

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 30, 2023 at 10:00 a.m.

1. [22-20913-E-7](#)
[HSM-1](#)

ZACHARIAH DORSETT
George Burke

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-27-22 [[37](#)]**

GLEND A AZEVEDO, ET AL. 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 27, 2022. 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 XXXXX.

NOVEMBER 30, 2023 HEARING

On November 6, 2023, the court entered its Order authorizing the Chapter 7 Trustee to sell the Property that secures Movant's claim. Order; Dckt. 124. The sales price is \$325,000.00, with the liens to be paid through escrow. *Id.* As stated in the Civil Minutes from the hearing on the Motion to Sell, the

Trustee projects there being \$146,000 in net proceeds for the Bankruptcy Estate after paying closing costs, expenses of sale, and Movant's secured claim from escrow.

At the hearing, **XXXXXXX**

REVIEW OF MOTION AND PRIOR PROCEEDINGS

Glenda Azevedo and Randall Azevedo ("Movant") seek relief from the automatic stay with respect to Zachariah Tesfaye Dorsett's ("Debtor") real property located in Lassen County, California, with APN's 139-030-2011, 139-030-21-11, 139-030-22-11, 139-030-23-11, 139-030-24-11, 139-030-25-11 ("Property"). Movant has provided the Declaration of Randall Azevedo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made any payments since September of 2020. Declaration, Dckt. 40. Movant also provides evidence that as of the petition date, the amount due under the Note through April 12, 2022 was \$112,863.56. *Id.* Movant argues that interest continues to accrue as of the date of Debtor's filing of petition, April 13, 2022. *Id.*

Movant asserts that Debtor caused title to the Property to be transferred into his name on April 12, 2022, and then filed bankruptcy on April 12, 2022 to prevent a foreclosure sale that Movant had set for that day.

Movant further asserts that through this bankruptcy case was filed in 2022, no Chapter 13 Plan has been confirmed.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on January 10, 2023. Dckt. 47. Debtor asserts that the Movant will receive preference to the detriment of the other priority and unsecured creditors and the court should issue and order the court finds just, necessary and proper. The basis for this is stated as:

If the Court Grants the Motion then Movant will receive a preference to the detriment of the other priority and unsecured creditors. Debtor estimates market value of the subject land (collateral) at \$600,000 whereas Movant estimates collateral value at \$250,000 with a \$112,000 secured claim.

Opposition, p. 1:24-27; Dckt. 47.

The Opposition further notes that Debtor had ceased communicating with his counsel. *Id.* at 2:1-2.

Debtor also notes that there is a hearing on a Motion to Convert this case to one under Chapter 7 that has been filed by the Chapter 13 Trustee, which is set for hearing on February 22, 2023.

CONVERSION TO CHAPTER 7

On February 9, 2023, the court entered the order converting this case to one under Chapter 7.

DEBTOR'S POST-CONVERSION OPPOSITION PLEADINGS

On March 16, 2023, the Declaration of the Debtor was filed. Dckt. 70. The Declaration provides a summary of the Property and an **"information and belief"** statement that former owners invested more than \$1,000,000 in improvements to the Property. Debtor then states his opinion that the Property is worth \$600,000.

OPPOSITION OF CHAPTER 7 TRUSTEE

On March 23, 2023, Nikki Farris, the Chapter 7 Trustee filed her Opposition to the Motion for Relief. Dckt. 83. The Trustee believes that there is a recoverable equity in the Property for the Bankruptcy Estate and is moving forward with hiring a broker and listing the Property for Sale.

DISCUSSION

While the Chapter 7 Debtor has provided a declaration with his opinion that the Property is worth \$600,000, no opposition to the Motion has been filed by the Chapter 7 Trustee. At the hearing, Trustee's counsel reported that the Trustee is moving forward to hire a real estate broker to market the Property.

