

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge
Sacramento, California

September 13, 2022 at 1:30 p.m.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2022. By the court's calculation, 25 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 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, _____.

The Motion for Relief from the Automatic Stay is granted.

Regal Capital Holdings LLC (“Movant”) seeks relief from the automatic stay with respect to James Paul Jones’s (“Debtor”) real property commonly known as 4418 Green Valley Rd., Fairfield, California (“Property”). Movant has provided the Declaration of Caroline Hegarty to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Movant’s loan matured and all is due and payable as of March 1, 2022. Declaration, Dckt. 38. Movant also provides evidence they recorded a Notice of Default after the filing of the Petition with no knowledge of the pending bankruptcy case. *Id.*

Movant requests several types of relief in this case. First, to terminate the stay going forward. Second, that any co-debtor stay will also be vacated. Third, to allow communication with Debtor regarding potential forbearance, loan modification, refinance, and other agreements. Fourth, for attorney fees and costs and waiver of the fourteen (14) day stay. And finally, for annulment of the stay to validate actions taken after the date the bankruptcy case was filed.

DISCUSSION

Annulment of Stay

For purposes of this Motion, the court begins with review of whether there are grounds to annul the stay. As is well established in the Ninth Circuit, an act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); (*In re Schwartz*), 954 F.2d 569, 571 (9th Cir. 1992).

Congress provides for the court to annul the automatic stay so as to render what was void to not be void. However, retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.*

In re Fjeldsted, the bankruptcy Appellate Panel for the Ninth Circuit expanded the factors a court may consider when deciding whether to annual the stay: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court reviews the various framework of factors and states how they apply in this Motion as follows:

Nat'l Envtl. Waste Corp Factors

- (1) Whether the creditor was aware of the bankruptcy petition;

Here, Movant has established they were not aware of the bankruptcy case. Upon review of Debtor's original filings on April 1, 2022, neither the Property nor Claim were included in their

documents. It appears, therefore, that Movant would not have notice of the bankruptcy case. It was not until April 14, 2022, that Debtor listed the Property in her Schedules, Dckt. 12, however, still did not list Movant as a creditor.

- (2) Whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.

The evidence as it stands shows Movant would be prejudiced if the stay is not annulled. Debtor has defaulted on the Note, the Note has fully matured, and Movant has performed all requirements under the Deed of Trust. Additionally, Debtor essentially hid the bankruptcy case from Movant by not listing them as a creditor or notifying them of the filing.

In Re Fjeldsted Factors

Under the *In re Fjeldsted* factors, the Panel looked at refining and providing further guidance to the court as to factors that may apply. Relevant factors here include:

- A. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;

Reiterating the foregoing, Movant was unaware of the bankruptcy. Movant did not receive notice of the bankruptcy on the master address list provided by the Debtor. Movant has taken no further action since receiving notice on June 24, 2022 when they were informed by counsel.

- B. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violating conduct;

Movant filed this Motion on August 19, 2022, shortly after they were informed of the bankruptcy case on June 24, 2022.

- C. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

There is no evidence that Movant has taken any further action regarding the default since receiving notice of the bankruptcy case. Therefore, Movant has not continued to act in violation of the stay.

- D. Whether annulment of the stay will cause irreparable injury to the debtor;

There is no showing that annulling the stay will cause irreparable injury to the Debtor.

After taking into consideration all factors, the court finds reason to annul the stay for actions taken after the filing of the bankruptcy case until Movant received notice.

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

Movant also asserts that cause exists to modify the stay, whether or not it is annulled to allow Movant to enforce its rights in the Property. 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 JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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.

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.

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant seeks to proceed with collecting the deficiency on the loan from the co-debtor who has not filed for protection under the Bankruptcy Code.

Attorney’s 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.

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 Motion to Annul Automatic Stay or in the Alternative In Rem Relief From Automatic Stay filed by Regal Capital Holdings LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled as of the April 1, 2022 commencement of this Bankruptcy Case with respect to all acts and actions taken by Movant and its agents to effect the Notice of Default, including but not limited to the filing of any documents or subsequent mailings as required by State law as it relates to Movant’s interest in the real property commonly known as 4418 Green Valley Rd., Fairfield, California, California.

