

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

October 6, 2015 at 1:30 p.m.

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1. [15-21711](#)-E-13 CHARLES/AMBER ARNEY MOTION FOR RELIEF FROM  
TJS-1 AUTOMATIC STAY  
9-1-15 [[35](#)]  
USE CREDIT UNION VS.

**Final Ruling:** No appearance at the October 6, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct 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 1, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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Charles Allen Arney and Amber Dawn Arney ("Debtor") commenced this bankruptcy case on March 4, 2015. Use Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Toyota Sequoia, VIN ending in 8981 (the "Vehicle"). The moving party has provided the Declaration of KC Andrews to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Andrews Declaration provides testimony that Debtor has not made 6 post-petition payments, with a total of \$1,993.14 in post-petition payments past due. Dckt. 37, 39. The Declaration also provides evidence that there are 2 pre-petition payments in default, with a pre-petition arrearage of \$664.38. *Id.*

From the evidence provided to the court, and only for purposes of this

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Motion for Relief, the debt secured by this asset is determined to be \$17,038.59, as stated in the Andrews Declaration, while the value of the Vehicle is determined to be \$7,000.00, as stated in Schedules B and D filed by Debtor. Dckt. 37; Dckt. 38 Ex. 3.

Trustee filed a nonopposition on September 21, 2015.

## **DISCUSSION**

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Use Creditor Union, 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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 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 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 Use Credit Union ("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 Use Credit Union ("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 2007 Toyota Sequoia, VIN ending in 8981 ("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 (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

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No other or additional relief is granted.

2. [15-26749](#)-E-13 ELENA DEMYAN  
SMR-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY, CO-DEBTOR STAY  
AND MOTION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
9-3-15 [[11](#)]

GP EQUITIES, INC. VS.

**Tentative Ruling:** 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, non-filing co-debtor, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 33 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

<b>The Motion for Relief From the Automatic Stay is granted.</b>
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GP Equities, Inc. ("Movant") filed the instant motion on September 3, 2015. Dckt. 11. Movant seeks relief from automatic stay on two grounds: first,

for cause and for adequate protection of an interest in property; and second, that Movant had a prior Chapter 13 proceeding dismissed within one year prior to the filing of the current bankruptcy proceeding, as 30 days will have passed as of the date of the October 6, 2015 hearing.

Movant seeks to terminate the automatic stay so it may pursue its interest in 6537 Ranch hand Way, Citrus Heights, California ("Property"). The motion is accompanied by the Declaration of Gary Sidhu ("Sidhu Declaration"). Dckt. 15.

Movant asserts that, under 11 U.S.C. § 362(c)(3)(A), the automatic stay terminates after 30 days if there is a Chapter 13 case filed within the past one year. Debtor filed this Chapter 13 petition on August 26, 2015. Dckt. 1. Debtor's prior bankruptcy case was filed April 3, 2015, and dismissed on April 21, 2015, for failure to timely file documents. E.D. Cal. Bankr. Case No. 15-22745, Dckt. 1, 13. Movant asserts that the automatic stay for the instant case expired on September 25, 2015, which is 30 days after the petition was filed. Thus, Movant seeks to confirm that the automatic stay has terminated.

Movant's alternative grounds are under 11 U.S.C. § 362(d)(1) for cause and for lack of adequate protection of Movant's interest. Movant argues that Debtor's occupation of the property

"causes real and irreparable harm on Movant, who bears the burden of the costs and burdens incident to ownership of the subject premises without receiving corresponding income from the occupancy by the debtor and non-filing codebtor..."

Dckt. 13. Movant asserts that \$4,201.69 in pre-petition holdover damages have accrued, as well as \$3,627.62 of post-petition holdover damages. Dckt. 15 ¶ 12, 13; Dckt. 16. On these grounds, Movant seeks to terminate the automatic stay for cause. FN.1.

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FN.1. The court notes that Movant has stated the barest of grounds in the Motion. The Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure require that motion state with particularity the grounds and specific relief requested thereon. Fed. R. Civ. P. 7; Fed. R. Bankr. P. 7007 and 9014. Here, the some total of the grounds stated with particularity are,

"This motion is filed on the basis of a lack of adequate protection and for cause. The debtor has no equity or interest in the residential property, but instead occupies the property as the previous owner of the subject property. The debtor has made no written offer to vacate the subject premises. The debtor has made no offer to cure the past due defaults and has provided no assurance of future performance. Continuation of the automatic stay under 11 U.S.C. §362(a) will work a real and irreparable harm to the owner herein. This motion is being brought on grounds that movant is entitled to relief from the automatic stay in accordance with the provisions of 11 U.S.C. § 362 (d)(1) and (d) (2)."

