

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

**The Court has Reorganized the Calendar,
Placing All Final Decision Items in the Second Part of the Rulings,
Beginning with Item 2**

August 29, 2019 at 10:00 a.m.

1. 19-90446-E-7 KR-2	GABRIEL SILVA Randy Walton	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-6-19 [33]
YAMAHA MOTOR FINANCE CORP. 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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 6, 2019. 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, -----.

August 29, 2019 at 10:00 a.m.

The Motion for Relief from the Automatic Stay is granted.
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Yamaha Motor Finance Corp. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Yamaha Raptor 700R, VIN ending in 7728 (“Vehicle”). The moving party has provided the Declaration of Vanessa Stephens to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Gabriel Silva (“Debtor”).

Movant argues Debtor has not made 1 post-petition payment, with a total of \$203.00 in post-petition payments past due. Declaration, Dckt. 36. Movant also provides evidence that there is 1 pre-petition payments in default, with a pre-petition arrearage of \$332.00. *Id.*

Debtor did not file an opposition to the Motion.

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 \$7,078.46 (Declaration, Dckt. 36), while the value of the Vehicle is determined to be \$4,000.00, as stated in Schedules A and B filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report. Dckt. 1.

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.

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the 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).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess,

dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, 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 Yamaha Motor Finance Corp. (“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 2017 Yamaha Raptor, VIN ending in 7728 (“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.

FINAL RULINGS

2. [18-90029-E-11](#) **JEFFERY ARAMBEL** **MOTION FOR RELIEF FROM**
[HSM-2](#) **Matt Olson** **AUTOMATIC STAY**
8-1-19 [[877](#)]

BENJAMIN LOPEZ VS.

Final Ruling: No appearance at the August, 2019 Status Conference is required.

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 28 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 hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on September 10, 2019, specially set to be heard in the Sacramento Division Courthouse in conjunction with the confirmation hearing in this case.

Continuance of Hearing

Due to scheduling conflicts the judge to whom this case is assigned is not hearing the August 29, 2019 calendar. In reviewing the pleadings, it is clear that the judge to whom this case is assigned, who has personally experienced the conduct of the various parties and counsel, and who "appreciates" the history in this case, should hear the Matter. This is not a matter for which it is appropriate to have a substitute judge hear the matter.

Below is a discussion of the Motion and points for the parties to be prepared to address at the continued hearing. No further filing of pleadings in this Contested Matter is permitted.

REVIEW OF MOTION

Creditor, Benjamin Lopez ("Movant"), seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to allow civil litigation pending in the Stanislaus Superior Court, captioned *Benjamin Lopez dba*

August 29, 2019 at 10:00 a.m.

- Page 4 of 18-

Benjamin Lopez Farm Labor Contractor v. Jeffrey Edward Arambel, et al., Case No. 2011118 (the “State Court Litigation”) to be concluded. Movant has provided the Declaration of Howard S. Nevins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor in Possession, Jeffrey Edward Arambel (“Debtor in Possession”).

Movant argues cause exists for relief on several grounds, including the following:

1. Concluding the State Court Litigation in state court will not harm the Debtor or Estate.
2. Movant may be prejudiced by having his claim determined in federal court.
3. The State Court Litigation involves only state law claims.
4. Trial in state court may be conducted quickly depending on Debtor in Possession’s attorneys’ schedules.
5. Determining Movant’s claim will not interfere with case administration. Debtor in Possession already has counsel for the State Court Litigation.

In the event the Motion is granted, Movant requests waiver of the 14-day stay to allow immediate liquidation of Movant’s claims.

DEBTOR IN POSSESSION’S OPPOSITION

Debtor in Possession filed an Opposition on August 15, 2019. Dckt. 901. Debtor in Possession argues several grounds, including the following:

1. The Estate has not retained any special counsel for the State Court Litigation.
2. Jeffrey Arambel’s prior counsel in the State Court Litigation, Michael B. Ijams, believes the earliest state court could set trial for is 6 to 8 months.
3. Movant failed to serve the Motion for Relief from Stay on the 20 largest unsecured claim holders as required by Federal Rule of Bankruptcy Procedure 4000(a)(1).
4. Permissive-abstention is the only cause for relief advanced by Movant, and the permissive abstention analysis does not support abstention here.
4. The Bankruptcy Court has the more efficient claims-allowance process. Costly state court litigation could interfere with a successful reorganization.
5. The state court claims are not complex, and there are no other parties to the litigation.
6. No exigent circumstances support relief from the 14-day stay.

August 29, 2019 at 10:00 a.m.

MOVANT'S REPLY

Movant filed a Reply on August 22, 2019. Dckt. 907. Movant argues that the evidence and analysis provided in its Motion was not rebutted in the Opposition.

