

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 15, 2020 at 1:30 p.m.

1.	<u>19-25021</u>-E-13 STEPHEN/KAREN GINGOLD <u>JHK-1</u> Michele Poteracke AMERICREDIT FINANCIAL SERVICES, INC. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-11-20 [83]
-----------	--	--

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, parties requesting special notice, and Office of the United States Trustee on November 11, 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is denied without prejudice, with the court ordering the Trustee to hold the insurance proceeds pending Debtor's completing the plan or further order of this case.

Americredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay to allow Movant to continue advancing a claim with Debtor's automobile insurance carrier, GEICO General Insurance Company with respect to an asset identified as a 2013 Toyota Corolla, VIN ending in 9492 ("Vehicle"). The moving party has provided the Declaration of Lorenzo Nunez to

introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Stephen Anthony Gingold and Karen Michelle Gingold (“Debtor”).

Movant argues that as lienholder of the Vehicle, Movant is the named loss payee. Thus, relief is needed so that they may obtain and apply the insurance proceeds to the remaining balance on the secured claim (estimated payoff is \$8,675.00). Declaration, Dckt. 86. According to the insurance carrier, the net settlement amount is \$11,221.78; and Movant adds that any overage will be sent to the Trustee’s office. *Id.*

In Proof of Claim 4-1, Movant bifurcated its pre-petition claim of \$10,573.91 into a secured claim of \$6,062.00 (the value of the collateral; 11 U.S.C. § 506(a)) and an unsecured claim of \$4,511.91. In so doing, Movant prudently saved Debtor, Movant, and the court time and expense of a motion to value having to be filed by Debtor.

TRUSTEE’S OPPOSITION

Trustee filed an Opposition on December 2, 2020. Dckt. 90. Trustee asserts already having received the insurance proceeds. Trustee further explains that according to Trustee’s records, Movant was paid their entire secured claim plus interest pursuant to their Proof of Claim 4-1. Trustee further noting that Movant’s unsecured claim in the amount of \$4,511.91 is not entitled to additional funds as the plan calls for 0.0% dividend to creditors with unsecured claims.

Trustee is currently holding the balance of the funds pending modification of the plan and/or further order of the court. Trustee expresses willingness to hold the additional funds pending completion of the plan to ensure that they are available to Movant should they be entitled to receive them.

MOVANT’S REPLY

Movant filed a Reply on December 8, 2020, acknowledging that its Secured Claim is provided for in the Debtor’s confirmed Chapter 13 Plan and that all payments due on the Secured Claim under the Plan have been paid in full. Reply, p. 2:1-3; Dckt. 93.

The Reply also acknowledges that the Secured Claim as modified by the Plan, has been paid in full, but there is a remaining balance due of \$4,511.91.

DISCUSSION

As stated by Movant, the confirmation of the Plan modifies the terms of the Debtor’s obligation from its original terms, but such modification is conditional, becoming final only upon Debtor completing the Plan. If Debtor can cure the defaults and complete the Plan, then Movant has finally modified Movant’s obligation and nothing more can be claimed by Movant.

However, if Debtor’s case is dismissed or converted, the Plan has not been completed and Movant’s secured claim is as it existed as of the filing of this case, unmodified by the uncompleted plan.

The Trustee and Movant concur with the court ordering that the Trustee hold the \$4,511.10 in insurance proceeds in excess of the amount disbursed to Movant under the Plan pending the conclusion of this case.

The Motion for Relief is denied without prejudice, with the court ordering the Trustee to hold the \$4,511.10 in remaining insurance proceeds pending: completion of the Plan and the modification of Movant's claim becoming final or further order of the court.

The court shall issue a minute 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 Americredit Financial Services, Inc. dba GM Financial ("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 is denied without prejudice.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall hold the \$4,511.10 in insurance proceeds relating to the 2013 Toyota Corolla which is collateral for Movant's Secured Claim, in excess of those already paid to Movant for its Secured Claim as provided in Debtor's secured claim pending Debtor's completion of the Plan or further order of the court.

Plaintiff's Atty: Robert J. Enos
Defendant's Atty: Len ReidReynoso

Adv. Filed: 4/6/20
Answer: 5/1/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud

Notes:
Continued from 11/12/20. The Parties requested a continuance to allow them to complete a settlement.

The Status Conference is XXXXXXX
--

DECEMBER 15, 2020 STATUS CONFERENCE

At the November 12, 2020 Status Conference the Parties reported that a settlement has been reached in principle and that some additional time was needed to complete the settlement. No updated status reports have been filed.

At the Status Conference XXXXXXX

NOVEMBER 12, 2020 STATUS CONFERENCE

No Status Conference updates have been provided by either Party. At the Continued Status Conference, Counsel for Plaintiff reported that a settlement has been reached in principle. The Parties requested a continuance to allow them to complete the settlement.

SEPTEMBER 23, 2020 CONTINUED STATUS CONFERENCE

The court continued the Status Conference to allow the parties additional time in addressing issues arising in this Adversary Proceeding.

SUMMARY OF COMPLAINT

Robert Krzewicki ("Plaintiff") has filed a Complaint to determine the nondischargeability of an obligation asserted to be owed to him by Defendant-Debtor. Nondischargeability is sought pursuant to 11 U.S.C. § 523(a)(2)(A) and (B).