IT IS FURTHER 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 4418 Green Valley Rd., Fairfield, California, 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 request to terminate the co-debtor stay of Cynthia D. Jones of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

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.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

No other or additional relief is granted.

2. **22-21222-E-13** **PEGGY SOMKOPULOS**
ALG-1 **Pro Se**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-8-22 [41]**

**WILMINGTON SAVINGS FUND
SOCIETY, FSB VS.**

**COUNSEL FOR MOVANT AND COUNSEL FOR THE CHAPTER 13 TRUSTEE
SHALL ADDRESS THE ISSUES RELATING TO THE PARTY HAVING THE RIGHT
TO ASSERT FRAUDULENT TRANSFER CLAIMS POST-PETITION
(See 11 U.S.C. § 544(a) and § 548) AND THE EFFECT OF RECOVERING
SUCH A TRANSFER FOR THE BENEFIT OF
THE BANKRUPTCY ESTATE (11 U.S.C. § 550(a))**

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 on August 8, 2022. The Motion was not served on Debtor's Attorney, however, Debtor's Attorney substituted in on September 5, 2022, after this motion was filed. By the court's calculation, 36 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 ~~XXXXXXX~~ .

Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Trustee for PNPMS Trust II ("Movant") seeks relief from the automatic stay with respect to Peggy Caryn Somkopulos's

("Debtor") real property commonly known as 195 Dayton Village Pkwy., Dayton, Nevada ("Property"). Movant has provided the Declaration of Steven Bellanti to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor sold all their interest in the Property on April 30, 2003 to New Smyrna Properties, Inc. After this transfer, on or about November 29, 2004, Debtor received a Home Equity Line of Credit in the amount of \$75,000.00 executed through a Note in favor of the lender, JPMorgan Chase Bank, N.A. On or about July 6, 2011, all beneficial interest in the Deed of Trust was assigned to Movant.

On November 3, 2021, a Notice of Default was recorded against the Property, in which Movant discovered the adverse claim between Movant, Debtor, and New Smyrna Properties, Inc. Movant commenced a civil action on or about March 22, 2022 against New Smyrna Properties, Inc., and includes claims for Fraudulent Conveyance against both New Smyrna Properties, Inc. and Debtor, as well as a breach of contract claim against Debtor.

Movant argues relief from stay is needed because it precludes Movant from proceeding with the pending state court action against Debtor and a third party.

The relief requested by Movant is stated as relating to the pending State Court Action against New Smyrna Properties, Inc., Debtor Peggy Somkopulos, and other Doe Parties. In addition to seeking to quiet title against New Smyrna Properties, Inc. and any Doe Defendants added, Movant seeks to prosecute a claim against all Defendants in the State Court Action, including Debtor Peggy Somkopulos for fraudulent conduct and conveyance. Exhibit 5, First Amended Complaint; Dckt. 46.

By the avoidance of the fraudulent conveyance action, it appears that Movant seeks to have title placed back into the Debtor, if having been fraudulently reconveyed, and thereby into the Bankruptcy Estate in this Bankruptcy Case.

In the Motion Movant makes it clear that the substantive relief sought is as against New Smyrna Properties, Inc., and apparently any other Does who come out of the woodwork asserting an interest via Smyrna Properties, Inc. Movant states that the stay remains in effect as to enforcing any judgment against the Debtor or the Bankruptcy Estate.

Issue of Fraudulent Conveyance and Recovery of Property

Movant asserts the right to have Debtor's transfer of the Property avoided as a fraudulent conveyance. As Congress provides in 11 U.S.C. § 544(a)(1) that as a matter of federal law the trustee in bankruptcy (or the Chapter 13 debtor acting as a fiduciary of the bankruptcy estate) has the right of any creditor to avoid fraudulent transfers made by the debtor. *See Zazzali v. United States (In re DBSI, Inc.)*, 869 F.3d 1004, 1008 (9th Cir. 2017), stating:

In bringing his [fraudulent transfer] claims against the IRS, Zazzali relied on two different sections of the Bankruptcy Code: 11 U.S.C. § 548 ("Section 548") and, as discussed above, Section 544(b)(1). Section 548 and Section 544(b)(1) both permit a trustee to avoid transfers, however they impose different statutes of limitations. Section 548 has a two-year statute of limitations, while Section 544(b)(1) incorporates the statute of limitations of the applicable law.

