

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**December 8, 2020 at 1:30 p.m.**

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1. <a href="#"><u>17-23287</u></a> -E-13 <a href="#"><u>RAS-1</u></a>	<b>ROBERT AMADOR</b> Mikalah Liviakis	<b>MOTION FOR RELIEF FROM AUTOMATIC STAY</b> 10-29-20 [ <a href="#"><u>125</u></a> ]
<b>NEWREZ LLC VS.</b>		

**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.

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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, and Office of the United States Trustee on October 29, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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NewRez LLC dba Shellpoint Mortgage Servicing ("Movant") seeks relief from the automatic stay with respect to Robert Marciano Amador's ("Debtor") real property commonly known as 12121 Gold Pointe, Gold River, California ("Property"). Movant has provided the Declaration of Laquanda Beaty 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 ten (10) post-petition payments, with a total of \$15,023.40 in post-petition payments past due. Declaration, Dckt. 127.

## **CHAPTER 13 TRUSTEE'S NON-OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed a Non-Opposition on November 23, 2020. Dckt. 131. Trustee asserts that Debtor is delinquent \$3,250.00 in plan payments and notes that according to Movant Debtor has defaulted on the mortgage payments since September 1, 2019, as stated by the Movant. *Id.*

## **DEBTOR'S OPPOSITION**

Debtor's counsel filed an Opposition on November 25, 2020. Dckt. 134. Debtor's counsel argues that no cause exists to grant the motion on the basis that there is an equity cushion sufficient to provide adequate protection of over \$150,000, where the Property is valued at \$390,000 and the debt secured by is approximately \$226,000. *Id.*, at 1:23-27. Debtor also asserts that Debtor has approximately \$25,000 in equity in the Property, and that even if there was no equity, the Property is necessary for an effective reorganization. *Id.*, at 2: 4-8.

Lastly, Debtor asserts that Movant fails to provide information regarding ongoing loan modification discussions and that the court require this information be presented prior to authorizing the relief. *Id.*, at 2: 11-17.

## **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 \$214,673.36 (Declaration, Dckt. 127), while the value of the Property is determined to be \$390,000.00, as stated in Schedules A/B and D 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 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.

Debtor's counsel's argument that the Property is required for an effective organization is not sufficient to survive the relief requested. Section 362(g) provides that a party opposing relief from stay has

the burden of proof. Here, Debtor simply states that the Property is necessary for an effective reorganization because it is Debtor's personal residence. Opposition, at 2: 8-9. Debtor offers no testimony or evidence how it is necessary for an effective reorganization. Here, Debtor has been operating under a confirmed Chapter 13 Plan, and is more than twelve months in default. Having defaulted in the confirmed plan, Debtor offers no plan. Thus, Debtor has not met this burden.

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### **Request for Attorneys' Fees**

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion asserts contractual grounds for the fees, specifically Movant points to the Loan Documents (Section 6(E) of the Note) which provide that Movant is entitled to its costs and expenses in enforcing its interest to the extent not prohibited by applicable law. *See* Exhibit A, Dckt. 128. Movant requests \$1,031.00 in attorney's fees, including the \$181.00 filing fee.

Commonly a request for attorney's fees and related nontaxable expenses is made by a post-judgment (which includes an order) motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

However, in some contested matters, including the request with a motion for a contested matter can be a cost effective, expense reducing (for both the creditor and debtor) practice.

Here, the Motion clearly states the grounds upon which the request for attorney's fees is based, identifying the contractual provision. The amounts of the fees, \$850.00, and the costs, \$181.00 filing fee, are reasonable. Though the Declaration provided by Movant does not state that the attorney's fees incurred with connection with this Motion is at least \$850.00, the court will, for this motion, find the pleading in the Motion to be sufficient for the request to be for attorney's fees that Movant will actually pay its counsel.

Attorney's fees of \$850.00 and costs of \$181.00 are awarded to Movant.

### **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 as adopted by the United States Supreme Court.

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.

## Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 NewRez LLC dba Shellpoint Mortgage Servicing (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 12121 Gold Pointe, Gold River, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**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.

**IT IS FURTHER ORDERED** that Movant is awarded \$850 in prevailing party attorney’s fees and costs of \$181.00.

No other or additional relief is granted.

## FINAL RULINGS

2. [17-25904-E-13](#)  
[GB-1](#)

BARBARA MYERS  
Chinonye Ugorji

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
11-4-20 [\[71\]](#)

U.S. BANK TRUST NATIONAL  
ASSOCIATION VS.

**Final Ruling:** No appearance at the December 8, 2020 hearing is required.

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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 November 4, 2020. By the court's calculation, 34 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><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust, its assignees and/or successors in interest ("Movant") seeks relief from the automatic stay with respect to Barbara Jean Myers' ("Debtor") real property commonly known as 6317 Jefjen Way, Elk Grove, California ("Property"). Movant has provided the Declaration of Trista Skaggs 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 15 post-petition payments, with a total of \$30,382.50 in post-petition payments past due. Declaration, Dckt. 73.

## TRUSTEE'S RESPONSE

Trustee filed an Response on November 23, 2020. Dckt. 77. Trustee asserts that Debtor is delinquent \$1,725.00 in plan payments. *Id.*, at 2. Additionally, Trustee notes that Movant is included in Debtor's plan and although it appears that Debtor's loan modification has been denied, Debtor has failed to modify the plan. *Id.*

## 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 \$254,592.68 (Declaration, Dckt. 73), while the value of the Property is determined to be \$513,598.00, as stated in Schedules A/B and D 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 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.

Here, Debtor has failed to make 15 post-petition payments. Moreover, Debtor is in breach of section 7.06 of the confirmed plan. According to Movant, Debtor was notified on or about August 4, 2020 that their application for a loan modification had been denied. Pursuant to Debtor's confirmed plan, Debtor had until August 19, 2020 to file a modified plan that provides for Movant's claim. Debtor has failed to do so.

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 Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

### 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.

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 U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust, its assignees and/or successors in interest (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 6317 Jefjen Way, Elk Grove, California, (“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Willie F. Myers of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).

**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.

No other or additional relief is granted.