UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 12, 2024 at 10:00 a.m.

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1. 24-22846-E-11 JWC-1 | **ISMOIL KASIMOV** | **David Foyil** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **8-14-24 [41]**

BMO BANK N.A. VS.

Item #3 on 10:30 Calendar

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, Debtor's Attorney, attorneys of record who have appeared in the case, creditors holding the twenty largest unsecured claims, parties requesting special notice, other parties in interest, and Office of the United States Trustee on August 14, 2024. By the court's calculation, 29 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 xxxxxxx.

BMO Bank N.A. ("Movant") seeks relief from the automatic stay with respect to two assets identified as 2017 Kenworth T680s, VINs ending in 9581 and 9563 ("Vehicles"). The moving party has provided the Declaration of Bryan J. Schrepel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ismoil Kasimov ("Debtor"). Decl., Docket 43.

Movant asserts that on or about October 1, 2023, Debtor defaulted under the terms of the Agreement by failing to make the monthly installments then due. At the time of the bankruptcy filing, the balance due under the loan agreement was $41,736.73. Debtor has made no post-petition payments to Movant as to the loan agreement. Mot. 2:20-23, Docket 41; Decl. ¶ 5, Docket 43.

Black Book Valuation Report Provided

Movant has also provided a copy of the Black Book Valuation Report for the Vehicle. Ex. 3, Docket 44. The average retail value of each of the Vehicles is stated to be $25,300.00 for the Vehicle. Movant cites the court to the retail value of the Vehicles, which is stated to be $20,425 each. *Id*.

The Report has been authenticated by Bryan Schrepel, who testifies he is a bankruptcy and litigation specialist for Movant. Dec., ¶ 1; Dckt. 43. He testifies that he relies on Black Book as a resource for valuation of such vehicles and that a copy of the Black Book valuation is Exhibit E. *Id*.; ¶ 7.

DEBTOR'S OPPOSITION

Debtor filed an Opposition and supporting Declaration on August 23, 2024. Dockets 61, 62. Debtor asserts:

1. Debtor admits he has been unable to make any post-petition payments on the loan agreement and the outstanding balance on the loan is $41,736.73. Opp'n 1:22-26, Docket 61.

2. Debtor uses the Vehicle with the Vin ending in 9581 in the ordinary course of business, relying on it as a primary source of income. This income is vital not only for the Debtor's daily expenses but also for funding the Chapter 11 Plan. Denying the Motion for Relief from Stay is crucial for the Debtor's reorganization efforts, as losing access to the Vehicles would severely impair the Debtor's ability to generate revenue and fulfill the obligations under the Plan. *Id.* at 2:1-6.

3. The Vehicle with the Vin ending in 9563 is currently in possession of Debtor's cousin. *Id.* at 2:7-8.

4. Debtor intends to provide Movant with adequate protection by paying the entire amount due, $41,736.73, in equal monthly installments of $880.22 over 60 months at 9.68% interest. *Id.* at 2:19-22.

5. Debtor objects to the Black Book valuation as hearsay. Movant has not had any personal contact, viewing, nor inspection of the Vehicles. The Black Book report has not been property authenticated. *Id.* at 2:23-3:2.

Debtor reiterates in his Declaration much of what is said in the Opposition. Debtor testifies he relies on the Vehicle with the Vin ending in 9581 for his business. Decl. ¶ 4, Docket 62. Debtor expresses his intent to provide adequate protection to Movant. *Id.* at ¶ 6. Debtor agrees to make the monthly payments of $880.22 beginning on September 1, 2024. *Id.* at ¶ 8. Debtor makes his legal objection that the Black Book valuation is inadmissible hearsay. *Id.* at ¶ 9.

MOVANT'S REPLY

Movant filed a Reply to Debtor's Opposition on September 5, 2024. Docket 69. Movant states:

1. Friends & Family Transportation, LLC, of which Debtor is a managing member, is the actual borrower of the Vehicles, not Debtor. Reply 2:6-7, Docket 69. Debtor merely has a possessory interest in the Vehicle with the Vin ending in 9581. *Id.* at 2:26.

