

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

December 7, 2023 at 10:00 a.m.

1. [23-90325](#)-E-7
[BPC-1](#)

ROBERT CHAMNISS
Michael Reid

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-13-23 [\[16\]](#)

PACIFIC SERVICE CREDIT UNION
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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 13, 2023. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and his attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994)), aff'd, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale*, 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), aff'd, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998). In this case, service appears to only have been made on Debtor's counsel. Dckt. 21.

At the hearing, **XXXXXXXXXXXX**

~~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~~

December 7, 2023 at 10:00 a.m.

~~opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing,~~

The Motion for Relief from the Automatic Stay is granted.

Pacific Service Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2022 Chevrolet Tahoe, VIN ending in 3034 (“Vehicle”). The moving party has provided the Declaration of Jeff Rodgers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Jeremy Chamniss (“Debtor”). Dec., Dckt. 18.

Movant asserts that Debtor initially entered into a reaffirmation agreement to keep the Vehicle, but defaulted on that reaffirmation agreement. Since defaulting on the reaffirmation agreement in May of 2023, Debtor has not made five post-petition payments, each in the amount of \$1,225.39. Declaration, Dckt. 18 ¶ 9. Movant argues there is a total amount of \$80,334.80 outstanding on the loan. *Id.* Movant also provides evidence that there are two pre-petition payments in default. *Id.*

The Chapter 7 Trustee, Nikki Farris, entered a statement of non-opposition on October 19, 2023. Debtor has not offered any Opposition to this Motion.

Kelley Blue Book Valuation Report Provided

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle; however, Movant has only provided the court with a trade-in valuation, not a retail or wholesale valuation. Exhibit E, Dckt. 20. 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 \$80,334.80 (Declaration, Dckt. 18 ¶ 9). The trade-in value of the Vehicle is determined to be \$65,999, which is far higher than the value stated in Schedule A/B filed by Debtor. Schedule A/B, Dckt. 12 (valuing the Vehicle at \$47,236).

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.

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 that the court grant relief from the Rule because “the fair market value of the Vehicle is diminishing daily.” Mtn., Dckt. 16 p. 4. However, Movant has not provided the court with sufficient evidence to support this contention. Moreover, Debtor submits that the Vehicle is in good condition, leading the court to believe the Vehicle is not diminishing in value daily. Schedule A/B, Dckt. 12. 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.

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 Pacific Service Credit Union (“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 2022 Chevrolet Tahoe, VIN ending in 3034 (“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 not waived for cause.

FINAL RULINGS

2. [23-90452-E-7](#)
[HRH-1](#)

GREWAL CARGO, INC
Simran Singh Hundal

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-31-23 [\[14\]](#)

TRANSPORT FUNDING, LLC VS.

Final Ruling: No appearance at the December 7, 2023 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 October 31, 2023. By the court’s calculation, 37 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.

The Motion for Relief from the Automatic Stay is granted.

Transport Funding LLC (“Movant”) seeks relief from the automatic stay with respect to two assets identified as a 2014 Utility Reefer Trailer, VIN ending in 4545 and a 2014 Utility Reefer Trailer, VIN ending in 2803 (“Trailers”). The moving party has provided the Declaration of Craig Newton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Grewal Cargo, Inc. (“Debtor”). Dec., Dckt. 17.

Movant argues the unpaid amount due on the Trailers is \$50,750.59. Declaration, Dckt. 17 ¶ 10. These amounts include “the principal sum of \$48,595.04, daily finance in the amount of \$200.46, late charges in the amount of \$934.50, expenses in the amount of \$2,884.00, minus unearned finance charges in the amount of \$1,898.41.” *Id.*

The Chapter 7 Trustee, Nikki Farris, filed two statements of non-opposition on November 14, 2023. Debtor has not filed any opposition to this Motion.

JD Power Valuation Report Provided

Movant has also provided a copy of the JD Power Valuation Report for the Vehicle. Exhibit 4, 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).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by these assets is determined to be \$50,750.59 (Declaration, Dckt. 17 ¶ 10), while the value of the Trailers, based on their wholesale value, are determined to each be \$17,125, or \$34,250 total. Declaration, Dckt. 17 ¶ 9; Exhibit 4, Dckt. 18.

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). In this case, the court determines that cause exists for terminating the automatic stay, including a lack of adequate protection in the Trailers. 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 that the court grant relief from the Rule “in light of Debtor’s and the Estate’s lack of equity in the Trailers, Debtor’s failure to pay therefor and their depreciating nature.” Dckt. 14 p. 3:24-26. 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.

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 Transport Funding, 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, and all other creditors having lien rights against the Trailers described as follows, under its security agreement, loan documents granting liens in two assets identified as a 2014 Utility Reefer Trailer, VIN ending in 4545 and a 2014 Utility Reefer Trailer, VIN ending in 2803 (“Trailers”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Trailers 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 not waived for cause.

3. [23-90486](#)-E-7 STEVEN/BRITTNIE MILLER MOTION FOR RELIEF FROM
[SKI](#)-1 Steven Alpert AUTOMATIC STAY
11-1-23 [[10](#)]
NEWPORT NEWS SHIPBUILDING
EMP CREDIT UNION, INC. VS.

Final Ruling: No appearance at the December 7, 2023 Hearing is required.

Newport News Shipbuilding Emp Credit Union, Inc. d/b/a Bayport Credit Union, having filed a Notice of Withdrawal, Dckt. 22, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief From Stay is dismissed without prejudice, and the matter is removed from the calendar.**