

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

November 5, 2024 at 1:30 p.m.

1. [22-21314-E-13](#) **NADIA ZHIRY**
[RHS-1](#)

**STATUS CONFERENCE RE:
VOLUNTARY PETITION
5-25-22 [1]**

DEBTOR DISMISSED: 09/20/24

Item #3 on 2:00 Calendar

**THE STATUS CONFERENCE WILL BE CONDUCTED AT
2:00 P.M. IN CONJUNCTION WITH THE MOTION FOR
COMPENSATION**

Debtor's Atty: Peter G. Macaluso

Notes:

[RHS-1] Order for Post-Dismissal Status Conference [for administrative tracking purposes] filed 9/24/24 [Dckt 438]

[PGM-7] Motion for Allowance of Final Disbursement to Contractor, Richard Sanders filed 10/17/24 [Dckt 441], set for hearing 11/5/24 at 2:00 p.m.

[PGM-6] Order Denying Motion to Confirm Plan. Motion denied as moot without prejudice, the case having been dismissed. [Dckt 447]

The Status Conference is concluded and removed from the Calendar.

The Bankruptcy Case having been dismissed, the Status Conference is removed from the Calendar.

FINAL RULINGS

2. [24-22426](#)-E-13 JAMALL ROBINSON MOTION FOR RELIEF FROM
[DS-10141](#) Richard Kwun AUTOMATIC STAY
10-2-24 [\[49\]](#)

DCELK IRREVOCABLE TRUST VS.

Final Ruling: No appearance at the November 5, 2024 hearing is required.

The Motion for Relief has been continued to 1:30 p.m. on January 14, 2025, pursuant to this court's Order issued on October 28, 2024. Docket 78.

3. [23-22540](#)-E-13 SATINDER SINGH STATUS CONFERENCE RE:
[RHS-2](#) VOLUNTARY PETITION
7-31-23 [\[1\]](#)

DEBTOR DISMISSED: 09/13/24

Final Ruling: No appearance at the November 5, 2024 Status Conference is required.

Debtor's Atty: Ryan C. Wood

Notes:

[RHS-2] Order Setting Status Conference Re: Monies Deposited With the Clerk of the Court filed 9/13/24 [Dckt 310]

[RCW-17] Final Application for Compensation filed 9/27/24 [Dckt 315], set for hearing 11/19/24 at 2:00 p.m.

[RHS-1] Order continuing status conference to be heard in conjunction with the hearing on the Motion for Allowance of Fees and Expenses for Debtor's counsel filed 10/9/24 [Dckt 321]

The Status Conference has been continued to 2:00 p.m. on November 19, 2024, pursuant to the prior Order of the court (Dckt. 321).

CAPITAL ONE AUTO FINANCE VS.

Final Ruling: No appearance at the November 5, 2024 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 13 Trustee, and Office of the United States Trustee on September 26, 2024. 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). 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>

Capital One Auto Finance, a division of Capital One, N.A. (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2022 BMW X2 XDR 28, VIN ending in 1886 (“Vehicle”). The moving party has provided the Declaration of Yvette Hutchison to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Naomi Delores Sanchez and Jessica Bunny Sanchez (“Debtor”). Decl., Docket 32.

Movant argues Debtor defaulted under the contract prepetition, and the Vehicle was repossessed on June 24, 2024, one day prior to filing. Declaration ¶ 8, Docket 32. Movant provides evidence Debtor is postpetition delinquent three payments for a total postpetition delinquency of \$2,996.88. *Id.* at ¶ 9.

The Chapter 13 Trustee, David Cusick, filed a nonopposition on October 22, 2024. Docket 39.

Kelley Blue Book Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. 3, Docket 33. 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).

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 \$42,770.50 (Declaration ¶ 11, Docket 32), while the value of the Vehicle is determined to be \$26,977, as stated on the Kelley Blue Book Valuation Report. Ex. 3, Docket 33.

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 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or David Cusick (“the Chapter 13 Trustee”), the court determines that there is no equity in the Vehicle for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

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.

Federal Rule of Bankruptcy Procedure 4001(a)(3) 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, as Movant is in possession of the Vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court. Mot. 2:16-21, Docket 30.

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 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 Capital One Auto Finance, a division of Capital One, 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 the Motion is granted, and 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 2022 BMW X2 XDR 28, VIN ending in 1886 ("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.

No other or additional relief is granted.