Movant also asserts that Debtor caused title to the Property to be transferred into his name on April 12, 2022, and then filed bankruptcy on April 12, 2022 to prevent a foreclosure sale that Movant had set for that day. Exhibit 7, Dckt. 39, is a copy of a Grant Deed by which the Debtor, as the president of Ruckus Ranch, LLC, transferred title to the Property from Ruckus Ranch, LLC to Debtor. The Grant Deed states:

The undersigned Grantor(s) declare(s) Documentary Transfer Tax is \$0.00. Grantor and Grantees are comprised of the same parties and their proportional interest remains the same immediately following the transfer. Rev & TC § 11925.

The Grant Deed is dated April 12, 2022 and has an 11:35 a.m. recording time. *Id.*

The Property was transferred to Ruckus Ranch, LLC by Anthony Cole Woloscsuk, James Kirk, and Braeden M. Keena, as the three owners of undivided one-third interests by a Grant Deed recorded on April 12, 2022, at 11:35 a.m. Exhibit 6; Dckt. 39. This Grant Deed contains the same statement as above that the Transfer Tax is \$0.00 because the grantors and grantees are comprised of the same parties and that they each have a one-third interest in the property when owned by the Transferee, Ruckus Ranch, LLC. *Id.*

This transfer to Ruckus Ranch, LLC was recorded at the same time and the transfer from Ruckus Ranch, LLC to Debtor.

On Schedule A/B Debtor states that he owned 100% of the interests in Ruckus Ranch, LLC as of the April 12, 2022 filing of this Bankruptcy Case. It is not clear how by the transfer from Woloscsuk, Kirk, and Keena recorded at 11:35 a.m., as the owners of 1/3 of the interest in the Property, into Ruckus

Ranch, LLC did not require the payment of transfer taxes because they each held a 1/3 interest in Ruckus Ranch, LLC, because a 100% interest for Debtor to transfer the Property out of Ruckus Ranch, LLC seconds later so that no Transfer Tax was owed.

Exhibit 8 filed by Movant, Dckt. 39, is the California Secretary of State Statement of Information for Ruckus Ranch, LLC. It was filed on September 20, 2020. The sole managing member is identified as the Debtor. Michael Mapes is identified as an attorney who certifies the information in the Statement is correct.

Looking at the Grant Deed executed by Woloscsuk, Kirk, and Keena purporting to transfer the Property into Ruckus Ranch, LLC, in which they state they hold the same 1/3 interests in the Property as they did as individual owners (so no Transfer Tax was due) states that they signed the Grant Deed on August 26, 2016. Exhibit 6; Dckt. 39.

Seeing this great disparity between the purported transfer date from Woloscsuk, Kirk, and Keena into Ruckus Ranch, LLC and the delay in recording until April 12, 2022, six years later, and the April 12, 2022 filing of bankruptcy by Debtor, the court consulted the public record of the California Secretary of State as to Ruckus Ranch, LLC and whether it was a legal entity in the State of California.

From the Secretary of State's Official Website, the Secretary of State Reports that with respect to Ruckus Ranch, LLC, that it initially filed as an limited liability company on April 8, 2016, and:

RUCKUS RANCH, LLC
(201610510472)



Request
Certificate

<i>Initial Filing Date</i>	04/08/2016
<i>Status</i>	Suspended - FTB
<i>Standing - SOS</i>	Good
<i>Standing - FTB</i>	Not Good
<i>Standing - Agent</i>	Good
<i>Standing - VCFCF</i>	Good
<i>Inactive Date</i>	08/02/2021
<i>Formed In</i>	CALIFORNIA
<i>Entity Type</i>	Limited Liability Company - CA
<i>Principal Address</i>	448-450 US HIGHWAY 395 MILFORD, CA 96121
<i>Mailing Address</i>	448-450 US HIGHWAY 395 MILFORD, CA 96121
 <i>Statement of Info Due Date</i>	04/30/2022
<i>Agent</i>	1505 Corporation 2366 CALIFORNIA REGISTERED AGENT INC 1401 21ST STREET SUITE 370 SACRAMENTO, CA 95811

Thus, it appears that Ruckus Ranch, LLC ceased operating as a limited liability company and became inactive due to a Franchise Tax Board suspension on August 2, 2021.