Congress further provides in 11 U.S.C. § 550 that if a transfer is avoided [including pursuant to 11 U.S.C. § 544 or § 548 (the additional federal fraudulent conveyance statutes)], such as a fraudulent conveyance is recovered “for the benefit of the [bankruptcy] estate.”

Given that Movant is seeking to assert a fraudulent conveyance action, it may be that the right to do so is “locked up” in the Bankruptcy Case as a matter of Federal Law. Absent leave from the court, it is for the trustee (here the Chapter 13 debtor as a fiduciary exercising the powers of a bankruptcy trustee) to bring such an action to recover the property for the benefit of the bankruptcy estate.

It may well be that Debtor is not capable of prosecuting such an action. It may be that Movant is the right person to do so. However, in light of 11 U.S.C. § 550(a) and such avoided transfers being for the benefit of the Bankruptcy Estate, the court wants to ensure that such issues are addressed and Movant doesn’t later learn that its efforts have been to benefit the Bankruptcy Estate in general and not to have its deed of trust determined to be encumbering the Property.

At the hearing, **XXXXXX**

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

David P. Cusick (“the Chapter 13 Trustee”) filed an Nonopposition on August 23, 2022. Dckt. 57. Chapter 13 Trustee does not oppose the Motion and notes this is an unconfirmed case where Debtor does not provide for Movant in her schedules or proposed Plan.

DEBTOR’S OPPOSITION

Debtor filed a pleading titled “Limited Opposition” (Dckt. 60) to this Motion for Relief From the Stay. In the Limited Opposition Debtor’s counsel states that it is undisputed:

1. Debtor has no interest in the Property.
2. It is not property of the Bankruptcy Estate in this Case.
3. Movant may file a Proof of Claim.
4. Debtor does not oppose the relief requested by Movant.

Dckt. 60.

DISCUSSION

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, however. *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).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state court litigation be allowed to continue after the considerable time and resources put into the matter already:

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of any judgment received against Debtor, David P. Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Trustee for PNPMS Trust II (“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 modified as applicable to Peggy Caryn Somkopulos (“Debtor”) 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 to proceed with litigation in Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust as Trustee for PNPMS Trust II v. New Smyrna Properties, Inc. et al.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David P. Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

PHH MORTGAGE CORPORATION VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 4, 2022. By the court's calculation, 40 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.

Mortgage Assets Management Series I Trust ("Movant") seeks relief from the automatic stay with respect to Helen Ruth Gunkel's ("Debtor") real property commonly known as 513 Phillip Street, Vallejo, California ("Property"). Movant has provided the Declaration of Marilyn Solivan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor is in default under the terms and conditions of the Note and Reverse Mortgage due to failure to maintain property taxes, an obligation set forth under the Reverse Mortgage. Motion, Dckt. 98. The total delinquency is stated to be \$1,371.58. Id, p. 3-4. However, no evidence (such as testimony) is provided to support the allegation that the taxes are \$1,371.58 in arrears.

TRUSTEE'S RESPONSE

Trustee filed a Response on August 9, 2022. Dckt. 103. Trustee opposes Motion for Relief on the grounds that Movant has not filed a Relief from Stay Summary Sheet and that Trustee is not certain to the nature of the default. Trustee filed an amended response on August 10, 2022. Dckt. 106. Trustee redacts opposition to the motion.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 30, 2022. Dckt. 113. Debtor asserts that her adult son is assisting her in the final payments and will make payments to Movant once her plan is paid off. Debtor also asserts there is sufficient equity in the property to more than adequately protect Movant.

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 \$276,018.51 (Declaration, Dckt. 101), while the value of the Property is determined to be \$246,000.00, as stated in Schedules A/B and D filed by Debtor.

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).