DISCUSSION

Insufficient Service

Pursuant to the Federal Rule of Bankruptcy Procedure 4000(a)(1) a motion for relief from stay must be served on the holders of the 20 largest unsecured claims. *See also*, FED. R. BANKR. P. 1007(d).

Debtor in Possession filed the List of Creditors Who Have the 20 Largest Unsecured Claims on March 1, 2019. Dckt. 114. Several of the 20 largest unsecured creditors were not served this Motion. Certificate of Service, Dckt. 884.

At the hearing, xxxxxxxxxxxxxx.

Relief From Stay

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, neither party has asserted any great prejudice in proceeding in either state or federal court to determine the amount of Movant’s claim. This is because there is no prejudice.

Movant’s claim on its face appears to be a simple breach of contract—Jeffrey Arambel having received services without paying. Such a claim would be determined expeditiously in the Bankruptcy Court, and it has been asserted by the parties that the state court could resolve this matter in a few months’ time as well.

Neither side has shown the necessity of the claim being determined in either state or federal court. However, the Movant has the burden of proof to show relief is warranted.

Moreover, the court questions Movant's sincerity as to its arguments. Movant filed Proof of Claim, No. 16, on May 8, 2018, asserting a claim of \$2,363,723.00. Before then, Movant commenced Adversary Proceeding, No. 18-09002, on April 16, 2019. 18-09002, Dckt. 1.

Movant's Adversary Proceeding was pending for over a year before Movant, after obtaining new counsel, decided that it should litigate the underlying liability of its claim in state court before proceeding with the Adversary Proceeding. 18-09002, Civil Minutes, Dckt. 45. The court dismissed the Adversary Proceeding on July 25, 2019. *Id.* at Dckt. 46.

Movant's argument (if it is making the argument) that pursuing some litigation in state court and some litigation in this court supports judicial economy is not well-taken. Here it is in the best interest of all parties to resolve all causes of action in one place.

On the other side, the Debtor in Possession strongly argues that the fast, efficient bankruptcy claims process that Congress has placed in the Bankruptcy Code is the ideal forum, but the Movant's proof of claim has been sitting, not objected to since it was filed on May 8, 2018. It is settled law in the Ninth Circuit that the proof of claim establishes *prima facie* validity of the claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). That claim has sat, not objected to, for more than an year.

Debtor in Possession also does not give adequate weight to discovery and all of the discovery conducted in the State Court Litigation. It is not clear if the Debtor in Possession believes it is entitled to, and intends to engage in, additional years of discovery. Such would not only be a waste of time and money for the parties, but a tremendous waste of the state and federal judicial resources. The filing of bankruptcy is not an opportunity for a person to just "wipe the slate clean" of years of state court pretrial litigation and get a "do over" in federal court.

Movant's state court counsel provides a general discussion of the State Court Litigation and the bankruptcy filing derailing the case. However, that counsel does not provide the court with a clear statement of what he can do to get this matter heard in state court. While Movant's bankruptcy counsel tells the court what he heard a clerk at the state court say, the person with real knowledge and experience who should be so testifying to the court as to how fast the State Court Litigation can be brought to trial is Movant's state court counsel.

Additionally, though Movant believes that this mere state law matter is not something that should grace the federal court, Congress has made such matter one of primary concern for the federal court through the claims and claims objection process. Federal bankruptcy judges rule on many state law and non-bankruptcy federal law matters everyday. This apparent simple breach of contract claim is not one for which the state court has special, personalized state interest matters, such as dissolution of marriage or probate proceedings.

Debtor in Possession's position of "we don't have an attorney" after more than a year so the stay cannot be modified does not carry much, if any, weight. If the Debtor in Possession does not have counsel who can litigate the matter (which may be the reason that no claim objection has been filed), then there will be no claim objection and the Debtor in Possession can conclusively stipulate to the Proof of Claim as filed.

In a similar situation where a matter was ready to go to trial in state court and grounds existed to modify the stay (multiple non-debtor parties, in addition to all discovery and pretrial matters completed),

the parties elected, due to subsequently appreciating the delay in getting a courtroom in state court, to have the trial conducted in the federal bankruptcy court, with all discovery and pre-trial rulings and orders made a part of the federal court litigation.

At the continued hearing Movant's state court counsel (telephonic appearance permitted) can update the court and parties of how he will be able to diligently get the State Court Litigation to trial if relief is granted. Movant's bankruptcy court counsel can expand his discussion of why a mere state law contract claim does not warrant adjudication in the specific process established by Congress for such claims.

Debtor in Possession's counsel can address whether the inability to have counsel adjudicate the alleged dispute is fatal to disputing the Proof of Claim filed and the claims stated in the State Court Litigation. Counsel for Debtor in Possession shall also address how and what can be done to avoid the tremendous waste of the time and money invested by the parties in the State Court Litigation to date, waste the significant state court judicial resources expended, avoid wasting federal judicial resources and party resources by duplicating the extensive work and time already spent in the State Court Litigation.