The Grant Deed purporting to transfer Ruckus Ranch, LLC to Debtor is dated December 12, 2018, but not recorded until April 12, 2022. Exhibit 7; Dckt. 39. While dated December 12, 2018, the Notary Public Acknowledgment attached to the Grant Deed is dated April 12, 2022. It is unclear why a deed, if it was to transfer title states it is signed in 2018 but not notarized until four years later to be recorded the day Debtor filed his bankruptcy case.

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 \$112,863.56 (Declaration, Dckt. 40), while the value of the Property is determined to be \$600,000.00, as stated in Schedules A/B and D filed by Debtor.

While asserting that there are hundreds of thousands of dollars of value in the Property, Debtor was not been able to prosecute a Plan in this Chapter 13 case. Nor did Debtor higher a Realtor and seek to preserve any of the asserted value for the Bankruptcy Estate. The court ordered the conversion of this bankruptcy case to one under Chapter 7 in part due to Debtor's failure, as the fiduciary of the Bankruptcy Estate, to act to preserve value of property for the Bankruptcy Estate

Looking at the Proofs of Claim filed in this case, with a value of \$600,000, the following liens encumber the Property:

270 Acres in Milford, CA.....	\$600,000	
Movant Deed of Trust.....	(\$125,000)	
Lossman Deed of Trust.....	(\$112,500)	Sch D, POC 9-2
Kirk Deed of Trust.....	(\$ 50,000)	Sch D, POC 8-1
Internal Revenue Service Lien.....	(\$ 30,631)	Amd POC 11-2

If the Property has a value of \$600,000, then there would be approximately \$283,869 in net proceeds (after 8% for costs of sale) recoverable for the Bankruptcy Estate. In the ten months from the filing of this case to it being converted to Chapter 7, Debtor, as the fiduciary of the Bankruptcy Estate, did nothing to recover the purported quarter of a million dollars of value for the Bankruptcy Estate. This is contrary to Debtor stating the Property has a value of \$600,000.

Continuance of Hearing to February 7, 2023.

At the hearing, the court addressed the issues concerning the administration of this case and the apparent substantial equity for the estate, which can be used to pay unsecured claims.

The hearing is continued to 1:30 p.m. on February 7, 2023, for the court to allow the administration of the Estate issues to be addressed in conjunction with the Trustee's Motion to Convert or Dismiss the case.

February 7, 2023 Hearing

At the hearing, the court addressed with the Parties the prosecution of this Motion in light of the court having ordered the case converted to one under Chapter 7 so that a Trustee may step in and administer the property of the Bankruptcy Estate in which there appears to be substantial non-exempt equity for the estate and creditors.

The court continues the hearing on Motion for Relief to assist the court in managing these proceedings and for Movant maintain this Motion in the event that the Chapter 7 Trustee were to determine that there is not value in the Property sufficient for it to be administered by the Trustee.

DISCUSSION

March 23, 2023 Hearing

The Motion requests relief from the stay pursuant to 11 U.S.C. § 362(d)(1), the “for cause,” grounds, and § 362(d)(2), the lack of equity in the Property and that it is not necessary for an effective reorganization.

At the hearing, Trustee’s counsel and Movant’s counsel agreed to continue the hearing to allow the Trustee time to market and sell the Property.

July 20, 2023 Hearing

No Status Report has been filed prior to the July 20, 2023 hearing. Additionally, no Motion to Sell has been filed regarding the Property. At the hearing, counsel for the Trustee reported that the Trustee is actively marketing the Property. The Parties have stipulated to a continuance. Dckt. 103.

September 21, 2023 Hearing

At the hearing, Movant agreed to continue the hearing one more time to allow the Trustee to the property sold, in contract, or appearing to move toward a sale.

Movant made it clear at the hearing that after the multiple delays and continuances, Movant was unlikely agree to a further continuance if it appears that the Trustee’s ability to sell the property was stalled.