In light of there being only a (\$1,371.58) default at this time and Debtor coming to the end of the Plan in October 2022, just one month away, cause does not exist to grant relief at this time. The Plan will come to an end and the stay will terminate in the near future by operation of law.

The court does not grant relief pursuant to 11 U.S.C. § 362(d)(1).

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 Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The obligation at issue is a Reverse Mortgage, which the court understands to be an obligation that the Debtor is not obligated to repay. Rather, whether there is equity or no equity, Movant gets the Property.

Here, with an obligation of (\$276,018), the only amount for which testimony is provided in the Declaration in Support of the Motion (Dckt. 101) and Movant relying on Debtor's valuation from 2016 on Schedule A/B of \$246,000, it appears that there may be equity for the Debtor, if she wanted to sell the Property, or at least Movant is adequately protected.

It is curious that Movant has chosen to use a six year old value for the Property. The court takes judicial notice that real estate values in California have increased substantially since 2016. While Debtor makes this statement in the Opposition, no evidence of the magnitude of the increase is provided.^{Fn.1} Given the well documented increase in property values, based on the six year old evidence of value that Movant has chosen to use, the court concludes that equity exists for Debtor in the Property.

FN. 1. In some situations the court will be presented with values from the zillow.com or redfin.com websites. The court does not accept such internet values as evidence of value, but it is interesting to note. For the redfin.com website, it gives an estimated value of \$460,000. Zillow.com has an estimated value of \$391,600.

<https://www.redfin.com/CA/Vallejo/513-Phillip-St-94590/home/2247704>.
https://www.zillow.com/homedetails/513-Philip-St-Vallejo-CA-94590/15660102_zpid/

The court does not grant relief pursuant to 11 U.S.C. § 362(d)(2).

Request for Attorneys' Fees

Because Movant has established that there is no equity in the Property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case. Thus, such amount is not included as part of a secured claim. 11 U.S.C. § 502(b).

While \$1,038.00 in requested attorney's fees may be reasonable for a Motion for Relief, no evidence is provided that such fees have actually been incurred and paid or owed to be paid by Creditor.

Movant not prevailing on this Motion, the court cannot identify a basis for Movant seeking prevailing party attorney's fees and costs as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054, 9014.

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 Mortgage Assets Management Series I Trust (“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 for Relief From the Automatic Stay is denied.

4. **22-21864-E-11 DAVID FOYIL**

CAE-1

**STATUS CONFERENCE RE:
VOLUNTARY
PETITION
7-28-22 [1]**

Debtor’s Atty: David Foyil

Notes:

Status Report filed 8/17/22 [Dckt 18]

Trustee Report at 341 Meeting lodged 9/2/22. Debtor did not appear. Meeting continued to 9/12/22 at 3:30 p.m.

The Status Conference is XXXXXX

SEPTEMBER 13, 2022 STATUS CONFERENCE

The U.S. Trustee reports that the Debtor did not appear at the First Meeting of Creditors on September 2, 2022. September 2, 2022 Docket Entry Report. The meeting has been continued to September 12, 2022. The U.S. Trustee reports, **XXXXXX**

On August 17, 2022, Debtor in Possession filed a Status Report. Dckt. 18. He reports that the Chapter 11 Plan is to be funded through the operation of his law practice. Additionally, Debtor has been able to resolve his other creditors, modified the loan secured by his residence so that it is current pursuant to a loan modification, and has little in unsecured debt, but for secured tax claims, which the Debtor in Possession sees to address through increased revenues in his law practice.

At the Status Conference, **XXXXXX**

FINAL RULINGS

Final Ruling: No appearance at the September 13, 2022 Hearing is required.

Local Rule 9014-1(f)(2) Motion— No Continued Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 1, 2022. By the court's calculation, 25 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 13 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.

The hearing on the Motion for Relief from the Automatic Stay is concluded, the Parties having Stipulated to the entry of an Adequate Protection Order.

KeyPoint Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford Truck Escape, VIN ending in 8387 (“Vehicle”). The moving party has provided the Declaration of Megan Pieracci to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Larry John Jackson and Debra Ann Jackson (“Debtors”).

