

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 17, 2019 at 10:00 a.m.

1. <u>19-90510-E-7</u> <u>APN-1</u>	BRIAN/SHANNON CROCKER Keith R. Wood	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-13-19 <u>[17]</u>
WELLS FARGO BANK, N.A. VS.		

Final Ruling: No appearance at the October 17, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 13, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Express, VIN ending in 2130 ("Vehicle"). The moving party has provided the Declaration of Doris Smith to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Brian Christopher Crocker and Shannon Marie Crocker ("Debtor").

Movant argues Debtor has not made 4 post-petition payments, with a total of \$2,599.52 in post-petition payments past due. Declaration, Dckt. 20. Movant also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of \$2,729.48. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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). The replacement value is stated to be \$24,875.00. Exhibit C, Dckt. 21.

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 \$29,877.43. Declaration, Dckt. 20.

The court finds the value of the Vehicle to be \$24,875.00. Debtor states on Schedule A/B a value of \$40,000.00 for the Vehicle. Dckt. 1 at 13. Debtor states on Schedule A/B that the Vehicle has been specially outfitted with 50 gallon drums, 50 foot reels, and a return system.

While stating a \$40,000.00 value, neither the Debtor nor Trustee have provided any opposition based on such asserted value and there being any recoverable value for the Estate or Debtor. There is no indication that Creditor's valuation, which relies on a NADA report, considered this outfitting and the value added therefrom.

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, neither the Debtor nor the Estate have an equity in the vehicle.

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 and Debtor's expressed intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to

repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 Wells Fargo Bank, N.A., dba Wells Fargo Auto (“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 2017 Chevrolet Express, VIN ending in 2130 (“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 to the extent the Motion seeks relief from the automatic stay as to Brian Christopher Crocker and Shannon Marie Crocker (“Debtor”), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(c) as to Debtor.

No other or additional relief is granted.

2. [19-90462-E-7](#)

LAURA MENDOZA
Carl E. Combs

AMENDED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-12-19 [\[27\]](#)

CHRISTINA GALVAN VS.

No Tentative Ruling: No appearance at the October 17, 2019 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Debtor's Attorney for Civil Action on September 12, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Notice of Hearing does not describe whether this Motion is set on 28 days' notice pursuant to Local Bankruptcy Rule 9014-1(f)(1) or 14 days' notice pursuant to Local Bankruptcy Rule 9014-1(f)(2). No indication is given whether written opposition must be filed. The Notice only informs parties in interest of the time for the hearing, and summarizes the requested relief. Dckt. 28.

Local Bankruptcy Rule 9014-1(d)(3)(B) specifies the contents of notices accompanying motions. The notice **shall** advise respondents whether and when written opposition is to be filed, deadlines therefore, and the names and addresses of the persons served with the opposition. Local Bankruptcy Rule 9014-1(d)(3)(B) also requires the notice to advise parties that failure to file written opposition may result in striking of untimely written opposition, that prehearing dispositions are available for review online prior to the hearing, and what the essential facts for opposing the motion would be.

The above requirements were not met.

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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The Motion for Relief from the Automatic Stay is xxxxxx.
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The present Motion (Dckt. 25) was initially filed on August 17, 2019, but was not actually set for hearing. Thereafter an Amended Motion (Dckt. 27) was filed and served and set for hearing. Dckts. 27-29.

The Amended Motion filed by Christina Galvan (“Movant”) seeks relief from the automatic stay to allow litigation in the Superior Court of California, County of Stanislaus, entitled *Christina Galvan vs. Laura Mendoza*, case no. CV-19-001410 (the “State Court Litigation”) to be concluded.

Movant asserts that the State Court Litigation centers around certain personal injury claims against the debtor, Laura Mendoza (“Debtor”), which Movant is only seeking to settle for the amount Debtor is insured. Movant argues relief from stay here will allow claims against the Debtor to be liquidated, that the parties are close to settling, and that hardship will result if the stay remains in place.

Documents Filed in Support of the Motion

No evidence or supporting pleadings were originally filed with the Motion. Along with the Amended Motion, Movant filed (in the same 34 page document) 7 exhibits. Dckt. 27.

That is not the practice in the Bankruptcy Court. “**Motions**, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, **exhibits**, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Buried behind the Motion are a series of exhibits, none of which are authenticated. Fed. R. Evid. 901 et. seq. There are also two documents identified as consents to the relief requested - Exhibit 1, Consent of Debtor’s defense counsel in the State Court litigation, and Exhibit 2. Dckt. 27 at 10, 34.

The “consent” provided by Debtor’s counsel includes factual statements (some may say “testimony”) about the State Court litigation and the possible pending settlement. Such “testimony” upon which the court appears to be requested to rely, is not made under penalty of perjury.

In reviewing the supporting pleadings, they are all exhibits, and there are no declarations. Thus, there is no testimony provided to authenticate any of the exhibits. The Motion itself does not reference any of the exhibits, or otherwise explain how they were authenticated.

APPLICABLE LAW

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).

DISCUSSION

While Debtor’s counsel has consented to the relief, the Chapter 7 Trustee is “missing in action.” Presumably, the Trustee would have no opposition to a motion to modify the stay to allow for the settlement of the State Court Action within the insurance policy limits, allowing the Plaintiff to obtain the insurance recovery and reduce whatever claim the Plaintiff may have in this case.

~~————— The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The parties here have represented they are very near settlement, and lifting the stay will allow prompt resolution of the State Court Litigation.~~

~~————— The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Irma Edmonds (“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 Christina Galvan (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Laura Leticia Mendoza (“Debtor”) to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in the Superior Court of California, County of Stanislaus, entitled *Christina Galvan vs. Laura Mendoza*, case no. CV 19-001410 (the “State Court Litigation”)~~

~~————— **IT IS FURTHER ORDERED** that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, the Chapter 7 Trustee, Irma~~

~~Edmonds (“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.~~