November 30, 2023 Hearing

At the hearing, **xxxxxxxxxx**

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 Glenda Azevedo and Randall Azevedo (“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 is

XXXXX.

2. [23-21407-E-7](#)
[TRF-1](#)

BELLA VIEW CAPITAL, LLC
Peter Macaluso

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-19-23 [61]**

**CENTER STREET LENDING VIII
SPE, LLC 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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2023. By the court’s calculation, 36 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).

The Motion for Relief from the Automatic Stay is XXXXX.

November 30, 2023 Hearing

This Bankruptcy Case was ordered reconverted to one under Chapter 7 on November 13, 2023. The Interim Trustee was reappointed on November 15, 2023. Dckt. 189.

At the hearing, **XXXXXXXXXX**

REVIEW OF MOTION AND PROCEEDINGS

Movant Center Street Lending VIII SPE, LLC (“Movant”) seeks relief from the automatic stay with respect to Bella View Capital, LLC’s (“Debtor”) real property commonly known as 5425 Bacon Road, Oakland, California 94619 (“Property”). Movant has provided the Declarations of Luis Montero and Russell Enyart to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Declaration, Dckts. 63 & 65.

Movant asserts Debtor executed a note to Movant to borrow \$2,555,695.00 secured by the Property on May 3, 2021. Declaration, Dckt. 63. The note’s maturity date was on April 26, 2022. *Id.* Debtor subsequently defaulted on the note and Movant informed Debtor of its default on May 2, 2022, and again on October 3, 2022. Dckt. 61. Movant had scheduled a foreclosure sale on April 28, 2023. *Id.* Debtor filed its bankruptcy petition on that same day. *Id.*

Declaration of Russell Enyart

The Declaration of Russell Enyart has been filed in support of this Motion, with Mr. Enyart providing expert witness testimony as to the value of the Property. Dec.; Dckt. 65. In the Declaration Mr. Enyart provides testimony of how he conducted his review and concludes that the value is \$2,199,000.00 due to the current state of the Property. He authenticates his Broker Price Opinion in which he provides the court with the information necessary to understand how he reached his opinion to assist the trier of fact in determining the value of the Property (not merely adopt the witnesses conclusion). See, Federal Rule of Evidence 702, which states:

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Exhibit 1, the Broker Price Opinion, begins with the standard identification of comparable sales and then the expert’s adjustments for differences between the subject property and the comparables. Here, the Expert identifies three comparable properties, with list prices of \$1,565,000, \$1,375,000, and \$3,488,000. Exhibit 1; Dckt. 67 at 5. These three properties are listed to be in good or very good condition and are of substantial square footage. *Id.*

However, no information, other than the number of rooms, is provided for the Property that is the subject of this Motion. No adjustments are made for any differences in the location, condition,

enhancements, and the like. The court is not provided with any information how the comparables are comparable to the subject Property.

In the Declaration Mr. Enyart does provide testimony of his investigation, including:

6. On or about April 29, 2023, I also walked the outside of the Bacon Property so that I could obtain exterior views. I also spoke with an occupant named Diarro Momar Foster, who came out of the Bacon Property. He expressed to me that he was living in the Bacon Property, in the downstairs portion of the property. He indicated that was the only section that was appropriate for occupancy and that the upstairs of the Bacon Property had been "gutted" and was not in good shape at the time of the visit.

Dec., ¶ 6: Dckt. 65. Most of the testimony in this paragraph is hearsay testimony about what Mr. Enyart heard the tenant say.

7. The Bacon Property was sold on May 7, 2021 for the price of \$2,750,000.00. But now, based on my research, analysis, and work in generating the above two reports, in its current state, my opinion is that the Bacon Property has a market value of only \$2,199,000 "as-is." This is due to its state of disrepair; the downstairs is original, and the entire upstairs has been gutted. The property is not move-in ready. Rather, my suggestion for the use of the property is that it is a fix-up project for potential investors looking for a project.

