

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 30, 2021 at 10:00 a.m.

1. [21-90402-E-7](#)
[HRH-1](#)

GURMEET SUNER
Nicholas Wajda

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-8-21 [11]**

BMO HARRIS BANK N.A. VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter Trustee, and Office of the United States Trustee on September 8, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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

BMO HARRIS BANK N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as:

1. 2016 Utility 53' Refrigerated Van, VIN ending in 2141
2. 2016 Utility 53' Refrigerated Van, VIN ending in 2143
3. 2016 Freightliner Cascadia Series, VIN ending in 2542

(“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 Gurmeet Singh Suner (“Debtor”).

Movant has also provided a copy of the Black Book Valuation Report for the Vehicles. 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 the asset s are determined to be \$112,856.12 (Declaration, Dckt. 13). Debtor has not listed nor valued the Vehicles in the Schedules filed by Debtor. Movant’s Valuation Report values the Vehicles at \$34,000.00; \$34,000.00; and \$44,7252.00, respectively.

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). 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).

DISCUSSION

Here, Movant's Declaration asserts that Debtor has not provided evidence of insurance coverage on any of the vehicles. (Dckt. 13). Additionally, Debtor has defaulted under the terms of their agreements and has failed to cure their defaults.

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

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 BMO HARRIS 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 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 assets identified as: 2016 Utility 53' Refrigerated Van, VIN ending in 2141; 2016 Utility 53' Refrigerated Van, VIN ending in 2143; and 2016 Freightliner Cascadia Series, VIN ending in ("Vehicles"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicles 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.

2. [21-90321-E-7](#) **SEYMON BETMASHAL AND** **MOTION FOR RELIEF FROM**
 RAQUEL MIRZA **AUTOMATIC STAY**
 Steve Altman 9-7-21 [\[24\]](#)

SEYMON BETMASHAL VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Chapter 7 Trustee on September 7, 2021. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

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<p>The Motion for Relief from the Automatic Stay is XXXXX.</p>
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Seymon Betmashal ("Movant-Debtor") seeks relief from the automatic stay to allow his insurance carrier, Great West Casualty Company, to resolve claims of Creditors Rey Saavedra, Carmen Moreno, Rey Saavedra, Jose Serrano, Rhonda Anderson, and Felipe Penaloza, resulting from underlying lawsuits in Federal and Nevada State Court. Movant-Debtor claims their insurer would be solely funding any settlements.

Movant-Debtor argues that relief is needed to settle their underlying cases. Motion, Dckt. 24. Movant-Debtor, however, has not provided a declaration or exhibits to introduce evidence of the bases of the claim and the obligation owed by them. Typically this court requires declarations and exhibits to support

the Motions for Relief to be supported by exhibits and declarations for evidence to support the claim for relief. No such documents were provided to substantiate Movant-Debtor's claim.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. September 19, 2021 Docket Entry Statement.

DISCUSSION

Relieve of Motion and Supporting Evidence

This Motion for relief from the automatic stay has been filed by Debtor seeking relief for several creditors. Dckt. 24. It has not been filed by Debtor's bankruptcy counsel of record, but by another attorney who the court surmises is Debtor's insurance defense counsel. That attorney is also the attorney for Seymon Trucking, Inc., an entity that is not the debtor in this case.

The Motion pleads some simple grounds seeking relief, as plaintiffs often do, to allow a state court action or mediation to continue so that those plaintiffs can seek to recover from an insurance policy of the debtor which covers the alleged event from which the plaintiff's claim arises. Relief is commonly granted.

While providing a clear and simple pleading, Movant-Debtor provides no evidence in support of the Motion. The providing of some evidence to support the allegations is required.

Looking to the Notice of hearing on the Motion, while it provides an accurate and concise description of the relief requested and the time and date of the hearing, it does not include the required statement of whether written opposition must be filed or oral opposition may be presented at the hearing. L.B.R. 9014-1(d)(3)(B). Additionally, no Docket Control Number was assigned by Movant for this Motion, leaving it and any responsive pleadings lost on the Docket. L.B.R. 9014-1(c). Buried at the end of the notice is the Certificate of Service, which must properly be filed as a separate document. L.B.R. 9014-1(d)(4), 9004-2(c)(1).

While Movant-Debtor may feel that the present Motion is a "simple" matter for the court to rubber stamp, the Rules apply to everyone, with there not being a self-exclusion authorization if a party believes the Rules should not apply to that party.

