

Eastern District of California

October 22, 2019 at 1:30 p.m.

- Final Ruling:** No appearance at the October 22, 2019 hearing is required.

Movant has presented evidence that the Vehicle was in a collision on August 21 and has determined to be a total loss. Further, Movant asserts that insurance proceeds of \$12,016.18 amount have been offered by the Debtor's Insurer. Movant seeks relief from the stay to apply the insurance proceeds to its secure claim which totals \$10,727.00. The Movant states that any overage will be sent to the Trustee.

The Chapter 13 Trustee filed a response on October 8, 2019 noting its non-opposition and the proposed Chapter 13 plan provides for Movant's claim as a Class 3. Trustee requests that any overage sent to the Trustee be treated as another payment under §2.02 of the plan.

Debtor has not filed any response to the Motion.

DISCUSSION

Based on the evidence presented, there is good cause for relief from the automatic stay to allow Movant to use the insurance proceeds that resulted from the loss of its collateral and apply those proceeds to its secure claim. 11 U.S.C. §362(d)(1). The Motion is granted.

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 Mercedes-Benz Financial Services USA 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, to apply insurance proceeds of \$12,016.18 to satisfy Movant's secured claim, which funds were received from the loss of the collateral securing Movant's claim, Debtor's vehicle identified as a 2013 Mercedes-Benz C250W and that the overage be sent to the Trustee and treated as a payment under §2.02 of the plan.

2.

[19-23735](#)-E-13
[KMR-1](#)

ROBIN/THOMAS HARLAND
Stephen Reynolds

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-2-19 [\[19\]](#)

DEUTSCHE BANK NATIONAL TRUST
CO., VS.

Final Ruling: No appearance at the October 22, 2019 Hearing is required.

Local Rule 9014-1(f)(1) 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, and the Chapter 13 Trustee on July 2, 2019. By the court's calculation, 28 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 Dismissed Without Prejudice.

Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 ("Movant") seeks relief from the automatic stay with respect to the debtors, Robin Arlene Harland and Thomas Scott Harland's ("Debtor"), real property commonly known as 2263 Casa Dulce Way, Plumas Lake, California ("Property"). Movant has provided the Declaration of Tonya R. Caldwell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Over the three and one-half months of this Contested Matter, the Movant Creditor, Debtors, and their respective counsel have worked diligently to address their respective financial interests, minimize unnecessary cost and expense, and work to a plan that serves their best financial interests (at least within the confines of the Bankruptcy Code).

The Plan has been confirmed, monies being paid to creditors, and the Debtors moving forward with their financial reorganization. The attorneys are commended for exemplifying the best in advocacy in representing their respective clients.

Movant has filed a Notice of Dismissal of this Contested Matter. Given that an opposition was filed by Debtor, Movant cannot unilaterally dismiss this pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 7041, 9014.

The court construes the Notice as an *ex parte* Motion to Dismiss this Contested Matter without Prejudice. In their latest Response pleading Debtor requests that Motion for Relief be dismissed in light of the confirmed plan. While it might be a stretch to cobble the two pleadings together to constitute a stipulation (Fed. R. Civ. P. 41(a)(1)(A)(ii)), it is proper to construe the Response (Dckt. 52) as a concurrence in the Ex Parte Motion to Dismiss.

Therefore, the Motion is dismissed without prejudice.

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 Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-3, Asset-Backed Certificates, Series 2006-3 (“Movant”) having been presented to the court, Movant requesting this Motion now be dismissed without prejudice, Debtor concurring in the request for dismissal of this Motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion is dismissed without prejudice.

3. [19-24390-E-13](#) **ROBERT PATTERSON**
[CAS-1](#) **Mikalah Liviakis**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-11-19 [\[14\]](#)**

**BMW BANK OF NORTH AMERICA
VS.**

Final Ruling: No appearance at the October 22, 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, Co-Debtor, Debtor’s Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 11, 2019. By the court’s calculation, 41 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>

BMW Bank of North America (“Movant”) seeks relief from the automatic stay and the co-debtor stay arising under 11 U.S.C. § 1301 with respect to an asset identified as a 2013 BMW X5 xDrive35d Sport Utility 4D, VIN ending in 6022 (“Vehicle”). The moving party has provided the Declaration of Pamela Weems to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert E. Patterson (“Debtor”).

Movant argues Debtor has not made the agreed upon lump sum payment to cover post-petition payments, with a total of \$24,403.13 past due. Declaration, Dckt. 16. Movant also provides evidence that there are 5.152 pre-petition payments in default, with a pre-petition arrearage of \$27,278.16. *Id.* Further, Movant points out that though the total amount of debt is \$27,278.16, the value of the Collateral is

\$13,893.00. *Id.*

Movant provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. C. Dckt. 18. 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 Chapter 13 Trustee filed a response on September 30, 2019 noting its non-opposition and the proposed Chapter 13 plan provides for Movant's claim as a Class 3.

Debtor has not filed any response to the Motion.

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 \$13,893.00. (Declaration, Dckt. 16).

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 rehabilitation. 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.

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 both pre- and post-petition payments that have come due and Debtor's surrender of the vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Requested Waiver of 14 Day Stay of Enforcement

In the Motion a further request is made for the court to waive the fourteen day stay of enforcement of an order granting for relief from the automatic stay that the United States Supreme Court has put into effect in Federal Rule of Bankruptcy Procedure 4001(a)(3). The grounds stated for this additional relief in the Motion are:

12. Movant asks the Court to waive the 14-day stay under Rule 4001(a)(3) for any order granting relief from the automatic stay, because although there is no equity in the Collateral and the value of Collateral BMW Bank of North America's Motion for Relief from Stay

Motion ¶ 12, Dckt. 14. Presumably, this is some form of “adequate protection” argument based on Movant not being able to accrue interest. This contention was addressed by the United States Supreme Court in *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988), concluding that merely because a creditor could not accrue interest during a bankruptcy case on its claim, such was not cause under 11 U.S.C. § 362(d)(1).

Possibly, Movant is trying to cobble in the contention that this eight model year old BMW is asserted in Paragraph 9 of the Motion. The court has not been presented with evidence that eight model year old BMW are such disfavored or reviled vehicles that they would be rapidly depreciating in value during the fourteen day stay of enforcement.

However, Movant does include, buried in Paragraph 9, a good basis for waiving the fourteen day stay – the Chapter 13 Plan provides for the surrender of this vehicle so the creditor can get it out of the Debtor’s possession, sell it, and use the proceeds to pay Movant’s secured claim. This does constitute cause for the court to waive the fourteen day stay of enforcement.

Additional Co-Debtor Stay Relief Requested

Stated in Paragraph 14 of the Motion is a request that the court terminate co-debtor’s stay that might be arising against Theresa Patterson, the identified Co-Debtor. Cause exists to terminate the co-debtor stay as well.

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 BMW Bank of North America (“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 2013 BMW X5 xDrive35d Sport Utility 4D (“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 the co-debtor automatic stay provisions of 11 U.S.C. § 1301 as they apply to Theresa Patterson 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 2013 BMW X5 xDrive35d Sport Utility 4D (“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.