Id.; ¶ 7. The testimony in paragraph 6 is that Mr. Enyart only conducted an exterior review. The statements about the inside condition appear to be based on the hearsay that Mr. Enyart is repeating. While such hearsay can be something an expert considers, it is not credible evidence of the actual condition of the Property.

Mr. Enyart does not provide the court with any photographs of the Property.

The Expert's Declaration and Broker Price Opinion provide the court with little more than this is my opinion of value – take it or leave it.

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 \$2,773,730.64 (Dckt. 61). The testimony of Mr. Enyart and his Broker Price Opinion does not provide the court with sufficient information to determine the issue of fact – the value of the Property. Debtor's valuation as stated in Debtor's Schedule D, as Debtor valued the property at \$3,760,000.00. Schedule D, Dckt. 26.

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 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).

Movant also asserts that since the Debtor did not cure the default pre-petition and filed bankruptcy so that the automatic stay would prevent the foreclosure sale, such weighs in favor of terminating the automatic stay. Debtor commenced a reorganization under Chapter 11 (the case was erroneously filed with the Chapter 7 box checked, the Motion to Convert to Chapter 11 filed four days after the case was filed, and the Order converting the case Chapter 11 entered (Dckt. 15) seventeen days after the case was filed). There is no assertion that Debtor has filed a series of cases or that Debtor transferred the property around to get the automatic stay. Debtor did what many debtors unfortunately do, bury their heads in the sand and not make the decision to obtain bankruptcy relief until the eve (or in this case the day) of foreclosure.

A debtor filing bankruptcy to obtain the automatic stay to stop a foreclosure sale from occurring itself, without other factors, is not cause to terminate the automatic stay.

11 U.S.C. § 362(d)(2): Grant Relief for Cause

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).

The burden of proof to establish that there is no equity in the Property falls on the moving party. 11 U.S.C. § 362(g).

September 21, 2023 Hearing

At the hearing, the court continued the hearing to 1:30 p.m. on November 21, 2023, to afford Movant the opportunity to file and serve supplemental pleadings in support of the Motion on or before October 21, 2023. Supplemental opposition pleadings, if any, shall be filed and served on or before November 3, 2023.

SUPPLEMENTAL BRIEFING IN SUPPORT OF CONTINUED MOTION

On October 21, 2023 Movant filed supplemental briefing in support of the Motion for Relief. Dckt. 150. The Movant had the Bacon Property appraised on October 10, 2023, which included an interior and exterior inspection of the Bacon Property. *Id.* Numerous photographs, research of comparable residential property sales in the vicinity, and adjustments to the sale prices of nearby comparable properties were used for a more accurate comparison to the Bacon Property. *Id.* With these supplemental filings, Movant has provided the court with enough information to support its factual contention of the Bacon Property’s value.

Based on those filings, it was determined that the Bacon's Property market value is approximately \$2,000,000.00. Declaration, Exhibit 2, pg. 4, Dckt. 151. On October 11, 2023, the Movant generated a payoff quote for the loan secured by the Bacon Property at the request of Debtor's Counsel. Declaration, Exhibit 1, Dckt. 151. The payoff quote, which is good through the end of November 2023, shows a payoff amount of \$3,037,181.37, which is over a million dollars higher than the market value of the Bacon Property. Motion, Dckt. 150.

The Movant argues that there is no equity in the Bacon Property and, as discussed in the original motion, it is not necessary to an effective reorganization because the property does not generate income and the Debtor is in severe default of the loan secured against the Bacon Property. *Id.* Therefore, the Movant states the Court should grant Movant relief from the automatic stay. *Id.*

November 21, 2023 Hearing

On November 13, 2023, the court entered its Order reconverting this Case to one under Chapter 7. Order; Dckt. 188. On November 15, 2023, the Notice of Appointment of Nikki B. Farris as the Chapter 7 Trustee in this Case. Notice; Dckt. 189. The 341 First Meeting of Creditors in the Chapter 7 Case is set for December 11, 2023. Notice of Reconversion; Dckt. 190.