Concerning this Motion, lack of evidence, and failure to comply with some basic rules concerning law and motion practice, Movant-Debtor's counsel advised the court **XXXXXXX**

Counsel also addressed if creditors of the Debtor were compromising claims against the Debtor's bankruptcy estate, would approval of such have to be obtained from the Bankruptcy Court as provided in Federal Rule of Bankruptcy Procedure 9019. Counsel addressed this points, **XXXXXXX**

Decision

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).

~~————— Movant-Debtor’s counsel having addressed at the hearing the reasons for the failure to provide evidence and the non-compliance with the long standing Local Bankruptcy Rules, the court proceeds with ruling on the merits of the Motion. ———~~

~~————— Although Movant-Debtor has provided no evidence of underlying state and federal court litigation, the court finds that the nature of these proceedings warrants relief from stay for cause. Therefore, judicial economy dictates that the state and federal court proceedings be allowed to continue in order for Movant-Debtor’s insurer to fund settlements to the Creditors. ———~~

~~————— The court shall issue an order modifying the automatic stay as it applies to Movant-Debtor to continue the Federal and State Court Litigation. The automatic stay is not modified with respect to enforcement of any judgment found against Debtor, Sheri L. Carello (“the Chapter 7 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 Seymon Betmashal (“Movant-Debtor”) 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 Seymon Betmashal (“Movant-Debtor”) to allow Movant-Debtor, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in the underlying State and Federal court proceedings. ———~~

~~————— **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Sheri L. Carello (“the~~

~~Chapter 7 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.

3. [16-25089](#)-E-13 **MARK/JENNIFER GALISATUS** **CONTINUED MOTION FOR RELIEF**
[QUA-1](#) **Daniel Davis** **FROM AUTOMATIC STAY**
 8-19-21 [111]
- MR. PICKLE'S FRANCHISE**
SYSTEMS, LLC VS.

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

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

Local Rule 9014-1(f)(3) 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 20, 2021. By the court’s calculation, 11 days’ notice was provided. The court set the hearing for August 31, 2021.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. Opposition was stated at the hearing.

The Motion for Relief from the Automatic Stay is granted, with the Stay annulled as to the filing of the Complaint in the District Court Action, and Modified effective November 30, 2021, to allow Movant to continue with prosecution of the District Court Action.

Mr. Pickle’s Franchise Systems, LLC (“Movant”) seeks relief from the automatic stay to allow a lawsuit against Mark Timothy Galisatus (the “Debtor”) in the United States District Court for the Eastern District of California in Case No. 2:21-cv-01003-MCE-DB (the “Federal Court Litigation”) to be concluded.

Movant has provided the Declaration of Jeffrey H. Wolf to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by MARK TIMOTHY GALISATUS and JENNIFER ELLEN GALISATUS (“Debtor”).

Movant argues that the Movant’s Franchise Agreement was mutually terminated between Movant and Debtor and there had been several conversations, with no resolution, regarding Movant’s concerns of Debtor violating the Franchise Agreement, Mutual Termination Agreement, and state and federal law by ongoing use of Movant’s trade dress and trade secrets in operating Dugout Deli. Declaration, Dckt. 112. Further, Mr. Wolf’s testifies that Movant was not aware of Debtor’s bankruptcy at the time Movant filed the Federal Court Litigation on June 4, 2021 as Debtor failed to inform Movant, and the first time Movant received notice was when Debtor filed notice of bankruptcy in the Federal Court Litigation on July 29, 2021. *Id.*

Movant requests that the court annul the stay as to the District Court proceedings that pre-dated Debtor giving Movant notice of the bankruptcy case. In making this request, Movant also asserts that the alleged improper conduct is continuing post-petition, thus the injunctive relief sought is based on continuing post-petition conduct.

CHAPTER 13 TRUSTEE’S NON-OPPOSITION

David Cusick (“the Chapter 13 Trustee”) filed a Non-Opposition on August 24, 2021. Dckt. 121.

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).

Debtor presented an oral opposition. The court addressed with the Parties the issues concerning the alleged post-petition conduct and that the Debtor’s Chapter 13 Plan will be completed soon and the bankruptcy case be done.

The court sets an extended briefing schedule to allow the Parties to continue in constructive settlement discussions that began at the August 31, 2021 hearing, so that they can focus their resources and

time on the issues in the pending litigation, and not bankruptcy sideshow issues that may be irrelevant in several months with the conclusion of the Bankruptcy Plan and the closing of the case.

At the August 31, 2021 hearing, the parties agreed to continue the matter to September 30, 2021.

