disputes in this case. While a "simple" spread sheet could be presented properly computing the debt and interest, and properly accounting for all payments, the parties have instead elected to present the issue in a manner that would be more conducive to confusing the court.

The court reviewed the Plan and payments in this case and found that on June 30, 2014, "Movant was paid $107,800.00 for the post-petition, pre-confirmation arrearage, which overpaid the arrearage by $25,567.00." Dckt. 621, at 6. With that information on hand, the court concluded that there was no pre-confirmation, post-petition default in this case. *Id.* In denying the motion without prejudice, the court stated that the Movant could refile its motion and prepare a chart showing the payments asserted to be due, the

payments for which there is an agreement, and the payments that the Chapter 12 Trustee and Debtor dispute. *Id.*

John Waste Declaration

Mr. Waste provides his declaration stating that he and his law firm have substituted in as counsel for Movant in this bankruptcy case. The court's review of the Docket for this bankruptcy case on August 5, 2017, disclosed that though Mr. Waste testifies under penalty of perjury that there has been a substitution of counsel for his client in this case, no such substitution has been ordered by the court. LOCAL BANKR. R. 2017-1.

Mr. Waste then testifies that he has reviewed the court's Docket for this bankruptcy case. Based on his review of the Docket, Mr. Waste provides the court with a copy of the Order confirming the Chapter 12 Plan in this case. Mr. Waste does authenticate a copy of a letter he wrote to the Plan Administrator/Debtor's counsel concerning the alleged default in payments. Those are Exhibits B and C (improperly) attached behind Mr. Waste's Declaration. Mr. Waste further testifies to other communications he had with Counsel for Plan Administrator/Debtor.

The second declaration provided by Movant is that of Rhonda Speelman, who testifies that she is a Vice President/Commercial Loan Officer for Movant. Declaration, Dckt. 640. The first part of her testimony relates to the history of Movant having made loans to Debtor. The obligations on these loans are provided for in the Confirmed Chapter 12 Plan in this case.

Then, in Paragraph 5 of her Declaration, Ms. Speelman begins with an ominous qualification on her testimony, stating, "Although I am not a lawyer, I understand . . . ." Declaration ¶ 5, Dckt. 640. Over the years, the court has observed that such statements of a bank officer are often followed by legal conclusions of the attorney that the declarant is then made to parrot.

Ms. Speelman then "testifies" under penalty of perjury that:

> (1) She understand that the terms of the Chapter 12 Plan require Debtor to make payments to the Chapter 12 Trustee within 60 days of confirmation to cure post-petition/pre-confirmation defaults;
>
> (2) Debtor filed this bankruptcy case on September 28, 2012; and
>
> (3) The court confirmed the Chapter 12 Plan by an order "entered" (nothing is provided to show that this witness understands the legal significance of, or the ability to use, the word "entered" in describing an order, as opposed to signed or filed).

Ms. Speelman testifies that her "understanding" of the above is based upon her experience as a bank officer, conversation with prior bank counsel, and now conversations with Mr. Waste. It appears that Ms. Speelman testifies that she has no actual personal knowledge, but that she waives the attorney-client privilege by voluntarily disclosing attorney-client communications in connection with this bankruptcy case.

The Speelman Declaration continues with Ms. Speelman's conclusion that thought three and one-half years have passed since confirmation, she believes that the obligation remains in default.

Ms. Speelman does provide some specific testimony that appears to be based on the business records of Movant (though Ms. Speelman does not state now she "knows" this information). Her testimony includes:

> (1) "Approximately one a month" (not specifying what "approximately" means) Movant has received a payment from the Chapter 12 Trustee in the amount of $5,390.23. Ms. Speelman states that this is not sufficient to cure the "default."
>
> (2) For the $725,000 Loan, as of May 24, 2017, the unpaid balance was $71,115.88.
>
> (3) For the $200,000 Loan, as of May 24, 2017, the unpaid balance was $23,259.70.

Declaration ¶ 7, Dckt. 640.

In her Declaration, Ms. Speelman continues to testify that Exhibit 6 is a summary of the payments received by Movant from the Chapter 12 Trustee.

What is missing from Ms. Speelman's testimony, however, is any analysis of the claims to be paid under the Plan, the payments received, how the payments received were applied, and how the current balances are computed. Ms. Speelman provides no credible evidence to the court, as the finder of fact, to whether there is a colorable contention that there is a default in payments to Movant. Rather, that conclusion is dictated to the court by this witness.