The court continues this hearing to 10:00 a.m. on November 30, 2023; the next available Sacramento Chapter 7 hearing date.

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 Center Street Lending VIII SPE, 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 that the Motion for Relief from the Automatic Stay is
XXXXX.

FINAL RULINGS

3. [19-22025-E-12](#) **JEFFREY DYER AND JAN** **CONTINUED MOTION FOR RELIEF**
[BPC-3](#) **WING-DYER** **FROM AUTOMATIC STAY**
Stephen Reynolds 8-12-22 [\[344\]](#)

RABO AGRIFINANCE LLC VS.

3 thru 4

Final Ruling: No appearance at the November 30, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 12 Trustee, and Office of the United States Trustee on August 12, 2022. By the court’s calculation, 45 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 Hearing on the Motion for Relief from the Automatic Stay is continued to
January 11, 2024 at 10:00 a.m.**

Rabo AgriFinance LLC, successor in interest to Rabobank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Jeffrey E. Dyer and Jan E Wing-Dyer’s (“Debtor”) real property described as the Debtor’s farm (“Lamb Ranch”) and the Debtor’s vacation home in Marin County (“Vacation Property”) along with all accounts receivable, inventory, and equipment as listed in its proof of claim. Proof of Claim, 11-1 through 11-3.¹ Movant has provided the Declaration of Valerie Bantner Peo to introduce

¹The items of property securing Movant’s claim are listed as 10973 Cranmore Road, Robbins, CA [APN 24-040-014]; 4741 Ensley Road, Knights Landing, CA [APN 34-040-003]; 1575 Bay Flat Road, Bodega Bay, CA [APN 100-070-018]; and all other real and personal property subject to the RAF Loan Facilities, as identified in Claim 11-2. Dckt. 347.

evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant's Declaration states that after conversation with the Trustee, the Trustee confirmed that the Debtor failed to make the required July 30, 2022 payment under the confirmed Chapter 12 Plan. Declaration, Dckt. 346. However, Movant's filed Declaration does not provide evidence of the amount of payments in default or the amount secured by the asset. The Movant's Motion states that the Debtor's failed to make a \$462,060.49 Plan payment that was due July 30, 2022, which included a \$266,360.55 payment to the Movant. Motion, Dckt. 344.

CREDITOR'S OPPOSITION

Citizens Business Bank, successor in interest to Suncrest Bank by reason of merger ("Creditor") filed an Opposition on August 30, 2022. Dckt. 353. Creditor asserts that Movant holds a first deed of trust on virtually all of the Debtor's real property. Opposition, Dckt. 353. The Creditor holds a second position deed of trust on Lamb Ranch. *Id.* The Creditor notes that the Movant filed its Motion of Relief three days after it opposed the Debtor's Motion to Borrow. *Id.* The Borrowing Motion was heard on August 15, 2022, and the court granted the motion. Order, Dckt. 352. Therefore, by September 12, 2022, the 2022 Plan payment should have been made. *Id.* The Creditor argues that by the time of the hearing on the Motion for Relief, the default should be cured and that the Movant will be accurately protected, having a senior lien on several parcels of the Debtor's real property. *Id.* As such, the Creditor requests that the Movant be denied relief. *Id.*

DISCUSSION

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.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

September 26, 2022 Hearing

The hearing was continued to November 21, 2022 as requested by Stipulation by the parties. Order, Dckt. 367.

November 21, 2022 Hearing

The hearing was continued to January 23, 2023 as requested by Stipulation by the parties. Order, Dckt. 361.

January 23, 2023 Hearing

Upon a transfer of the case, the January 23, 2023 hearing was vacated. The Motion was to be heard before the Honorable Judge Sargis on January 24, 2023. Notice, Dckt. 372.

January 24, 2023 Hearing

The hearing was continued to March 23, 2023 as requested by Stipulation by the parties. Order, Dckt. 381.