Debtor's Opposition

Debtor filed an Opposition on September 17, 2021. Dckt. 130. Debtor asserts costs incurred having to defend a separate action outside the bankruptcy will dissipate funds available to the estate. Additionally, Movant has shown no evidence of hardship due to the operation of "Dugout Deli." Debtor is requesting the stay in place to complete their payment plan. In the interim, Debtor asserts they will continue discussing and attempting to resolve the underlying "trade dress" suit.

Debtor's Declaration

Debtor filed a Declaration on September 17, 2021. Dckt. 131. Debtor lists the time-line of the underlying District Court proceeding and attempts made to resolve the case.

Movant's Reply

Movant filed a Reply on September 24, 2021. Dckt. 133. Movant reasserts the automatic stay does not apply to the District Court Action, or, to modify the stay for cause (a) retroactively permitting the filing of the District Court Action and other acts done by Mr. Pickle's prior to its learning of the Bankruptcy Case and (b) prospectively to permit Movant to pursue its motion for a preliminary injunction and to liquidate its damages in the District Court.

Movant argues the Objection does not address that "the automatic stay neither licenses a debtor to infringe the property interests of others" or permit a debtor to operate a business in violation of statutes. Additionally, it would be an "unwarranted imposition" for this court to adjudicate the trade dress action. Further, Movant argues likelihood of success on the merits, litigation expenses, and the detriment to follow is not enough grounds to deny the motion.

DECISION

Movant seeks confirmation that the automatic stay does not apply, or if it does to modify the stay, to allow Movant to proceed in the United States District Court in an action seeking injunctive relief to enjoy Debtor from violating Movant's rights in intellectual property, including [d]ress and trade secrets relating to the ingredients, recipes, preparation methods, service standards, advertising and sale of sandwiches and other food items from Mr. Pickle's Sandwich Shop® locations." Supplemental Pleadings, p. 1:23-25; Dckt. 123.

In the Opposition, Debtor recounts the struggles of operating a restaurant business during the pandemic, having to modify their Chapter 13 Plan, why Debtor believes that Debtor is no infringing on the rights of Movant, and why having to litigate that issue now (as opposed to December 2021, which appears to be the end of the 66 month plan) would be a burden. Dckt. 130. Debtor asserts that to have to litigate the injunctive relief action outside of bankruptcy (there being no complaint for injunctive relief filed in this bankruptcy court) would be a burden that dissipates funds for the Debtor to complete the Plan.

Granting of Relief

In continuing the hearing, the court hoped that the parties could see a basis for agreeing to wait a couple months to proceed with the litigation in the District Court. That would allow Debtor to close within a month of completing the Plan, and add only a month or two to Movant being delayed. Unfortunately, such an agreement was not reached.

Movant provides a copy of the District Court Complaint as Exhibit 4. Dckt. 115. The Complaint does seek injunctive relief, but also seeks substantial monetary damages, which Movant asserts in the Complaint may be tripled.

Exhibit 5 by Movant is a copy of the Motion for Preliminary Judgement. *Id.* The Motion for Preliminary Judgment is one ten line paragraph in length. It advises the District Court that Movant seeks a preliminary injunction, but does not state grounds with particularity. Fed. R. Civ. P. 7(b). There is a twenty page points and authorities attached to the Motion for Preliminary Injunction that appears to include many grounds, as well as extensive citations, quotations, and argument. The requested injunctive relief requested is stated by Movant to be:

Mr. Pickle's brings this action to immediately enjoin Defendant from: (a) infringing and diluting Mr. Pickle's trade dress, thereby capitalizing on and damaging Mr. Pickle's goodwill and reputation; (b) engaging in unfair competition and misappropriating Mr. Pickle's trade secrets for Defendant's gain and to Mr. Pickle's detriment; and (c) and violating contractual post-termination obligations set forth in two contracts between the parties. Defendant's ongoing contractual and statutory violations are causing Mr. Pickle's immediate and irreparable harm, and injunctive relief is necessary.

Memorandum Points and Authorities, p. 1:3-9; Dckt. 115 at 111.

The Complaint has the District Court filed date of June 4, 2021. *Id.* 90. The Motion for Preliminary Injunction has a District Court filed date of June 7, 2021. *Id.* at 105.

A Certificate of Default issued by the Clerk of the District Court is dated July 14, 2021. *Id.* at 132.

A Notice of Pendency of Bankruptcy Case filed in the District Court Action has a District Court filed date of July 29, 2021.

The present Motion for Relief was filed shortly thereafter on August 19, 2021. Dckt. 111.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re*

Busch, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, the grounds for relief include the Debtor engaging in post-petition conduct that violates Movant's trademark and trade secrets right. Because a debtor obtains relief under the Bankruptcy Code, including the automatic stay, such is not a license to commit post-petition violations of another's rights.