2. The fact that Debtor is neither the borrower nor the owner of the Vehicles, is cause alone to grant relief from stay. *Id.* at 3:1-2.

3. Debtor actually bought Vehicle Vin 9563 for his cousin, who still has possession. However, Debtor was unable to provide any contact information for his cousin because they do not talk anymore. *Id.* at 2:8-10.

4. Debtor has a serious gambling problem, having incurred at least $200,000 in gambling losses by the time he filed his bankruptcy petition. Debtor is not even paying the mortgage on his home. *Id.* at 2:11-13.

5. Debtor admits he his post-petition delinquent, justifying relief. *Id.* at 2:15-21.

6. Debtor states now he will make adequate protection payments, but that is only an empty promise based on his testimony at the 341 Meeting and the information in the Monthly Operating Reports showing no plans to operate the LLC, and the Vehicles are now uninsured. *Id.* at 3:5-22.

Movant submits the Declaration of Jennifer Witherell Crastz in support of the Reply. Docket 70. Ms. Crastz testifies as to the authenticity of the facts alleged in the Reply.

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 $41,736.73 (Declaration ¶ 5, Docket 43), while the value of the Vehicles is determined to be $50,600, as stated on the Black Book Valuation Report. Ex. 3, Docket 44 (adding the value of both Vehicles together, when one Vehicle alone is depicted as worth $25,300).

On Schedule A/B filed by Debtor, neither of the two Vehicles are listed as assets of the Debtor. For vehicles Debtor lists owning a 2014 Mercedez (sic.) GL as his only vehicle. Sch. A/B, ¶ 3. However, in Part 5 of Schedule A/B, "Business-Related Property," Debtor lists the following asset: "2017 Kenworth T680 Semi Truck" with a value of $72,000.00. *Id.*

On Schedule D, Debtor does not list Movant as a creditor having a claim secured by any property of Debtor. *Id.*; p. 11-12. Debtor does list Movant as having a general unsecured claim in the amount of ($41,736.73) on Schedule E/F. *Id.*; p. 15.

On Schedule I, Debtor lists having monthly Net Income from the operation of his business of $12,308.00. *Id*., p. 21-22. The attached Business and Income Statement attached to Schedule I is titled "Proposed Business Budget," and lists having $8,307.03 in monthly Net Income. *Id*.; pl. 31. However, this includes a "Semi Payment" of $1,942.97 a month.

On Schedule J, Debtor lists having five dependents, a spouse and four children (whose ages are not stated). *Id*.; p. 24-25. On Schedule J Debtor lists having monthly expenses of ($8,149). Based on monthly Net Income of $12,308.00 (which does not include the ($1,942.97) Semi Payment), Debtor states having projected disposable income of $4,159.00 a month.

Ownership of the Vehicles

Exhibit 2 filed in support of the Motion are California Certificates of Title for the two Vehicles. Dckt. 44, p. 9-11. The registered owner for each vehicle is identified as "Friends/Family Trans LLC." *Id*. Movant is listed as the lienholder on the Certificates of Title.

In his Declaration, Debtor testifies stating that "On or about May 26, 2020 I purchased" the two Vehicles. Dec., ¶ 2; Dckt. 62. This statement is inconsistent with the Certificates of Title that state that Friends/Family Trans LLC is the owner of the two Vehicles.

Debtor further testifies that Vehicle 9563 is in the possession of his (unnamed) cousin. *Id*.; ¶ 5. Thus, it appears that Debtor's testimony is that Vehicle 9563 is not part of any business operated by the Debtor.

