

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 6, 2018 at 10:00 a.m.

1.	<u>18-90413-E-7</u> <u>JCW-1</u>	CHRISTY RAPOZO Tyson Takeuchi	MOTION FOR RELIEF FROM AUTOMATIC STAY 8-1-18 <u>[13]</u>
FREEDOM MORTGAGE CORPORATION VS.			

Final Ruling: No appearance at the September 6, 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, and Chapter 7 Trustee on July 31, 2018. By the court’s calculation, 37 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.
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Freedom Mortgage Corporation (“Movant”) seeks relief from the automatic stay with respect to Christy Lynne Rapozo’s (“Debtor”) real property commonly known as 8274 Mcatee Street, Valley Springs, California (“Property”). Movant has provided the Declaration of Latoya Dawson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Dawson Declaration states that there is 1 post-petition default in the payment on the obligation secured by the Property, with a total of \$1,610.27 in post-petition payments past due. The Declaration also provides evidence that there are 12 pre-petition payments in default, with a pre-petition arrearage of \$19,394.08.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$256,393.93, secured entirely by Movant's first deed of trust, as stated in the Dawson Declaration and Schedule D. The value of the Property is determined to be \$250,000.00, as stated in Schedules A and D.

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 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 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.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Freedom Mortgage 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Freedom Mortgage Corporation, 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 8274 Mcatee Street, Valley Springs, 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.

2. [18-90519-E-7](#)
[JHW-1](#)

KULBIR KAUR
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-2-18 [\[13\]](#)**

**SANTANDER CONSUMER USA INC.
VS.**

Final Ruling: No appearance at the September 6, 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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on August 2, 2018. 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Santander Consumer USA Inc., dba Chrysler Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Toyota Prius, VIN ending in 7860 ("Vehicle"). The moving party has provided the Declaration of Brandi Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kulbir Kaur ("Debtor").

The Brown Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$282.71 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$1,124.36.

Movant has also provided a copy of the 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 \$12,174.16, as stated in the Brown Declaration, while the value of the Vehicle is determined to be \$11,497.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report.

Debtor has not filed an opposition to Movant's Motion.

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. 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); 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 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., dba Chrysler Capital (“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 Toyota Prius (“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.

3. [18-90450-E-7](#)
[APN-1](#)

RAKIYA SMITH
Kathleen Crist

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-24-18 [\[22\]](#)

TOYOTA MOTOR CREDIT CORP.
VS.

Cont. 8/2/18

Tentative Ruling: No appearance at the August 2, 2018 hearing 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, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 5, 2018. By the court’s calculation, 58 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 denied.

Toyota Motor Credit Corporation (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2016 Lexus ES350, VIN ending in 3314 (“Vehicle”). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rakiya Smith (“Debtor”).

The Rahnae Spooner Declaration provides testimony that Debtor has not made one post-petition payments, with a total of \$568.23 in post-petition payments past due. The Declaration also provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of \$1,550.50. Movant directs the court to the Statement of Intention filed by Debtor on June 18, 2018, Debtor intends to surrender the Vehicle to Movant. Dckt. 1.

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 \$30,602.33, as stated in the Rahnae Spooner Declaration, while the value of the Vehicle is determined to be \$20,000.00, as stated in Schedules B and D filed by Debtor.

AUGUST 2, 2018, HEARING

At the August 2, 2018, hearing, the court continued the Motion for final oral argument September 6, 2018. Dckt. 18. The court ordered Austin Nagel, Esq., counsel for Movant, to appear in person at the continued hearing—No Telephonic Appearance Permitted. *Id.* The court further ordered that on or before noon on August 29, 2018, Movant shall file a supplemental brief providing the legal authority for the additional relief requested in the prayer of the Motion as:

“3. That the Order hereon be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code;”

why such relief is necessary and the legal effect of such an order, the grounds stated with particularity in the Motion upon which relief is stated to be based, and the evidence filed in support of such requested relief in the prayer of the Motion. *Id.*

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY

Movant filed an Amended Motion for Relief from Automatic Stay on August 24, 2018. Dckt. 22. A review of the Amended Motion shows that Movant has removed its third request for relief, which requested this court issue an Order binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code. *Id.* at 4:23-28. While

Movant also adds a section stating grounds for waiver of the fourteen-day stay under Bankruptcy Rule 4001(A)(3). *Id.*, at 4:11-17.5. Movant argues that Debtor, in the Statement of Intent, has indicated a desire to surrender the Vehicle, thereby making the fourteen-day stay unnecessary. *Id.*

No other or additional relief is granted by the court.

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

Though it would appear that grounds could exist for such relief, in light of the failure to comply with this court's August 5, 2018, Order, the veracity of Movant's contentions and good faith in this proceedings is put in doubt.

Failure to Comply With August 5, 2018, Order

In addition to continuing the hearing, the court ordered Toyota Motor Credit Corporation to file a supplemental brief to provide the court with the legal authorities in support of its request (for which it made the Fed. R. Bankr. P. 9011 certifications) that the court expressly order that the relief granted is binding despite conversion to another Chapter under the Bankruptcy Code. The court did not make the filing of a supplemental brief optional, the August 5, 2018, Order clearly providing:

IT IS FURTHER ORDERED that on or before noon on August 29, 2018, **Movant shall file a supplemental brief** providing the legal authority for the additional relief requested in the prayer of the Motion as:

"3. That the Order hereon be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code;"

why such relief is necessary and the legal effect of such an order, the grounds stated with particularity in the Motion upon which relief is stated to be based, and the evidence filed in support of such requested relief in the prayer of the Motion. **The filing of other additional pleadings is not authorized.**

Dckt. 19.

Toyota Motor Credit Corporation and its counsel have elected to not comply with the above order, refusing to file a supplemental brief identifying the legal authorities upon which the additional relief is proper. Even a supplemental brief acknowledging that such relief is not supported, and stating that while what somebody in a "backroom" somewhere thought was a good idea, the lawyers advising Toyota Motor Credit have stepped up and corrected the practice.

Such is not the case. In addition to ignoring the affirmative order of the court, Toyota Motor Credit Corporation and its counsel have elected to ignore/override/"overrule" the prohibitory language precluding the filing of "other additional pleadings" in this contested matter. Toyota Motor Credit Corporation and its counsel took the affirmative step in violation of the court's order and filed the additional pleading titled "Amended Motion" for relief from the stay. Dckt. 22. By the sweep of the pen in this additional pleading, Toyota Motor Credit Corporation sought, with the assistance of its counsel, to re-write

the earlier motion to cover up what now appears to be a knowing seeking of relief for which no legal basis exists.

The court is at a loss to determine the basis for a party to “vacate” an order of the court – choosing what orders it will comply with and those which are not worth its time and effort.

This willful failure to comply with this court’s order and brazen violation of the prohibition on filing any additional pleadings demonstrates a lack of good faith and credibility in appearing in federal court and requesting the relief sought. While quite possibly good grounds could exist, Toyota Motor Credit Corporation’s lack of good faith taints it with bad faith in these proceedings.

In light of the failure to comply with this court’s order, the Motion is denied. The court will consider what corrective action for the non-compliance, and what, if anything, related hereto should be referred to the Chief Judge of the District Court for a District Court Judge to exercise the corrective and punitive sanction powers of an Article III judge for failure to comply with an order of a federal judge.

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 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 Motion is denied.