Motion, Dckt. 11. In connection with other motions, this court has addressed in detail the significant difference between motions, points and authorities, declarations, and exhibits. The Local Bankruptcy Rules require that the

motion, points and authorities, each declarations, and the exhibit documents (which may be combined into one document) each be filed as separate documents. L.B.R. 9004-1, Revised Guidelines for Preparation of Documents. It is not proper to bury grounds among extensive citations, quotations, arguments and speculation in a points and authorities, and throughout declarations and exhibits, and task the court to assemble the grounds which the court believes best state a basis for movant's requested relief.

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#### **DEBTOR'S OPPOSITION**

Debtor filed a reply on September 22, 2015. Dckt. 27. Debtor asserts that Movant did not perfect title on the Property and therefore lacks standing to bring the relief from stay for the unlawful detainer proceedings.

To begin, the Debtor asserts the following time line, copied verbatim from Debtor's opposition:

1. DEBTOR filed Chapter 13 bankruptcy petition on April 3, 2015 (Case No. 2015-22745) as a Pro Se Debtor (April 2015 Bankruptcy)
2. Immediately after the filing of the April 2015 Bankruptcy, but before the trustee's sale of the Subject Property. DEBTOR notified foreclosing trustee, QUALITY LOAN SERVICE CORPORATION ("QLS"), servicing company, NATIONSTAR MORTGAGE ("NATIONSTAR") about the April 2015 Bankruptcy.
3. Trustee's Sale of the Subject Property conducted on April 6, 2015.
4. On April 8, 2015, REO Agen, Warren Adams ("ADAMS") of Security Pacific Real Estate Brokerage ("SECURITY PACIFIC") contacted DEBTOR as the Subject Property informing her that the Subject Property "[H]as Gone Through Foreclosure And Is Now Owned By The Mortgage Holder" [sic].
5. On the same day, April 8, 2015, DEBTOR informed ADAMS that she was in bankruptcy and showed him the notice of the April 2015 Bankruptcy.
6. The Trustee's Deed Upon Sale ("TDUS") was recorded on April 14, 2015.
7. The April 2015 Bankruptcy was dismissed on April 21, 2015.
8. The Subject Property was transferred to MOVANT on May 19, 2015, pursuant to a grant deed by the purported foreclosing beneficiary, The Bank of New York Mellon, as Trustee for Structured Asset Mortgage Investments II Trust 2006-AR4 Mortgage Pass-Through Certificates Series 2006-AR4 ("BONY")

The Debtor argues that Movant does not have sufficient cause to seek relief because the Debtor asserts that the foreclosure sale should not have occurred because it was in violation of the automatic stay. The Debtor argues that Debtor informed QLS and Nationstar prior to the sale of the Property while the bankruptcy was still open. Thus, the Debtor asserts that recording the

Trustee's Deed Upon Sale was also a violation of the automatic stay. The Debtor argues that any subsequent actions taken by QLS, Nationstar, The Bank of New York Mellon, including the recording the Trustee's Deed Upon Sale and transfer from Bank of New York Mellon to Movant are void.

The Debtor state she is willing and able to prove adequate protection in the form of the reasonable rental value to be determined at an evidentiary hearing.

Debtor informs the court that she is intending to file an adversary proceeding complaint for violation of the automatic stay, the invalidity of the Trustee's Deed Upon Sale, and seek to have the foreclosure set aside.

The Debtor requests an evidentiary hearing.

#### **MOVANT'S REPLY**

The Movant filed a reply on September 29, 2015. Dckt. 35. The Movant argues that it is a bona fide purchaser for value of the Property without any prior notice of any alleged irregularities concerning the prior trustee's sale. The Movant asserts that even assuming arguendo that the trustee's sale was conducted while an automatic stay was in effect, ample justification exists for this court to confirm the validity of the sale by retroactively granting relief from the automatic stay to the date upon which the sale occurred and to confirm that the subsequent perfection of title by recording of the Trustee's Deed was likewise valid.

The Movant argues that if Bank of New York Mellon had properly sought relief from stay, it would have been granted either due to the lack of equity in the Property or rendered moot by the dismissal of Debtor's prior bankruptcy.

