

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

October 30, 2024 at 1:30 p.m.

1. [23-21835-E-13](#) ANGELA FIELDS CONTINUED MOTION FOR RELIEF
[AT-1](#) Mo Mokarram FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
9-24-24 [\[20\]](#)

RIVER CITY COMMONS
HOMEOWNERS ASSOCIATION 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, Co-Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion for Relief from the Automatic Stay and from the Co-Debtor Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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

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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.

**The Motion for Relief from the Automatic Stay and the Co-Debtor stay is
XXXXXXX.**

October 30, 2024 Hearing

The court continued the hearing as Debtor had reported the steps being taken to address the HOA arrearage, and the Parties agreed to continue the hearing to allow the Debtor to promptly address the matter.

On October 28, 202, the parties filed a Stipulation for Adequate Protection with the court. Docket 29. The Stipulation provides:

1. Debtor is currently post-petition delinquent in the amount of \$2,611.13 as of the date of this Order for Adequate Protection (“APO”). The Association has also incurred \$2,000.00 in attorneys’ fees (as of September 30, 2024) that Debtor is required to reimburse, for a total of \$4,611.13. Stip. ¶ 1, Docket 29.
2. On the first day of each month, commencing November 1, 2024, the Debtor shall timely tender the regular monthly Association assessment payments of \$98.00 (or as they may increase) and any other assessment obligation including but not limited to special assessments, which come due after the date of execution of this APO. *Id.* at ¶ 2.
3. Additionally, on the first day of each month beginning November 1, 2024, Debtor shall also pay twenty-four (24) monthly installments of \$192.13, for a total of \$4,611.13, in order to become current on the post-petition delinquency and the Association’s collection costs and attorneys’ fees. *Id.* at ¶ 3.
4. On or by October 1, 2026, i.e., one month before the conclusion of this twenty-four (24) month repayment period, the Association shall invoice any remaining attorneys’ fees and/or other costs that have accrued over the course of the repayment period to Debtor via Debtor’s attorneys, to be paid within thirty (30) days of the date of the invoice, to conclude the repayments and complete performance under this Repayment Plan. *Id.* at ¶ 4.
5. In the event Debtor fails to timely perform any obligations set forth in this APO, the Association shall be entitled to notify Debtor and Debtor’s attorney of record of said default in writing with service via electronic (to

Debtor's attorney) and U.S. Mail. Debtor shall have fifteen (15) calendar days from the date of the written notification to cure the default. *Id.* at ¶ 6.

6. If Debtor fails to cure the default, the Association shall be entitled to lodge Declaration of Default and an Order Terminating the Automatic Stay which includes a waiver of the 14-day stay provided by Bankruptcy Rule 4001(a)(3). A Declaration shall accompany the Order Terminating the Automatic Stay which states that the Association duly notified Debtor and Debtor's attorney of record of the default and that the default was not timely cured. The Order Terminating the Automatic Stay shall be entered without further hearing. *Id.* at ¶ 7.

This Stipulation is brought without a Motion to Approve Compromise. Fed. R. Bankr. P. 9019(a) states:

(a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Confirmed Plan, Treatment of Movant's Claim

In the confirmed Chapter 13 Plan, Movant's secured claim is not provided for. Plan, Dckt .3; and Confirmation Order, Dckt. 15. The Stipulation reached by the Parties is effectively Plan treatment, by which Movant will make arrearage cure payments of \$192.13 for 24 months to cure a post-petition delinquency of (\$2,611.13) in assessments and an additional (\$2,000.00) for legal fees. Additionally, Debtor shall make the currently monthly assessment payment of (\$98.00), or any increased monthly assessment amount, timely.

In the 23rd Month, Movant will issue an invoice for any remaining fees or costs that have accrued over the repayment period, which will then be paid within 30 days.

There is also a co-debtor on this obligation, Brian Chiesa, who is named in the Motion. It is not stated in the Stipulation who will be generating the monies to make the post-petition cure payments. The pre-petition cure payments are provided for in Class 2 of the Plan. Dckt. 3; A.S.A.P. Collection Services, as Trustee, is identified as the creditor.

Reviewing Schedules I and J (Dckt. 1), it appears questionable that Debtor would have sufficient monies to come up with an additional \$192.14 a month to make the post-petition cure payment.

There are two questions that come to mind for the court:

1. What is the source of the monies to make the cure payment?
2. Should the Debtor and Chapter 13 Trustee have a stipulated Plan amendments to provide for the post-petition default cure payments to be made directly by the Debtor outside of the Plan?

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

River City Commons Homeowners Association (“Movant”) seeks relief from the automatic stay with respect to Angela Yvonne Fields’ (“Debtor”) real property commonly known as 1630 Bannon Creek Drive, Sacramento, California 95062 (“Property”). Movant has provided the Declaration of Terin Reeder to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 24.

Movant pleads with particularity that:

1. Debtor and Co-Debtor Brian Chiesa (“Co-Debtor”) own an interest in the River City Commons as their Property is apart of the development. Movant is a non-profit mutual benefit corporation charged with the management, governance and operation of the development. Debtor and Co-Debtor are obligated to pay regular monthly assessments to Movant. Mot. 2:7-13.
2. Debtor and Co-Debtor’s monthly assessment is \$93. Since filing the Chapter 13 Petition commencing this matter, Debtor and Co-Debtor have failed to make payment of the monthly assessment obligations and are now post-petition delinquent in the amount of \$2,611.13. *Id.* at 2:23-26; Decl. ¶ 6, Docket 24.
3. As such, Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1) to record its assessment and foreclose on the Property. Movant seeks leave to file a proof of claim reflecting the delinquency and associated attorneys’ fees and costs in the amount of \$1,500.

The court notes that filing an Amended Proof of Claim does not violate the provisions of the automatic stay. *See* Official Form 410.

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 \$2,611.13 (Declaration ¶ 6, Docket 24), while the value of the Property is determined to be \$450,000, as stated in Schedules A/B filed by Debtor.

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

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE 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 JE 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).

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted as Movant would be unable to foreclose on the Property and if the Co-Debtor stay remained in effect.

OCTOBER 10, 2024 HEARING

At the hearing counsel for the Debtor reported the steps being taken to address the HOA arrearage and the Parties agreed to continue the hearing to allow the Debtor to promptly address the matter.

The hearing on the Motion for Relief from the Automatic Stay and the Co-Debtor stay is continued to 1:30 p.m. on October 30, 2024. (Specially Set Day and Time).

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 River City Commons Homeowners Association (“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 for Relief from the Automatic Stay and the Co-Debtor stay is **XXXXXXX**.