Obligor on the Contract

A copy of the Loan and Security Agreement upon which Movant asserts its secured claim is filed as Exhibit 1 in support of the Motion. Dckt. 44 at 3-8. The borrower (identified as contract "Debtor") from Movant is Friends & Family Transportation, LLC. *Id*., p. 8. Debtor signed the Loan and Security Agreement as the President of Friends & Family Transportation, LLC. *Id*. Debtor is not the borrower on the Loan and Security Agreement.

On Schedule A/B Debtor states that he has no interests in any non-publically traded stock or interests in incorporated an unincorporated businesses, including any interests in an LLC, partnership, or joint venture. A/B, ¶ 19; Dckt. 31 at 5.

On the Statement of Financial Affairs Debtor stated that within four (4) years prior to the filing of bankruptcy he had no interests in any business, including: (1) sole proprietorships or being self-employed, (2) limited liability company, limited liability partnership, or (3) partnership. Stmt of Fin Affairs, ¶ 27; Dckt. 31 at 34. He additionally states that he has not, in the four years preceding the filing of this Bankruptcy Case, served as an officer, director, or managing executive of a corporation, or been an owner of at least 5% of the voting or equity shares of a corporation. *Id*.

This appears to conflict with signing the Loan and Security and Security Agreement with Movant as the president of Friends & Family Transportation, LLC. Exhibit 1; Dckt. 44 at 8.

Income From Operation of Business

Based upon Schedules I and J filed, Debtor generates $4,159.00 a month in monthly net income. This bankruptcy case having been filed in June 2024, that would mean that there is two or three times that amount in surplus revenues in the Bankruptcy Cases - $8,318.00 to $12,477.

However, the Debtor in Possession filed the July 2024 Monthly Operating Report on August 5, 2024. The financial information provided in the July 2024 Monthly Operating Report includes the following:

A. The business did not operate in July 2024 and is not planed to operate in August 2024. MOR, § 1, ¶¶ 1, 2. Dckt. 34.

B. The insurance company has cancelled the Debtor's insurance policy. *Id*.; § 1, ¶ 13.

C. The Debtor in Possession has borrowed money from other persons. *Id*., § 1, ¶ 15.

D. There is a $0.00 balance in all of the Debtor in Possession's bank accounts. *Id*.; § 2, ¶ 19.

Thus, it appears that the Debtor, now serving as the Debtor in Possession, has been unable to operate the business of the Bankruptcy Estate since the filing of this Bankruptcy Case.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor has raised the issue of documentation of the Black Book valuation as a market report or similar commercial publication generally relied upon by the public or persons in particular occupations, such as the lending and sale transactions related to vehicles. Fed. R. Evid. 803(17). While the court is familiar with Kelly Blue Book as such a trade publication, it is not familiar with Black Book.

At the hearing, **xxxxxxx**

In considering cause, from the evidence presented, the Debtor is not the obligor on the Loan & Security Agreement and is not the person who purchased the two Vehicles. Rather, the obligor on the Loan & Security Agreement is Friends & Family Transportation, LLC, which is also the owner of the two Vehicles.

The Debtor is in possession of one of the two Vehicles - Vehicle 9581. Debtor testifies that he is using Vehicle 9581 in operation of his business (though on the Statement of Financial Affairs Debtor states he has no business).

Vehicle 9563, which is owned by Friends & Family Transportation, LLC, is not used by the Debtor, is not in possession of the Debtor and is, as testified to by the Debtor, in possession of an unnamed cousin.

Relief From the Stay re Vehicle 9563

The court begins with Vehicles 9563. It is not owned by the Debtor, it is not used by the Debtor, and it is not in the possession of Debtor. Debtor's testimony is that he uses Vehicle 9581 in the ordinary course of business to generate Debtor's primary source of income. Dec., ¶ 4; Dckt. 62.

At best, Debtor is merely a figurehead to claim bankruptcy automatic stay protection for the benefit of Friends & Family Transportation, LLC and an unnamed cousin, which "protecting" Friends & Family Transportation, LLC and the unnamed cousin from fulfilling duties and obligations arising under the Bankruptcy Code for obtaining relief thereunder.