March 23, 2023 Hearing

After a Post-Confirmation Status Conference, the parties stated on the record their agreement to continue the hearing on this Motion to be continued to the Status Conference date, which is August 24, 2023. Order, Dckt. 391.

August 24, 2023 Hearing

The hearing was continued to November 30, 2023 as requested by Stipulation of the parties. Order, Dckt. 418.

November 23, 2023 Joint Request for a Continuance

On November 22, 2023, the Parties filed a pleading titled as a Stipulation in which they make a joint request (in the nature of a joint *ex parte* motion) requesting that the court continue the hearing to January 11, 2024. The grounds stated that in light of the Parties addressing their issues in connection with the Motion to Confirm the Chapter 12 Plan, the hearing on the Motion for Relief should be continued.

The court concurs with the request and the hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on January 11, 2024.

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 Rabo AgriFinance LLC, successor in interest to Rabobank, 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 Hearing on the Motion for Relief of Automatic Stay is continued to **10:00 a.m. on January 11, 2024.**

4. <u>19-22025-E-12</u> <u>CAE-1</u>	JEFFREY DYER AND JAN WING-DYER	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 4-1-19 <u>1</u>
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Final Ruling: No appearance at the November 30, 2023 Status Conference is required.

Debtors’ Atty: Stephen M. Reynolds

Notes:

Continued from 8/24/23

Operating Reports filed: 9/22/23; 11/14/23

[RLC-22] Order granting Motion to Confirm the Chapter 12 Plan filed 8/30/23 [Dckt 426]

[RLC-24] Motion to Approve Sale of Real Property and Waiver of FRBP 6004(h) filed 10/4/23 [Dckt 431];
Order granting filed 10/20/23 [Dckt 440]

[RLC-22] Order Confirming Modified Chapter 12 Plan filed 10/31/23 [Dckt 442]

The Post-Confirmation Status Conference is continued to 10:00 a.m. on January 11, 2024 (Specially Set Day and Time), to be conducted in conjunction with the continued hearing on the Motion for Relief from the Stay.

NOVEMBER 30, 2023 POST-CONFIRMATION STATUS CONFERENCE

As of the court’s November 28, 2023 review of the Docket, the post-confirmation Debtor has not provided the court with an updated Status Conference Statement. However, on November 22, 2023, the Debtor, Rabo AgriFinance, LLC, and Citizens Business Bank filed a pleading titled as a Stipulation requesting that the court continue a hearing in a contested matter. Dckt. 445.

In that Pleading, the post-confirmation Debtor informs the court as part of the grounds in requesting that the hearing be continued that:

- A. The following Plan payments have been made:
 - 1. The July 31, 2022 Plan payment was made (a portion of it made late).
 - 2. Rabo AgriFinance, LLC filed its Motion for Relief From the Automatic Stay on August 12, 2022, and the hearing on the Motion has been repeatedly continued.

Dckt. 445.

On October 31, 2023, the court entered its Order Confirming the Modified Chapter 12 Plan in this Case. Dckt. 442. The confirmed Modified Plan includes the following information and terms:

- A. As of the filing of the Modified Plan on July 26, 2023, payments of \$1,047,694.31 have been made through the Plan. Mod. Plan, p. 2:3-4.
- B. Due to a decline in the walnut market, the Plan is modified to provide for the immediately listing and sale of the Debtor's agricultural property, as well as the marketing of the Bodega Bay Property as a backup source to fund the Plan. *Id.*, p. 2:5-11.
- C. The Modified Plan delays the July 30, 2023 payment until October 31, 2023 or the sale of the Bodega Bay Property. *Id.*, p. 2:16-17.

On October 20, 2023, the court entered its Order authorizing the sale of the Bodega Bay Property. Dckt. 440. No subsequent pleadings have been filed indicating that the sale did not close or that creditor secured claims were not paid as provided in the court's Order authorizing the sale of the Bodega Bay Property.