The scope of the automatic stay is provided in 11 U.S.C. § 362(a), which states that the commencement of the bankruptcy case:

(a) . . . operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362(a). As provided in the Modified Plan, all property of the bankruptcy estate has reverted in the Debtor. Plan, ¶ 6.01; Dckt. 98.

As addressed by the court in *Dominic's Restaurant of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760 (6th Cir. 2012), the filing of a bankruptcy case does not provide a debtor with protection from post-petition torts or other enjoined conduct that violates the rights and property of others:

Because this matter involves Powers's use of the restaurant to commit a tort, specifically the tort of trademark and service mark infringement, application of the automatic stay would permit Powers to continue to commit this tort. Powers's commission of a tort is not protected by the Bankruptcy Code. *See Larami*, 244 B.R. at 60; *Seiko Epson*, 190 F.3d at 1364; *In re Rook*, 102 B.R. at 493. Therefore, Power's petition for bankruptcy does not stay this judicial proceeding.

In the Complaint it appears that Movant asserts that the violation of trade dress and trade secrets may date back to the 2011 termination of the franchise agreement and continues as of the June 4, 2021 filing of the Complaint in District Court (which is after the 2016 filing of Debtor's Chapter 13 bankruptcy case). Complaint, ¶¶ 2-7; Exhibit 4, Dckt. 115.

In the Points and Authorities attached to the Motion for Preliminary Injunction in the District Court Action asserts that the alleged misconduct was continuing as of the June 7, 2021 of the filing of that Motion.

Movant has presented the court with a hybrid pre and post-commencement of the 2016 bankruptcy case claim for damages and to enjoin the decade long alleged misconduct.

Congress defines what constitutes a "claim" under the Bankruptcy Code in 11 U.S.C. § 101(5), which states (emphasis added):

(5) The term "claim" means—

(A) **right to payment**, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, **equitable**, secured, or unsecured; or

(B) **right to an equitable remedy for breach of performance if such breach gives rise to a right to payment**, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Movant asserts the right to not only equitable relief against Debtor, but also monetary relief from the conduct upon which the right to equitable relief is asserted. Thus, in proceeding on claims that existed as of the 2016 filing of the bankruptcy case, which include monetary recovery, such conduct could be in violation of the stay.

Debtor is closing in on completion of this plan which provides for a 0.00% minimum dividend for creditors with unsecured claims, payment of \$121,486.38 in priority unsecured tax claims, and \$52,401.00 in secured tax claim. If this case were earlier in performance, resolution of the Motion would

be a tougher call. The Bankruptcy Code does not exist to allow a debtor to operate a business alleged to be in violation of the rights and interests of others.

Here, Debtor will soon have the past debt behind them and be freed (by the discharge) of pre-petition debts. For Movant, it appears that this conduct has been going on for a decade and only recently was it identified as something for which Movant could seek relief in the District Court.

The court determines that cause has been shown for relief from the stay as follows:

- A. The court annuls the automatic stay as to the June 4, 2021 filing of the Complaint for Injunctive Relief in the United States District Court in the action titled: *Mr. Pickle's Franchise Systems, LLC v. Mark T. Galisatus d/b/a "Dugout Deli,"* Case 2:21-cv-01003 (the "District Court Action").
- B. The court does not annul the stay for any further actions or proceedings in the District Court Action. As provided in this Modification of the Stay, Movant can then proceed to prosecute the District Court Action, including any claim for preliminary injunction.
- C. The automatic stay is modified, effective 12:00 p.m. noon on November 30, 2021, to allow Movant to assert and prosecute any and all claims asserted by Movant against Mark T. Galisatus to final judgment, including any appeals, in the District Court Action.
- D. By this Order the Court does not determine whether any claims or rights of Movant against Mark T. Galisatus which predate the August 3, 2016 filing of bankruptcy case 16-25089 were discharged in that Chapter 13 case. If an issue concerning such arises, this bankruptcy court has jurisdiction to make that determination.

Though there is approximately a 60 day delay in Movant prosecuting the District Court Action, that is a minor time considering the allegations of a decade of the objected to conduct. This will also afford Debtor to complete prosecution of this case, obtain a discharge, and have their fresh start going forward to litigate these issues with Movant.

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

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

The Motion for Relief from the Automatic Stay filed by Mr. Pickle's Franchise Systems, 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 of 11 U.S.C. § 362(a) are annulled as to the June 4, 2021 filing of the Complaint for Injunctive Relief in the United States District Court in the action titled: *Mr. Pickle's Franchise Systems, LLC v. Mark T. Galisatus d/b/a "Dugout Deli,"* Case 2:21-cv-01003 (the "District Court Action"). With such annulment the filing of the Complaint is not in violation of the automatic stay and the filing of such is not void.