Movant argues Debtor has not made 2 post-petition payments, with a total of \$676.36 in post-petition payments past due. Declaration, Dckt. 129.

TRUSTEE'S NONOPPOSITION

On June 30, 2022, Chapter 13 Trustee filed a nonopposition to the Motion for Relief. Dckt. 23.

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 \$11,535.48 (Declaration, Dckt. 129), while the value of the Vehicle is determined to be \$15,700.00, as stated in Schedules A/B and D filed by Debtor. Movant claims there is lack of equity in the vehicle (Motion, Dckt. 126 at 4:12), however, the evidence shows there is around \$4,000 in equity.

At the hearing, Movant and Debtor reported that Debtor is current and that the parties are working out an adequate protection stipulation. The parties requested a continuance so that could be completed for this Contested Matter.

The court continues the hearing as requested by the Parties.

August 30, 2022 Hearing

At the hearing, counsel for Movant reported that the adequate protection agreement is being executed and requested a short continuance so that it may be complete, and then Movant will dismiss this Motion.

Movant and Debtor's Stipulation

On August 30, 2022, Movant and Debtor filed a stipulation (Dckt. 135), signed by both parties and counsel, confirming that Debtor agrees to maintain monthly payments, insurance on the vehicle, and to comply with the terms of the contract, among other items various things mentioned in the stipulation. The parties also agreed to waive the 14-day stay prescribed by Bankruptcy Rule 4001(a)(3). The Stipulation did not dismiss this Matter.

September 13, 2022 Hearing

On August 30, 2022, the Parties had their Stipulation for Adequate Protection filed and a proposed order lodged with the court. The terms of the Stipulation and Adequate Protection Order are:

- A. Debtor shall make the regular monthly plan payments of \$338.18, commencing on August 19, 2022, and continuing thereafter under the secured claim is paid in full.
- B. Debtor shall provide written proof of continuing insurance on the Vehicle securing Creditor's claim, with Creditor listed as a loss payee.
- C. Except as modified by the Adequate Protection Stipulation, Debtor will comply with the terms of the Contract between the Parties.
- D. In the event of a default, Creditor will provide a written Notice of Default and Debtor will have ten (10) days to cure. If not timely cured, Creditor may file a supplemental *ex parte* motion for relief from the stay based on the failure to cure the default. (The court requires the *ex parte* motion in light of Federal Rule of Bankruptcy Procedure 9013.)

- E. In the event this bankruptcy case is converted to another Chapter of the Bankruptcy Code, any orders entered by the court pursuant to the Stipulation continues to be effective as to the Debtor.
- F. Further, that if this Bankruptcy Case is dismissed, then the orders in this case remain effective in a subsequent case based upon *res judicata*.

This court has not been presented with a legal basis for an order of this court in this Bankruptcy Case somehow effecting a subsequent bankruptcy case. Congress provided in 11 U.S.C. § 362(d)(4) when an order effecting the automatic stay in a prior case can preclude the stay from going into effect in a subsequent case. No basis has been shown for the parties having the ability to waive the application of law as written by Congress in a subsequent case as it applies to all other parties in interest and persons, including future bankruptcy trustee who do not yet exist.

- G. The fourteen (14) day stay of enforcement arising under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

With the exception of the order issued by this court pursuant to this Motion being effective and binding in future bankruptcy cases, and requiring the filing of a supplemental ex-parte motion and evidence seeking relief based on the failure to cure a default within ten days, adequate protection is granted as provided in the Stipulation (Dckt. 135).

All issues in this Contested Matter being resolved, it is removed from the Calendar.

The court shall issue an order using the proposed order lodged by counsel for Creditor, with modifications as provided above.

6. [20-21922-E-13](#) MATTHEW/MICHELE KING MOTION FOR RELIEF FROM
[SKI-1](#) Mary Ellen Terranella AUTOMATIC STAY
8-9-22 [48]

CARMAX BUSINESS SERVICES, LLC VS.

DEBTOR DISMISSED: 08/26/22
JOINT DEBTOR DISMISSED:
08/26/22

Final Ruling: No appearance at the September 13, 2022 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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 Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.