While the Debtor in Possession states that he wants to keep Vehicle 9563, which is owned by Friends & Family Transportation, LLC and is in the possession of an unnamed cousin, cause exist to terminate the stay, to the extent it exists for Vehicle 9563. This is not a vehicle that the Debtor in Possession uses in the operation of the business of the Bankruptcy Estate. The evidence presented demonstrates that Vehicle 9563 is not owned by the Debtor.

The Debtor is attempting to use this Bankruptcy Case to improperly "protect" Vehicle 9563 for the benefit of Friends & Family Transportation, LLC while it is being used by an unnamed cousin. Debtor lists Movant as having "only" a general unsecured claim in this Case on Schedule E/F. Dckt. 31 at 15.

While the Debtor in Possession proposes to start making adequate protection payments and reamortize the entire debt owed to Movant over sixty months, there is no explanation provided as to how Vehicle 9563 has any connection to this Bankruptcy Estate.

Cause exhibits to terminate the automatic stay, to the extent it actually applies, to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against Vehicle 9563, 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.

Relief From the Stay re Vehicle 9581

The Debtor, as of the commencement of this case, and continuing as Debtor in Possession has been and is in possession of Vehicle 9581. This is the vehicle that Debtor testifies is used to operate the business that is property of the Bankruptcy Estate and will be used to fund a Plan in this case.

The July 2024 Monthly Operating Report shows that the Debtor in Possession has been unable to operate this business since the filing of this case. The testimony provided by the Debtor provides no explanation as to why there has been no business operation or how it will start going forward in September 2024.

On Schedule A/B, under business equipment, Debtor lists the two Vehicles as having a value of $72,000.00. Schedule A/B, ¶ 44. That appears to state a value of $36,000 for each vehicle. The Debtor in Possession offers no statement of value in the Opposition.

While the Debtor in Possession argues that adequate protection exists and payments will be made to Movant, they have not yet begun.

Debtor in Possession argues he will pay the full value of the outstanding loan at 9.68% interest, beginning September 1, 2024. Such an amount could provide sufficient adequate protection payments to Movant while Debtor uses the Vehicles to reorganize.

Using the Debtor's valuation of Vehicle 9581, there would be an equity cushion of approximately $15,000, assuming that one-half the debt, ($20,868) will remain to be paid after Movant recovers Vehicle 9563. If the Debtor in Possession is able to operate the business and generate income to pay the secured claim, such equity may provide adequate protection.

However, Movant asserts that Debtor first defaulted on the secured debt in October 2023, and has continued in default during the following eleven months.

At the hearing, **xxxxxxx**

~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due, as well as Debtor failing to maintain insurance on the Vehicles. 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)
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 BMO Bank N.A. ("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 granted, and 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 two assets identified as 2017 Kenworth T680s, VIN ending in 9563 ("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 the Motion is **xxxxxxx**, ~~and 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 two assets identified as 2017 Kenworth T680s, VIN ending in 9581 ("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.

2. **24-23061-E-7** **LIZA MORENO** **CONTINUED MOTION FOR RELIEF**
AGN-1 **Nicholas Wajda** **FROM AUTOMATIC STAY**
7-30-24 [14]

MAYRA VICTORIA 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 not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and the Chapter 7 Trustee on July 26, 2024. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. Movant is one day late of the required notice period.

Moreover, Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and his attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), aff'd, 56 F.3d 70 (9th Cir. 1995)*; In re Bloomingdale,* 137 B.R. 351, 354 (Bankr.C.D.Cal.1991)*; In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), aff'd, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

At the hearing, the court continued the hearing to allow for service to be completed.

The Motion for Relief from the Automatic Stay is granted.