As to the request of retroactive relief, the Movant argues that at the time the Trustee's Deed Upon Sale was duly recorded, the Property sold for \$274,500.00 while Debtor's unpaid debt balance due was \$496,388.08. Thus, Debtor's lack of equity in the Property by a substantial margin at the time Debtor filed her bankruptcy petition would have been sufficient grounds at the time of the sale to grant relief from the stay to the foreclosing beneficiary if such request had been brought. The Movant restates that no such relief had been sought because the foreclosing beneficiary was unaware of the pending bankruptcy proceeding.

The Movant argues that as a subsequent bona fide purchaser for value without notice of any irregularity in the underlying sale which pursuant to which Movant's predecessor in interest acquired title to the Property. The Movant argues that voiding the Trustee's Deed Upon Sale and all subsequent transactions now would only serve to work a real and irreparable harm to Movant.

The Movant once again requests the court to confirm the absence of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(A) as there was a pending bankruptcy case within the past year and 30 days has past since the filing of the instant case with no order extending the say.

Lastly, the Movant argues that relief should be granted as to the non-filing co-debtor pursuant to 11 U.S.C. § 1301(c)(1) and (3) because the co-

debtor has received the benefits of occupancy of the Property and continuation of the stay would cause real and irreparable harm to Movant as the Movant will continue to bear the burden of the costs and incidents of ownership of the Property without receiving corresponding income from the occupancy by the Debtor and non-filing co-debtor of the Property.

In sum, the Movant seeks *nunc pro tunc* relief from the prior April 2015 automatic stay including annulment of the April 2015 stay and validation of the Trustee's Deed Upon Sale. Furthermore, Movant not only seeks relief from the present stay concerning the non-filing co-debtor, Vyacheslav Demyan, and unlawful detainer proceedings as against the Property.

## DISCUSSION

This Motion highlights a situation which can begin to wildly spin out of control, leaving a clouded title in the California land title records. It must first be noted that an act taken in violation of the automatic stay is void, not merely voidable.

"In fact, the automatic stay provision is so central to the functioning of the bankruptcy system that this circuit regards judgments obtained in violation of the provision as void rather than merely voidable on the motion of the debtor. See [*In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) ]. Courts regularly void state court default judgments against debtors when the judgments are obtained in violation of the automatic stay provision, even where the debtor filed for bankruptcy in the midst of the state court proceedings. See, e.g., *In re Fillion*, 181 F.3d 859, 861 (7th Cir. 1999); *In re Graves*, 33 F.3d 242, 247 (3d Cir. 1994)."

*Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001).

"Our decision today clarifies this area of the law by making clear that violations of the automatic stay are void, not voidable. See *In re Williams*, 124 Bankr. 311, 316-18 (Bankr. C.D. Cal. 1991) (recognizing that the Ninth Circuit adheres to the rule that violations of the automatic stay are void and criticizing the BAP decision in this case)...

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his [or her] creditors. *It stops all collection efforts, all harassment, and all foreclosure actions.* It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy."

*Schwartz v. United States of America (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) (Emphasis in original).

Though void, Congress created the authority for the bankruptcy court to address such violations in providing the court may annul the automatic stay, as well as terminate, vacate, or modify such stay. 11 U.S.C. § 362(d). Such relief must be sought in the bankruptcy case in which the stay was violated.

Debtor has filed several bankruptcy cases in this District. These are

summarized as follows:

15-26749 (current case) Chapter 13	Filed: August 26, 2015	
	<p>A. Chapter 13 Plan filed September 29, 2015. The Plan provides for:</p> <p>(1) Monthly Payments of \$351 for a period of sixty months;</p> <p>(2) No Class 1 Claim Payments</p> <p>(3) Class 2 \$0.00 Payment (no motion to value secured claim filed)</p> <p>(4) No Class 3 Claim Treatment</p> <p>(5) No Class 4 Claim Treatment</p> <p>(6) No Class 5 Claim Treatment</p> <p>(7) No Class 6 Claim Treatment</p> <p>(8) No Class 7 Claim Treatment (all fields left blank)</p> <p>Plan, Dckt. 33. Other than providing for Debtor's counsel to be paid \$500, no provision is made for paying any creditor claims.</p>	