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 hearing on the Motion for Relief from the Automatic Stay filed by Benjamin Lopez ("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 hearing on the Motion is continued to 10:00 a.m. on September 10, 2019, specially set in Courtroom 33 of the Sacramento Division of this Court, to be heard in conjunction with the confirmation hearing specially set for that date and time.

IT IS FURTHER ORDERED that no further pleadings are authorized to be filed by any parties to this Contested Matter, with the exception of the Parties filing a stipulation, if any, resolving all or any part of this Motion.

No other or additional relief is granted.

3. [19-90638-E-7](#)
[APN-1](#)

DALE BENNETT
Robert Johnson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-25-19 [9]

FORD MOTOR CREDIT COMPANY
VS.

Final Ruling: No appearance at the August 29, 2019 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 25, 2019. 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). 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.

Ford Motor Credit Company ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford F150, VIN ending in 5057 ("Vehicle"). The moving party has provided the Declaration of Kristina M. Mowers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the debtor, Dale Clayton Bennett ("Debtor").

Movant provides testimony that Debtor voluntarily surrendered the Vehicle. Declaration, Dckt. 9. This testimony germanes with Debtor's Statement of Intention, which indicates the Vehicle is to be surrendered. Dckt. 1.

Debtor did not file an opposition to the motion.

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 \$42,337.66 (Declaration, Dckt. 11), while the value of the Vehicle is determined to be \$41,000.00, as stated in Schedules A and D filed by Debtor. Dckt. 1.

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 Debtor’s expressed intent to surrender the vehicle. 11 U.S.C. § 362(d)(1).

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the 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).

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 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 Ford Motor Credit (“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 2018 Ford F150, VIN ending in 5057 (“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.

NATIONSTAR MORTGAGE LLC VS.

Final Ruling: No appearance at the August 29, 2019 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 19, 2019. By the court's calculation, 41 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.

Nationstar Mortgage LLC, DBA Mr. Cooper ("Movant") seeks relief from the automatic stay with respect to Riley Ray Narmore and Denise Renay Narmore's ("Debtor") real property commonly known as 3054 North Dakota Ave, Modesto, California ("Property"). Movant has provided the Declaration of Mary Gracia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 1 post-petition payments, with a total of \$1,707.03 in post-petition payments past due. Declaration, Dckt. 29. Movant also provides evidence that there are 8 pre-petition payments in default, with a pre-petition arrearage of \$13,656.24. *Id.*

No Oppositions were filed by the Debtors or the Chapter 7 Trustee, Irma Edmonds.

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 \$293,050.38 (Schedule D, Dckt. 1; Declaration, Dckt. 29), while the value of the property is determined to be \$295,000.00, as stated in Schedules A and B filed by Debtor.

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 payment that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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). 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).

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Attorneys’ Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys’ fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees “pursuant to the Security Agreement”). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys’ fees or having any obligation to pay attorneys’ fees. Based on the pleadings, the court would either: (1) have to award attorneys’ fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys’ fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

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.

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.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who

routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 Nationstar Mortgage LLC, DBA Mr. Cooper (“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 Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3054 North Dakota Ave, Modesto, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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.

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

Final Ruling: No appearance at the August 29, 2018 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 17, 2019. By the court’s calculation, 43 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.

Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-WL3, Asset-Backed Certificates, Series 2006-WL3 (“Movant”) seeks relief from the automatic stay with respect to Fatima De’Shawn Bordner’s (“Debtor”) real property commonly known as 800 Salina Drive, Modesto, California (“Property”). Movant has provided the Declaration of Alma Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made 3 post-petition payments, with a total of \$6,658.92 in post-petition payments past due. Declaration, Dckt. 19. Movant also provides evidence that there are 52 pre-petition payments in default, with a pre-petition arrearage of \$88,177.42. *Id.*

Debtor did not file an opposition to the Motion.

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 \$519,668.09 (Declaration, Dckt. 19), while the value of the

property is determined to be \$250,000.00, as stated in Schedules A and B filed by Debtor, which is the same as the value provided by Movant.

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.

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the 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).

Debtor was granted a discharge in this case on July 30, 2019. Dckt. 28. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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 Deutsche Bank National Trust Company, as Trustee, in trust for registered Holders of Long Beach Mortgage Loan Trust 2006-WL3, Asset-Backed Certificates, Series 2006-WL3

August 29, 2019 at 10:00 a.m.

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(“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 Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 800 Salina Drive, Modesto, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Fatima De'Shawn Bordner (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

No other or additional relief is granted.