SEPTEMBER 12, 2024 HEARING

At the prior hearing held on August 22, 2024, the court raised the point the Debtor herself had not been served. The court continued the hearing to allow service on the Debtor. A review of the Docket shows service was made on Debtor on August 22, 2024. Dockets 30, 31.

At the hearing, **xxxxxxx**

REVIEW OF THE MOTION

Mayra Victoria ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 715 West Beverly Place, Tracy, Ca 95376 ("Property"). The moving party has provided the Declaration of Arthur G. Newton to introduce evidence as a basis for Movant's contention that Liza Melina Moreno ("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. Decl. ¶ 7, Docket 17; Ex. B, Docket 16. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of San Joaquin on May 13, 2024. Ex. C, Docket 16. The trial in that case has been stayed pending this Motion.

While in the Motion Movant states that she is the owner of the property that is the Subject of the Motion, the State Court Complaint (Exhibit C; Dckt. 16) have Movant show as "Mayra Victoria, Trustee - Mayra Victoria Trust DTD 12/22/22." The Lease Agreement, or portion thereof, filed as Exhibit A (Dckt. 16) does not identify who is the lessor of the Property.

From the Motion and the State Court Complaint, relief from the automatic stay is sought by Mayra Victoria, whether individually or as the Trustee of the Mayra Victoria Trust DTD 12/22/22, and relief can be so granted.

Evidence In Support of Motion

Four Exhibits have been filed in support of this Motion. These Exhibits are summarized below by the court:

A. Exhibit A - Identified as "Rental Agreement Between the Debtor and the Movant."

It appears that a clerical error was made with the filing of the Rental Agreement. No Agreement is provided as Exhibit A, but rather, it appears that a last page addendum to a Rental Agreement has been provided as Exhibit A. Exhibit A is a notarized page which is signed only by the Debtor, and states: (1)Her name is Liza Moreno, (2) she rents the house identified as 715 W. Beverly Place, Tracy, CA, (3) the rent is $1,700 a month, and (4) Debtor pays the rent via Zelle.

There is no landlord identified and there is no other party to any agreement.

This Exhibit purports to be authenticated by Arthur Newton, attorney for Movant ("Counsel'). He states that Exhibit A is a true and correct copy of the "Lease." However, he does not state how he has personal knowledge that this is the "Lease." Rather, it appears that Counsel likely heard somebody say, possibly Movant, that this is the Lease and now Mr. Arthur Newton is saying what his ears heard the other person say.

B. Exhibit B - Three-Day Notice to Pay or Quit.

This Three-Day Notice is authenticated by Counsel, who is the person signing the Three-Day Notice.

C. Exhibit C - Unlawful Detainer State Court Complaint

The Unlawful Detainer Complaint is authenticated by Counsel, who has signed the Complaint. It is also verified by Mayra Victoria, Trustee. It states that the Lease is attached to the State Court Complaint, however, the "Lease" is the same one page document as Exhibit A.

D. Exhibit D - Notice of Trial Issued by the State Court.
The Notice of Trial states that the Unlawful Detainer Trial was set for July 31, 2024.

Exhibits; Dckt. 16.

The only Declaration filed in support of the Motion is that of Counsel. Dec.; Dckt. 17. While testifying that Exhibit A is the lease and the monetary defaults, the Declaration does not provide any testimony as to how Counsel has personal knowledge of these facts which he is attempting to testify to in this court. See, Fed. R. Evid. 602, personal knowledge required of witness.

Schedules and Statement of Financial Affairs Filed by Debtor

On the Bankruptcy Petition, ¶ 5, Debtor lists the Property as her residence. Dckt. 1 at 2. On Schedule E/F Debtor lists Movant (individually, not as Trustee) as having an undisputed unsecured claim for ($5,950). *Id*. at 23. The basis for this obligation is stated to be a "lease."

On Schedule G, Debtor does not list any unexpired leases that are property of the Debtor. *Id*. at 25.

On the Statement of Financial Affairs, ¶ 9, Debtor identifies the State Court Unlawful Detainer action as pending litigation. *Id*. at 34.