	<p>B. Schedule A - Debtor lists the property which is the subject of the present Motion. Dckt. 34.</p> <p>C. Schedule B - Debtor's main assets consist of three vehicles which Debtor states have a value of \$39,000. <i>Id.</i></p> <p>D. Other than the lien in dispute in this Motion, the only other creditor is listed on Schedule F, Real Time Resolutions, with a \$42,667 co-debtor claim. <i>Id.</i></p> <p>E. Schedule I lists Debtor having monthly income of \$3,309. <i>Id.</i></p> <p>F. Schedule J lists necessary monthly expenses, for a family of four persons, to be \$2,958 a month. This does not include a mortgage or rent payment, property taxes, or property insurance. After payment of expenses, Debtor has \$351 in projected disposable income to fund a plan. <i>Id.</i></p> <p>G. No motion to confirm, declaration, or other supporting pleadings are filed for the Plan.</p> <p>H. Mailing Matrix lists only GP Equities, Inc. Dckt. 6.</p> <p>I. Amended Mailing Matrix adds Bank of America (served at a Simi Valley address), Nationstar Mortgage, and Real Time Resolutions.</p>	
Chapter 13 Case 15-22745 <i>In Pro Se</i>	Filed: April 3, 2015  Dismissed: April 21, 2015	
	<p>A. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affairs, and other documents.</p> <p>B. Motion to vacate dismissal denied. 15-22745, Dckt. 27.</p> <p>C. Mailing Matrix lists only Nationstar Mortgage. <i>Id.</i>, Dckt. 4.</p>	

Chapter 13 Case 12-33721 <i>In Pro Se</i>	Filed: July 26, 2012  Dismissed: August 13, 2012	
	A. Dismissed for failure to file Chapter 13 Plan, Schedules, Statement of Financial Affairs, and other documents.  B. Mailing Matrix lists only Bank of America Home Loans. 12-33721, Dckt. 4.	
Chapter 13 Case 11-46231 <i>In Pro Se</i>	Filed: November 4, 2011  Dismissed: December 12, 2011	
	A. Case voluntarily dismissed by Debtor. 11-46231; Ex Parte Motion, Dckt. 18.  B. No Schedules A, B, C, D, F, I, or J; No Statement of Financial Affairs filed.  C. Mailing Matrix only lists Recontrust Company and Bank of New York Trust Co. <i>Id.</i> , Dckt. 4.	
Chapter 7 Case 09-38756 Represented by Counsel	Filed: August 31, 2009  Discharges Entered: December 8, 2009	
	A. Bankruptcy filed by both current Debtor, Yelena Demyan and her husband, Vyacheslav (who has not been filing the series of Chapter 13 cases with the Debtor). (In her bankruptcy cases, Debtor has used the first name Yelena in some cases and Elena in other cases. This is disclosed in the Petition in the current case.)	

While Debtor has attempted on multiple occasions to file Chapter 13 cases, she has not diligently or effectively prosecuted those cases. In the current case, the financial information provided by Debtor indicates an inability to prosecute this Chapter 13 case. Additionally, Debtor has not filed a Motion to confirm a Chapter 13 Plan in this case. The Plan filed in this case makes no provision for the payment of any claims of creditors. The only parties on the Mailing Matrix appear to be the ones relating to the foreclosure. It appears that Debtor has no other financial reorganization, other than the debt secured by the Property (if it is determined that the prior foreclosure was void).

In the Motion, Movant overstates the effect of 11 U.S.C. § 362(c)(3), asserting, "11 U.S.C. § 362(c)(3)(A) provides that if a Chapter 7, 11, or 13 case is filed within one year of an earlier dismissed case, **the automatic stay in the second case terminates** 30 days after the filing...." Points and Authorities, p. 7:7-8; Dckt. 13. The actual language of the Bankruptcy Code provides,

"(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall **terminate with respect to the debtor on the 30th day after the filing of the later case;**..."

11 U.S.C. § 362(c)(3)(A) [emphasis added]. The plain language of the statute provides for termination of the stay "as to the debtor," and nothing more. The automatic stay applies not only to the debtor but property of the bankruptcy estate. See 11 U.S.C. § 362(a)(2), (3), (4), (5).

This contrasted with the provisions of 11 U.S.C. § 362(c)(4)(A) enacted by Congress which provides that under the specified circumstances, "the stay under subsection (a) shall not go into effect...." Congress did not limit that provision to the stay as it applies to the Debtor.