It appearing that the post-confirmation Debtor is working to perform the Modified Plan and that the active Parties in Interest have requested that the court continue the hearing on the Motion for Relief, the court continues the Status Conference.

AUGUST 24, 2023 POST-CONFIRMATION STATUS CONFERENCE

No updated Status Report has been filed by the post-confirmation Debtor. On the 10:30 a.m. Calendar on August 24, 2023, the court conducted the hearing on the post-confirmation Debtor in Possession's Motion to Modify the Confirmed Chapter 12 Plan.

At that Modification Hearing, the court granted the Motion and confirmed the Modified Plan to allow for the payment of the 2023 disbursements to be made from the proceeds from the sale of the Bodega Bay Property.

FEBRUARY 9, 2023 STATUS CONFERENCE

This Chapter 12 Case in which there is a confirmed Plan was transferred from Department

A to Department E as part of a realignment of cases coinciding with the change of the Chief Bankruptcy Judge in this District.

On February 2, 2023, the Chapter 12 Debtor filed an updated Status Report. Dckt. 385. This updated Status Report includes the following information (identified by paragraph number used in the updated Status Report):

1. The Order confirming the Modified Chapter 12 Plan was entered on November 4, 2021.
5. Rabo Agrifiance, LLC has filed a Motion for Relief from the Stay, which has been continued. There is no current default under the Plan, with the Chapter 12 Debtor viewing the continuance of that Motion as a “place holder” in the event that a default occurs. The hearing on the Motion for Relief has been continued to March 23, 2023.
10. The Chapter 12 Debtor continues to perform the Chapter 12 Modified Plan and there remain two annual payments to be made in funding the Plan. If the Chapter 12 Debtor cannot make the payments, the Plan provides for the marketing and sale of specified real property to complete the Plan funding.

At the Status Conference, the Chapter 12 Debtor reported that the Plan is being performed. The Chapter 12 Trustee, Chapter 12 Debtor, and other parties in interest agreed to continue the Status Conference to August 24, 2023

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 Continued Post-Confirmation Status Conference having been scheduled for November 30, 2023; the court having entered an Order authorizing the sale of the Bodega Bay Property which would provide additional funds the Plan, the active Parties in Interest requesting the court continue the hearing on a Motion for Relief From the Stay, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Post Confirmation Status Conference is continued to **10:00 a.m. on January 11, 2024**, (Specially Set Day and Time) to be conducted in conjunction with the hearing on the Motion for Relief of Automatic Stay.

FORD MOTOR CREDIT COMPANY
LLC. VS.

5 thru 6

Final Ruling: No appearance at the November 30, 2023 Hearing is required.

**The Motion for Relief and/or Motion to Confirm Termination or Absence of Stay
is dismissed without prejudice.**

Ford Motor Credit Company LLC (“Creditor”) having filed a “Withdrawal of Motion,” which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on November 16, 2023, Dckt. 60; no prejudice to the responding party appearing by the dismissal of the Motion; the Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the *Ex Parte* Motion is granted, the Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 and/or Motion to Confirm Termination or Absence of Stay filed by Ford Motor Credit Company (“Creditor”) having been presented to the court, the Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 60, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief and/or Motion to Confirm Termination or Absence of Stay is dismissed without prejudice.

FORD MOTOR CREDIT COMPANY
LLC. VS.

Final Ruling: No appearance at the November 30, 2023 Hearing is required.

**The Motion for Relief and/or Motion to Confirm Termination or Absence of Stay
is dismissed without prejudice.**

Ford Motor Credit Company LLC (“Creditor”) having filed a “Withdrawal of Motion,” which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on November 17, 2023, Dckt. 62; no prejudice to the responding party appearing by the dismissal of the Motion; the Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the *Ex Parte* Motion is granted, the Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 and/or Motion to Confirm Termination or Absence of Stay filed by Ford Motor Credit Company (“Creditor”) having been presented to the court, the Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 62, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief and/or Motion to Confirm Termination or Absence of Stay is dismissed without prejudice.