The Chapter 7 Trustee has filed his Report of No Distribution.

Decision

Movant has provided a properly authenticated copy of the Three-Day Notice to Pay Rent or Quit. Ex. B, Docket 16. The Three-Day Notice to Pay Rent or Quit document lists Movant, in her capacity as trustee of the Mayra Victoria Revocable Trust, as the landlord of the real property. On Schedule E/F Debtor verifies that Movant is the landlord for the Property. 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-Mack, 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).

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, in order to protect her against further loss and prejudice due to a lack of adequate protection, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:1-4, Docket 14.

Movant has pleaded, by the court assuming that the grounds stated in various parts of the Motion are a basis for the requested waiver of the 14-day stay, 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 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 Mayra Victoria ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, individually and as Mayra Victoria, Trustee - Mayra Victoria Trust DTD 12/22/22," and her agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 715 West Beverly Place, Tracy, Ca 95376 .
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

FINAL RULINGS

3. 24-23106-E-7 SKI-1 | **JOELLE ROBERTS** Pro Se | **MOTION FOR RELIEF FROM AUTOMATIC STAY** 8-8-24 [14]

AXOS BANK VS.

Final Ruling: No appearance at the September 12, 2024 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 8, 2024. 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.

Axos Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Ford Explorer, VIN ending in 4946 ("Vehicle"). The moving party has provided the Declaration of Tim Mertikas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joelle Roberts ("Debtor"). Decl., Docket 16.

Movant Debtor is in default for the payments due April 23, 2024 through July 23, 2024, each in the amount of $878.22, which remain unpaid for a default of $3,512.88. Declaration ¶ 7, Docket 16. This delinquency includes one post-petition payment.

Kimberly Husted, the Chapter 7 Trustee ("trustee"), filed a nonopposition on August 14, 2024.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 17. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $35,704.10 (Declaration ¶ 6, Docket 16), while the value of the Vehicle is determined to be $14,450, as stated on the J.D. Power Valuation Report. Ex. D, Docket 17.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 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.

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, as Debtor's Statement of Intention provides for surrender of the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 3:8-9, Docket 14.

Movant has 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 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 Axos 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** the Motion is granted, and 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 Explorer, VIN ending in 4946 ("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 waived for cause.
>
> No other or additional relief is granted.

4. 24-23308-E-7 KALI SMITH **MOTION FOR RELIEF FROM AUTOMATIC STAY**
Pro Se **8-9-24 [15]**

SEABRIDGE, LLC VS.
DEBTOR DISMISSED: 08/16/24

Final Ruling: No appearance at the September 12, 2024 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 9, 2024. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted, the automatic stay having been terminated by dismissal of this bankruptcy case.

Seabridge, LLC ("Movant") seeks relief from the automatic stay with respect to Kali S. Smith's ("Debtor") rental real property commonly known as 1402 Spyglass Parkway, Vallejo, California, 94591 ("Property"). Movant has provided the Declaration of Jonathan Findlaytor to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 18.

The instant case was dismissed on August 16, 2024, for failing to timely file documents. Dckt. 22.

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

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

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

> (1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;
>
> (2) the stay of any other act under subsection (a) of this section continues until the earliest of—
>
> (A) the time the case is closed;
>
> (B) ***the time the case is dismissed***; or
>
> (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

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

> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—
>
> (1) reinstates—
>
> (A) any proceeding or custodianship superseded under section 543 of this title;
>
> (B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and
>
> (C) any lien voided under section 506(d) of this title;
>
> (2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and
>
> (3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of August 16, 2024, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on August 16, 2024.

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 Seabridge, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on August 16, 2024 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Kali S. Smith ("Debtor") pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 1402 Spyglass Parkway, Vallejo, California, 94591, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the August 16, 2024 dismissal of this bankruptcy case.