The request to confirm that the automatic stay terminated is granted, to the extent that it applies to the Debtor with respect to "to a debt or property securing such debt or with respect to any lease," and denied as to any other extent.

Movant also asserts that cause exists to terminate the automatic stay. The cause is asserted to be Debtor's continued possession following the foreclosure sale and any right to possession having been terminated. Movant asserts that Debtor has no interest in, or right to possess the Property.

Debtor responds, disputing the validity of the alleged foreclosure sale, and thereon Movant's right to and interest in, contending that the foreclosure sale was void because it was in violation of the automatic stay in the prior bankruptcy case. Debtor offers to make adequate protection payments, in an unstated amount, pending litigation of the violation of the stay issue. Debtor further states that Debtor will be "seeking the opportunity" to file an adversary proceeding alleging a violation of the automatic stay and determine that the foreclosure deed is void.

Relief from stay proceedings are summary proceedings limited to the automatic stay issues. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at 8-9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue

declaratory relief.

Here, the issues that Debtor seeks to litigate in defending the relief from stay motion are the validity of the deed. That is not litigated in the context of this summary proceeding.

Movant has filed a "Reply" to the Opposition. In that Reply, Movant seeks new and further relief, including the retroactive termination of the automatic stay. That relief is not requested in the Motion. It appears that Movant is seeking to have this court reach out and issue orders in the prior bankruptcy case. That is not proper, as bankruptcy cases are not fungible, borderless proceedings.

Debtor appears to have the same mistaken understanding, indicating that Debtor wants to file an adversary proceeding in this case to enforce rights relating to an alleged violation of the automatic stay in the prior case (which was not even assigned to this judge).

The court further notes that Movant appears to misunderstand the basic fundamental principle that acts taken in violation of the automatic stay are void, not voidable. In the Reply Brief, Movant states, "Voiding the Trustee's Deed Upon Sale and all subsequent transactions now would only serve to work a real and irreparable harm to Movant." Reply Brief, p. 5:19-20; Dckt. 35.

Relief "for cause" is not a specifically defined statutory term, but a is grounded on any reason cognizable to the equity power and conscience of the court as constituting an abuse of the bankruptcy process. See *Little Creek Development Co v. Commonwealth Mortgage Corp (In re Little Creek Development Company)*, 779 F.2d 1068, 1072-73 (5th Cir. 1986). The court considers the "totality of the circumstances" in considering for cause relief from the stay. *Disciplinary Bd. V Feingold (In re Feingold)*, 730 F.3d 1268 (11th Cir. 2013).

As discussed by the Ninth Circuit Court of Appeals in *State of Idaho Department of Lands v. Arnold (In re Arnold)*, 806 F.3d 937, 939 (9th Cir. 1986);

"The existence of good faith depends on an amalgam of factors and not upon a specific fact. *Matter of Little Creek Development Co.*, 779 F.2d at 1072. The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment. *Id.* Said a Ninth Circuit bankruptcy panel:

'If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses . . . to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation, namely, to attempt to effect a speedy efficient reorganization, on a feasible basis . . . good faith cannot be denied.'

*In re Thirtieth Place, Inc.*, 30 Bankr. 503, 505 (Bankr. App. 9th

Cir. 1983) (quoting *In re Loeb Apartments, Inc.*, 89 F.2d 461, 463 (7th Cir. 1937))."

In considering the hardships and "*bona fides*" of the parties, the court concludes that cause exists to modify the automatic stay in this case. First, the alleged violation of the automatic stay, and any continuing violations of the automatic stay, arise in Debtor's prior Chapter 13 case, not this case. That litigation must properly proceed in Bankruptcy Case No. 15-22745. To the extent that Movant wants relief from that stay, the relief must be sought in the prior case. To the extent that anyone who conducted or whose rights were exercised by agents that want to seek relief from the automatic stay with respect to the foreclosure sale, that relief must be sought in the prior case.

Debtor has filed, and failed to prosecute, multiple prior Chapter 13 cases. It is different that Debtor is represented by counsel in the present case. However, even with the assistance of counsel Debtor is not seeking to confirm the proposed Chapter 13 Plan.

Additionally, the proposed Chapter 13 Plan does not provide for paying any creditor claims and does not provide for the secured claim which Debtor asserts exists based on the contention that the nonjudicial foreclosure sale is void due to the alleged violation of the automatic stay in Bankruptcy Case No. 15-22745.