The court does not annul the stay for any further actions or proceedings in the District Court Action. As provided in this Modification of the Stay, Movant can then proceed to prosecute the District Court Action, including any claim for preliminary injunction.

IT IS FURTHER ORDERED that the automatic stay is modified, effective 12:00 p.m. noon on November 30, 2021, to allow Movant to assert and prosecute any and all claims asserted by Movant against Mark T Galisatus to final judgment, including any appeals, in the District Court Action.

By this Order the Court does not determine whether any claims or rights of Movant against Mark T. Galisatus which predate the August 3, 2016 filing of bankruptcy case 16-25089 were discharged in that Chapter 13 case. If an issue concerning such arises, this bankruptcy court has jurisdiction to make that determination.

**No Appearance Required Unless a Party in Interest is
Stating an Opposition to the Dismissal**

**If Opposition Orally Presented at the Hearing
The Court Will Issue an Order Setting a Briefing Schedule**

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 creditors, Chapter 13 Trustee, and Office of the United States Trustee. The court ordered that the hearing date be accelerated to September 30, 2021, to allow Debtor to on September 8, 2021. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and order of this court. Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

The Motion to Dismiss is granted, and the Chapter 13 case is dismissed.

Torri Lynn Jones ("Debtor") filed a Motion to Dismiss this Chapter 13 case. Dckt. 73. Debtor seeks such dismissal as provided in 11 U.S.C. § 1307. As the Ninth Circuit Court of Appeals has recently addressed, this right to dismiss is absolute (though subject to conditions as the court may impose as provided in 11 U.S.C. § 349 and other statutory provisions). *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 2021 U.S. App. LEXIS 26366 *, ___ F.4th ___, 2021 WL 3891571 (9th Cir. 2021).

The Debtor has dismissed the pending Contested Matter (an Objection to Claim) and no other matters are now pending before the court in this case.

The Motion is granted, and the bankruptcy case is dismissed.

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 to Dismiss Chapter 13 filed by Torri Lyn Jones (“Debtor”) having been presented to the court, Debtor having requested that the Chapter 13 itself be dismissed pursuant to 11 U.S.C. § 1307(b), Dckt. 73, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that this Chapter 13 bankruptcy case is dismissed.

5. [21-20795](#)-E-13
[DBJ](#)-2

TORRI JONES
Douglas Jacobs

**CONTINUED OBJECTION TO CLAIM OF
THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., CLAIM
NUMBER 1
5-20-21 [43]**

Final Ruling: No appearance at the September 30, 2021 hearing is required.

<p>The Objection to Claim is dismissed without prejudice.</p>
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Torri Lynn Jones (“Debtor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Objection on September 30, 2021, Dckt. 81; no prejudice to the responding party appearing by the dismissal of the Objection; Debtor having the right to request dismissal of the objection pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Shellpoint Mortgage Servicing (“Creditor”); the Ex Parte Motion is granted, Debtor’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Objection to Claim filed by Torri Lyn Jones (“Debtor”) having been presented to the court, Debtor having requested that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 81, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Claim is dismissed without prejudice.

FINAL RULINGS

6. [21-90409-E-7](#)
[VVF-1](#)

JOSHUA CATON
Thomas Hogan

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
9-3-21 [9]

MECHANICS BANK AUTO FINANCE
VS.

Final Ruling: No appearance at the September 30, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 3, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further.

Both the Debtor and the Trustee have filed statements of non-opposition. Dckt. 15 and the Trustee's September 19, 2021 Docket Entry. These parties in interest for this Contested Matter stating their non-opposition, the court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Relief from the Automatic Stay is granted.
--

Mechanics Bank Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Ford F-150, VIN ending in 1527 ("Vehicle"). The moving party has provided the Declaration of Carina Olivares to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Joshua Ronald Caton ("Debtor").

Movant provides evidence that there are \$2,046.51 pre-petition payments in default as well as late fees and other charges of \$162.95. Declaration, Dckt. 11.

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on September 14, 2021 to “avoid unnecessary delay.” Dckt. 15.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. September 19, 2021 Docket entry Statement.

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 \$16,384.68 (Declaration, Dckt. 11), while the value of the Vehicle is determined to be \$12,000.00, 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). 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). 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.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

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 Mechanics Bank Auto Finance ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Ford F-150, VIN ending in 1527 ("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.