Review of Confirmed Plan

The Confirmed Chapter 12 Plan does require that "post-petition defaults," in an unstated amount, will be cured within sixty days of confirmation. Order Confirming Plan, p. 2; Exhibit B, Dckt. 659. Movant's claims revised under the Plan are to be amortized over twenty-five years, with interest at 6.4% and 6.5% as provided in the Notes on which Movant's claims are based, with the balance due in full "seven years after confirmation." *Id.* The Confirmation Order, nor the Amended Chapter 12 Plan attached thereto, do not specify the amount of the arrearage to be cured.

Before agreement was reached with Movant to confirm the Plan in this bankruptcy case, Movant filed an Opposition to Confirmation. Dckt. 477. In that Opposition Movant stated (admitted) that as of February 15, 2013, the balance of the obligation owing on Loan No. 1 was $658,749.05 (with a principal balance of $632,552.29), not including attorney's fees and costs. For Loan No. 2, the balance owing on that obligation was $201,672.59 (with a principal balance of $194,416.68), again, not including attorney's fees and costs. *Id.* at 3:11–18.

Using the above numbers, amortizing the two loan balance amounts over twenty-five years at the respective interest rates, for Loan No. 1 ($658,749.05 at 6.4%) the monthly payment would be $4,406.85.

For Loan No. 2 ($201,672.59 at 6.5%) the monthly payment would be $1,361.71. These payments total $5,768.56. Movant's evidence is that it has been receiving $5,390.23, which would appear to be insufficient.

But Ms. Speelman testifies under penalty of perjury that the obligations owed on the two loans have been reduced to $71,115.88 and $23,259.70. Clearly more than merely the monthly twenty-five-year-amortized payments have been made to Movant by or for the Plan Administrator/Debtor. If these twenty-five-year-amortized obligations have so substantially reduced in just three and one-half years, then the court is uncertain as to how there can be any unpaid post-petition defaults.

Included with the April 4, 2017 Letter that is disputed is a spread sheet provided by Mr. Waste. Exhibit D, Dckt. 639. No witness provides testimony as to preparation of these spread sheets. The court was unsuccessful in trying to divine the information therein, which, if properly authenticated and explained, may have provided the court with some information to understand what bona fide, good faith dispute could exist between these parties.

For the second time, Movant has failed to demonstrate to the court that there is sufficient cause to grant it relief from the automatic stay. It has been receiving plan payments, and by Movant's admissions (counsel and Ms. Speelman) the obligation to it is almost paid in full.

The Motion is denied.

Possible Adversary Proceeding to Determine Amount of Obligation Owing On the Loans

In a final note, it appears that the dispute between these parties may well be beyond the summary proceeding nature of a motion for relief from the automatic stay. *Hamilton v. Hernandez*, 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)) (stating that relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. § 362(d)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.

It may well be time for the parties to move to an adversary proceeding and have this court determine their respective rights and obligations. The parties claim the right to attorneys' fees under the contracts between the parties. Just as in connection with a motion, the court can address and the prevailing party can be awarded attorney's fees—which would be collectable for both parties—Movant, in light of the substantial equity cushion and for the Plan Administrator/Debtor from the well-known, financial institution Movant.

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 Westamerica Bank ("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.

4. **17-90489-E-7** **MARLON/ANGELA KILGORE** **MOTION FOR RELIEF FROM**
APN-1 **Pro Se** **AUTOMATIC STAY**
7-6-17 [11]

SANTANDER CONSUMER USA 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 Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 6, 2017. By the court's calculation, 35 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.

Marlon Kilgore and Angela Kilgore ("Debtor") commenced this bankruptcy case on June 12, 2017. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Scion XB, VIN ending in 2175 ("Vehicle"). The moving party has provided the Declaration of Gary Esparza to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor.

The Gary Esparza Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $575.00 in post-petition payments past due. The Declaration also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of $2,663.29.

Movant has also provided a copy of NADA 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).

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 $22,044.59, as stated in the Gary Esparza Declaration, while the value of the Vehicle is determined to be $13,850.00, as stated in the NADA Valuation Report, which is slightly more than the value as stated on Schedule B.

Movant also notes that Debtor intends to surrender the Vehicle.

DISCUSSION

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 and Debtor electing to surrender the Vehicle. 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.

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 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 the Automatic Stay filed by 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** 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 2014 Scion XB ("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.