Debtor has provided financial information under penalty of perjury (Schedules I and J) that Debtor's family unit has only \$351 a month of projected disposable income after payment of all reasonable and necessary expenses. Those expenses do not include rent or mortgage, insurance, or property taxes. While Debtor states that she is willing to make some form of adequate protection payment in an unstated amount, Debtor has only \$351 a month to both fund a plan and make the adequate protection payment.

In these foreclosure dispute or "who owns the note dispute" cases, the court has required adequate protection payments to be in the amount of regular loan payment or a fair projection of what the modified loan payment would be if the debtor is asserting the right to a loan modification. *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

Setting the adequate protection payment (even if is paid to the Clerk of the Court) is essential to a good faith plan and Chapter 13 case. Failure to provide would create a huge post-petition delinquency which a debtor could never cure during the limited sixty month duration of a Chapter 13 Plan. The payment also insures the good faith prosecution of the bankruptcy case and avoids the bankruptcy process being used as part of a scheme to occupy property with payment of any monies.

In the Reply Brief, Movant states that the sales price at the non-judicial foreclosure sale was \$274,500. Neither Debtor nor Movant provide the court with evidence of the current value of the Property. In 2009, Debtor and her husband (who is not a debtor in the current case) stated under penalty of perjury that the Property had a value of \$299,500. 09-38756; Schedule A, Dckt. 1. Using the referenced \$274,500 stated purchase price at the non-judicial foreclosure sale would not be unreasonable as to Debtor in light of the general

knowledge that real estate values in the Sacramento Region have generally increased significantly since 2009.

If Debtor were able to obtain a loan modification and decrease the principal to \$274,500, have the loan amortized over thirty years, and obtain a 3.5% fixed interest rate (giving Debtor the benefit of the doubt that she could obtain an interest rate which would be available for someone with a high credit score), the monthly principal and interest payment would be \$1,232.63. FN.1 On top of this, an amount would have to be added for the monthly insurance and property tax set aside (whether as part of Debtor's budget or an impound account). Debtor has stated under penalty of perjury that she and her family unit has only \$351.00 a month to put toward this claim expense and to fund a plan. Schedules I and J, Dckt. 34.

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FN.1. The court used Microsoft Excel's simple loan calculator program to calculate these figures.  
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As discussed by this court in *Del la Salle* and other cases, a good faith Chapter 13 plan with adequate protection payments can allow a debtor to use the automatic stay in lieu of an injunction and having to post an injunction bond as required by Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065. What the Debtor cannot do is file a bankruptcy case, not prosecute a good faith plan, and have the non-productive bankruptcy case exist solely to use the "free" automatic stay to impair rights and interests asserted by another person.

Debtor has not made even a facial showing that she can, or will, prosecute, or be able to prosecute, a Chapter 13 plan in this case. It is clear that the only judicial proceedings envisioned by Debtor and her counsel is the automatic stay litigation in Bankruptcy Case no. 15-22745. Debtor may commence that litigation and assert her rights under and relating to that automatic stay. Debtor may assert her rights and interests in the property that were protected by that automatic stay. But that litigation is in the prior bankruptcy case and is not the basis for a Chapter 13 Plan which pays nothing in this case.

#### **Termination of Co-Debtor Stay**

Movant also seeks relief from the co-debtor stay which arises pursuant to 11 U.S.C. § 1301. The non-bankruptcy filing co-debtor is Vyacheslav Demyan. Vyacheslav Demyan was the co-debtor with the Debtor in the Chapter 7 case filed in 2009. Bankruptcy Case No. 09-38756. On Schedule I in the Chapter 7 case Debtor and Vyacheslav Demyan state they are married. *Id.*, Dckt. 1. On current Schedule I Debtor lists income for a non-filing spouse, but on the Statement of Financial Affairs, Question 16, Debtor states under penalty of perjury that she has no spouse and has not had a spouse within the eight years preceding the commencement of the current case. Dckt. 30 at 9.

