UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 1, 2020 at 10:00 a.m.

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1. 20-90434-E-7 AP-1 | **TONY ANGLIN** | **George Burke** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **8-20-20 [15]**

LAKEVIEW LOAN SERVICING, 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.

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, and Chapter 7 Trustee on August 20, 2020. By the court's calculation, 42 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 granted.

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay with respect to Tony Melvin Anglin's ("Debtor") real property commonly known as 14729 Lucero Court, La Grange, California ("Property"). Movant has provided the Declaration of Aaron Angelilli to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made two post-petition payments, with a total of $3,893.00 in post-petition payments past due. Declaration, Dckt. 18. Movant also provides evidence that there are sixteen pre-petition payments in default, with a pre-petition arrearage of $32,041.28. *Id*.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 14, 2020. Dckt. 25. Debtor asserts that Movant's motion is moot because it was filed in Debtor's chapter 7 case as opposed to Debtor's chapter 13 case, which was recently filed on September 14, 2020. Debtor states that he has the right under chapter 13 of the code to cure any default "within reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim" where the last payment is due after the date the final payment under the plan is due. 11 U.S.C. §§ 1322(b)(5) & (c)(1). Debtor elects to save his homestead from foreclosure and may file successive petitions to do so.

MOVANT'S REPLY

Movant argues the motion is not moot because the property in question became property of the chapter 7 estate upon Debtor's filing of the chapter 7 voluntary petition and the chapter 7 case remains pending. The property remains part of chapter 7 estate until it is abandoned, administered, or the bankruptcy case is closed. 11 U.S.C. §§ 544(c), 554(d); 349(b)(3). Therefore, the property in question is not part of the chapter 13 estate and Movant is not required to file its motion under the chapter 13 case to have relief granted from the automatic stay.

Movant argues that without relief from the automatic stay its interest in the property is not adequately protected. Debtor having failed to make 18 monthly payments and there being no adequate equity cushion. Additionally, Movant contends that Debtor's chapter 13 plan is likely to be dismissed due to inconsistencies in the schedules filed in both cases.

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 $285,330.35 (Declaration, Dckt. 18), while the value of the Property is determined to be $261,000.00, as stated in Schedules A/B and D filed by Debtor.

At this point, the Chapter 7 case is still open, and the Property remains property of this Chapter 7 bankruptcy estate. Thus, the court provides the following relief under this case.

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

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

not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). 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 Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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 Lakeview Loan Servicing, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 14729 Lucero Court, La Grange, 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.
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> No other or additional relief is granted.

2. **20-90349-E-11 HRH-1** **R. MILLENNIUM TRANSPORT, INC.** **David Johnston** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **9-16-20 [93]**

PNC EQUIPMENT FINANCE, 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)(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 11 Trustee, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 15 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 11 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.

PNC Equipment Finance, LLC ("Movant") seeks relief from the automatic stay with respect to an assets identified as:

1. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit, VIN ending in 6902,

2. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6901,

3. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6905,

4. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6903, and

5. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 2719

("Vehicles"). The moving party has provided the Declaration of Michael McGinley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by R. Millennium Transport, Inc. ("Debtor").

Movant argues Debtor has not made four post-petition payments, with a total of $28,874.56 in post-petition payments past due. Declaration, Dckt. 95. Movant also provides evidence that there are three pre-petition payments in default, with a pre-petition arrearage of $21,655.92. *Id*.

Expert Valuation Provided

Movant has also provided the declaration of Michael McGinley, Vice President of Litigation and Recovery for Movant. Mr. McGinley testifies, under penalty of perjury, the fair market value of the Trailers is $28,000 each. Along with Mr. McGinley's previous knowledge and experience, his opinion of value is based upon the Trailers' original price, age and forecast of current market values, conversations with equipment vendors, and the industry-standard TruckPaper values.

Thus, as the Trailer with a VIN ending in 6901 was totaled, the total value of the remaining four Trailers is $112,00.00.

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 $91,460.31 (Declaration, Dckt. 95), while the value of the Trailers is determined to be $120,000.00, as stated in Schedules A/B and D filed by Debtor, which is more than the retail value as stated on the Expert Valuation.

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 Trailers are *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 Vehicles, 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 a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by PNC Equipment Finance, 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** 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 Vehicles, under its security agreement, loan documents granting it a lien in the asset identified as:
>
> 1. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit, VIN ending in 6902,
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> 2. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6901,

3. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6905,

4. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 6903, and

5. 2014 Utility VS2 Trailer, with Thermo King SB 230 Refrigeration Unit VIN ending in 2719

("Vehicles"), 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.

3. 20-21316-E-13 GGM-12 | **GAVIN MEHL** | **MOTION TO DISMISS CASE**
Pro Se | **9-16-20 [64]**

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 (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 10 days' notice was provided. The court set the hearing for October 1, 2020. Dckt. 66.

The Motion to Dismiss Case 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. 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 Case is xxxxx.

ORDER SETTING HEARING ON
DEBTOR'S REQUEST TO DISMISS CHAPTER 13 CASE

On September 16, 2020, Debtor filed a pleading titled: NOTICE OF DISMISSAL PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 41(a). Dckt. 64. The pleading states that the "action" is "dismissed by Plaintiff in its entirety." Further, that the dismissal is made pursuant to Federal Rule of Civil Procedure 41(a).

Federal Rule of Civil Procedure 41(a) provides for a plaintiff to dismiss a lawsuit either unilaterally under certain circumstances, by stipulation with the other party, or by order of the court. This Federal Rule of Civil Procedure is incorporated into Federal Rule of Bankruptcy Procedure 7041 for adversary proceedings and by Rule 9014(b) for Contested Matters in bankruptcy court.

Congress provides in 11 U.S.C. § 1307(b) that a bankruptcy case may be dismissed by the court upon a request from a debtor. Such a "request" is made by a motion to the court. Fed. R. Bankr. P. 9013.

The ability to dismiss is not absolute, but is subject to such a request being made in good faith. *Rossen v. Fitzgerald (In re Rossen)*, 545 F.3d 764, 773-774 (9th Cir. 2008); discussing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).

Though the Debtor does not have the unilateral power to dismiss a bankruptcy case, the court construes the "Notice of Dismissal" to be a "Motion to Dismiss." Though the "Notice" was served on the two creditors impacted by the Plan to avoid any "legal issues," the court sets the Motion for hearing.

DEBTOR'S DECLARATION

Debtor filed a Declaration on September 28, 2020 testifying under penalty of perjury that at the hearing for the amended plan Debtor made an oral motion to dismiss the case due to a change in circumstances and that there was no objection. Dckt. 72. Debtor adds that the motion to dismiss is brought in good faith and with the intent to honor the court.

DEBTOR'S MEMORANDUM OF POINTS AND AUTHORITIES

In his Memorandum of Points and Authorities, Debtor argues that there has brought this motion in good faith, there has been a change in circumstances that have caused the need for dismissal, and that he expects no objections. Dckt. 73.

Debtor cites to 11 U.S.C. section 1307(b) to support his assertion that the Debtor is allowed a voluntary dismissal provided is in good faith. Debtor then states "The supporting facts show this dismissal is brought in good faith and the debtor is entitled to this honorable courts [sic] order for dismissal." *Id.* at 2.

The court notes that no facts have been provided in either Debtor's declaration or the Memorandum of Points and Authorities for the court to find that there has been a change of circumstances or that Debtor is filing the Motion to Dismiss in good faith.

October 1, 2020 Hearing

At the hearing, **xxxxxx**