5. **24-20212-E-7** **RONALD/SUSAN MACOM** **MOTION FOR RELIEF FROM**
AP-1 **Gabriel Liberman** **AUTOMATIC STAY**
8-6-24 [28]

JPMORGAN CHASE BANK, N.A.
VS.

Item 5 thru 6

Final Ruling: No appearance at the September 12, 2024 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 August 6, 2024. 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.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Jaguar F-Type, VIN ending in 0138 ("Vehicle"). The moving party has provided the Declaration of James Stephan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ronald Joseph Macom and Susan Lynn Macom ("Debtor"). Decl., Docket 31.

Movant argues Debtor has not made the payments for February 12, 2024 through July 12, 2024, which amounts to six post-petition payments delinquent in the total amount of $4,487.04. Declaration ¶ 5, Docket 31.

The Chapter 7 Trustee, Nikki Farris, filed a nonopposition on August 14, 2024.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 3, Docket 30. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $28,354.75 (Declaration ¶ 6, Docket 31), while the value of the Vehicle is determined to be $30,675, as stated on the J.D. Power Valuation Report. Ex. 3, Docket 30.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 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 equity in the Vehicle in the amount of $2,320.25. 11 U.S.C. § 362(d)(2). Therefore, the court cannot grant relief pursuant to 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by JPMorgan Chase Bank, N.A. ("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 granted, and 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 Jaguar F-Type, VIN ending in 0138 ("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.

6. **24-20212-E-7 AP-2** | **RONALD/SUSAN MACOM** **Gabriel Liberman** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **8-13-24 [35]**

JPMORGAN CHASE BANK, N.A.
VS.

Final Ruling: No appearance at the September 12, 2024 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 August 13, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2020 Land Rover Discovery, VIN ending in 9896 ("Vehicle"). The moving party has provided the Declaration of James Stephan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ronald Joseph Macom and Susan Lynn Macom ("Debtor"). Decl., Docket 38.

Movant argues Debtor has not made the payments for February 12, 2024 through July 12, 2024, which amounts to six post-petition payments delinquent in the total amount of $6,019.86. Declaration ¶ 5, Docket 38.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. 3, Docket 37. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $42,636.92 (Declaration ¶ 6, Docket 38), while the value of the Vehicle is determined to be $33,800, as stated on the J.D. Power Valuation Report. Ex. 3, Docket 37.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by JPMorgan Chase Bank, N.A. ("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 granted, and 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 2020 Land Rover Discovery, VIN ending in 9896 ("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.

7. 24-22482-E-7 KMM-1 | **TIRSA SARDINHA** Scott Johnson | **MOTION FOR RELIEF FROM AUTOMATIC STAY** 7-31-24 [12]

AMERICAN HONDA FINANCE CORPORATION VS.

Final Ruling: No appearance at the September 12, 2024 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 31, 2024. 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.

American Honda Finance Corporation, as serviced by American Honda Finance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2022 Honda Civic, VIN ending in 0374 ("Vehicle"). The moving party has provided the Declaration of Tasha Jackson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Tirsa Priscila Sardinha ("Debtor"). Decl., Docket 14.

Movant argues Debtor is past due for March 3, 2024 through and including July 3, 2024, monthly payments at the rate of $575.05 per month. Declaration 3:1-6, Docket 14. This includes at least one post-petition payment missed. Movant also testifies it cannot identify if the Vehicle is insured, believing Debtor is operating the Vehicle without insurance. *Id.* at 3:7-10.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Ex. D, Docket 15. The Report has been properly authenticated and is accepted as a market report or commercial

publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $33,411.57 (Declaration 4:4, Docket 14), while the value of the Vehicle is determined to be $25,000, as stated on the J.D. Power Valuation Report. Ex. D, Docket 15.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 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).

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 American Honda Finance Corporation, as serviced by American Honda Finance 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 granted, and 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 2022 Honda Civic, VIN ending in 0374 ("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.