The court's files disclose that Vyacheslav Demyan has filed four individual bankruptcy cases since 2011. These cases are summarized as follows:

Chapter 13 Case 15-25517 Represented by Same Counsel as Debtor in Current Case	Filed: July 10, 2015  Dismissed: August 12, 2015	
	A. Case Dismissed for failure to file Chapter 13 Plan, Motion to Confirm Plan, Schedules, and Statement of Financial Affairs.	
Chapter 13 Case 12-39378 <i>In Pro Se</i>	Filed: November 1, 2012  Dismissed: January 14, 2013	
	A. Case Dismissed for failure of Vyacheslav Demyan to prosecute the bankruptcy case.	
Chapter 13 Case 12-27301 <i>In Pro Se</i>	Filed: April 16, 2012  Dismissed: May 4, 2012	
	A. Case Dismissed for failure to file Chapter 13 Plan, Schedules, and Statement of Financial Affairs.	
Chapter 7 Case 11-38526 <i>In Pro Se</i>	Filed: July 29, 2011  Dismissed: August 9, 2011	
	A. Case Dismissed for failure to file Schedules and Statement of Financial Affairs.	

When Vyacheslav Demyan's bankruptcy filings are overlaid with those of this spouse, the Debtor in this case, during the period of 2011 to now, there is a daisy chain of continuous non-productive bankruptcy cases which have been pending before this court.

As with Debtor, cause exists to terminate the co-debtor stay. This is a Chapter 13 case with no good faith plan providing for payment of any creditor claims presented to the court. Debtor's own, uncontradicted by Movant, financial information demonstrates that there is not a financial ability to prosecute this case or provide adequate protection and plan payments.

Further, continuing the co-debtor stay, while terminating the stay as to the Debtor would work an unreasonable and irreparable harm to Movant. At issue is the right to the Property. Debtor, and apparently co-debtor Vyacheslav Demyan, continue to occupy and use the Property. Debtor demonstrates that she,

and the co-debtor, have no ability to pay for the damages caused by such use and deprivation of the property from Movant if it is determined that Movant is entitled to the Property.

Vyacheslav Demyan, in filing and not prosecuting bankruptcy cases, which overlap with Debtor's cases to create a continuous bankruptcy process concerning the Property is concerning. Such non-productive conduct is not consistent with a debtor availing him or herself of the extraordinary relief under the Bankruptcy Code in good faith.

Therefore, the court shall issue an order terminating and vacating the automatic stay and the co-debtor stay to allow GP Equities, Inc., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 6537 RanchHand Way, Citrus Heights, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof. The court shall also confirm that the automatic stay has terminated by operation of law, as to the Debtor, pursuant to 11 U.S.C. § 362(c)(3)(A).

No other relief is requested in the Motion.

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 GP Equities, Inc. ("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) and 1301(a) are vacated to allow GP Equities, Inc. and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 6537 RanchHand Way, Citrus Heights, California.

**IT IS FURTHER ORDERED** that the court confirms that the automatic stay, as to Elena Demyan, aka Yelena Demyan, the Chapter 13 Debtor in this case, terminated by operation of law with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease on September 25, 2015, pursuant to 11 U.S.C. § 362(c)(3)(A).

No other or additional relief is granted.



3. [14-29661](#)-E-7 AARON/HEATHER BRYANT  
ASW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-27-15 [[32](#)]

BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 27, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

**The Motion for Relief From the Automatic Stay is continued to 1:30 p.m. on October 20, 2015 to allow the Movant to serve the Chapter 7 Trustee.**

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 106 Buttersworth Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Wilmor Dolmos to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Dolmos Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,102.84 in post-petition payments past due.

The Debtor failed to respond to the instant Motion. Pursuant to Local

Bankruptcy Rul 9014-1(f)(1), the Debtor's default is entered.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$140,334.97, as stated in the Dolmos Declaration and Schedule D filed by Aaron David Bryant and heather Dominique Bryant ("Debtor"). The value of the Property is determined to be \$150,000.00, as stated in Schedules A and D filed by Debtor. Dckt. 1 p. 12.

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. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *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 which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

However, a review of the Proof of Service shows that only the Chapter 13 Trustee was served. The instant Case was converted to a Chapter 7 case on September 2, 2015. Dckt. 39. As of the conversion, the Chapter 7 Trustee, Geoffrey Richards, became the fiduciary of the estate and a necessary party. To allow the Movant the opportunity to properly serve the Chapter 7 Trustee, the court continues the Motion to 1:30 p.m. on October 20, 2015. If the Chapter 7 Trustee has any opposition, he may state so at the continued hearing.

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 Bank of America, 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** that the Motion is continued to 1:30 p.m. on October 20, 2015. The Movant shall serve the Chapter 7 Trustee the instant Motion and supporting papers prior to the hearing.

October 6, 2015 at 1:30 p.m.

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