SUMMARY OF ANSWER

Shawn Meyers (“Defendant-Debtor”) has filed an Answer, Dckt. 7, that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Robert Krzewicki alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(i) and (j). Complaint ¶ 2.1, Dckt. 1. In the Answer, Defendant Shawn Myers admits the allegations of jurisdiction and core proceedings. Answer, ¶¶ 2.1, 2.2, Dckt. 7. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

JOINT STATUS CONFERENCE STATEMENT AND DISCOVERY PLAN

The Parties filed their Joint Status Statement and Discovery Plan on June 24, 2020. Dckt. 10. Plaintiff projects having discovery completed in 120 days. Plaintiff reports that due to other trial commitments, Plaintiff’s counsel cannot be ready for trial until February 2021.

Defendant proposes that the parties use written testimony and exhibits in lieu of a trial.

NOVEMBER 12, 2020 STATUS CONFERENCE

At the Status Conference the Parties advised the court that this matter has been settled and the settlement agreement is being circulated for signatures. They requested a short continuance to allow them to complete the documentation of the settlement.

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, parties requesting special notice, and Office of the United States Trustee on November 13, 2020. By the court's calculation, 32 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 granted, with the court modifying the automatic stay to allow the sale of the real property to be consummated, with the net sales proceeds to be held by xxxxxx pending further order of this court determining the property of the bankruptcy estate.~~

Kendra Coupe, Debtor's former spouse, ("Movant") seeks relief from the automatic stay with respect to Arturo Bruce Coupe's ("Debtor") real property commonly known as 58 Chicory Rd., Chico, California ("Property"). Movant has provided the Declaration of Kendra Coupe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues that Debtor signed a binding agreement as part of their dissolution proceeding in the Superior Court of California County of Butte ("State Court") after the court ordered the parties to sell the house. Declaration, Dckt. 26. Escrow was set to close on September 11, 2020 but the Debtor refused to sign the papers closing escrow. *Id.* The State Court judge issued an "Elisor" to allow the title company to complete the sale. *Id.*^{Fn.1.} Movant then testifies that Debtor then filed this bankruptcy case to interfere with the sale. *Id.* Movant further testifies that Movant and the buyers are ready to move forward with the sale, which has a purchase price of \$620,000 and after payment of the first deed of trust and other expenses and fees will net approximately \$340,000 to split between Debtor and Movant. *Id.*

FN. 1. While Movant may be familiar with what an “Elisor” is, the federal judge is not. Fortunately, a copy of the “Elisor” is provided as Exhibit C. Dckt. 27. This appears to be a court order, similar as provided in Federal Rule of Civil Procedure 70 and Federal Rule of Bankruptcy Procedure 7070, to authorize the clerk of the court to execute documents in the place of a person failing to do so when ordered by the court.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on December 1, 2020. Dckt. 34. Debtor asserts that Movant’s statement about filing the bankruptcy to stop the sale is conclusory and explains that Debtor wishes to obtain new financing so that he can pay the existing loan, pay Movant’s share of the equity, and keep the house. *Id.* Debtor asserts that Movant is not entitled to an automatic 50% share of the equity because Debtor has separate property contribution from inherited funds of approximately \$65,000 in the property. *Id.*

Through his Chapter 13 Plan, Debtor is requesting six (6) months to obtain new financing. *Id.* Debtor argues that he wanted to obtain new financing during the dissolution but that his divorce attorney represented that this was not an option. *Id.* Debtor also asserts he is making adequate protection payments to the mortgage lender and has steady employment which will allow him to qualify for a new loan and continue making payments. *Id.* Debtor further contends sending loan modification applications to three different lenders. *Id.*

Debtor filed his proposed plan as Exhibit 1 and Schedules I and J as Exhibit 2. Dckt. 36.

MOVANT’S RESPONSE

Movant filed a Response on December 8, 2020. Dckt. 38. Movant again asserts that Debtor has not filed the case in good faith but to stop the sale having failed to make mortgage payments while still living in the residence for free and that the sale was ordered by the court with Debtor agreeing to sale by signing the purchased agreement. *Id.* Movant adds that the issues of ownership interest in the house or whether Debtor is capable of making the house are state court issues that should be solved in the state court once the stay is lifted. *Id.*

CHAPTER 13 TRUSTEE’S OPPOSITION

David P. Cusick (“the Chapter 13 Trustee”) filed an Opposition on December 8, 2020. Dckt. 40. Trustee asserts that creditor Mechanics Bank (“Creditor”) is included in Debtor’s proposed plan and Trustee has disbursed a total of \$4,223.68 towards Debtor’s mortgage and \$0.00 in arrears payments to creditor. Trustee notes that although it appears Debtor has not adhered to a court order, the proposed plan requests the loan modification period and the mortgage payments are current. Trustee also asserts having filed an objection to Debtor’s plan for failure to provide proof of social security and unfiled tax return. *Id.* Trustee adds that the meeting of creditors has been continued to January 21, 2021 @ 1 p.m. for the returns to be filed. *Id.*

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a

nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, there have been extensive state court family law proceedings relating to the dissolution of Movant’s and Debtor’s marriage. Stipulations have been filed, orders by the state court to administer the marital property, the Debtor agreeing to sell the Property, and now the bankruptcy case has been filed to “overrule” the state court orders and agreements entered into by Debtor.

Movant has provided as Exhibit B a copy of the Purchase Agreement by which he has contracted with Movant to sell the Property. Dckt. 29. It appears that Debtor now seeks to use the Bankruptcy Code to terminate the Buyers’ rights to purchase the Property, and Debtor’s obligation to sell the Property.

The court finds that the nature of the State Court Dissolution Action warrants relief from stay for cause. The issues appear to have been litigated already, and the judge has issued an order for Debtor to move forward with the sale. Indeed, Debtor signed a binding agreement to sell the property. Therefore, judicial economy dictates that the state court order be allowed enforcement after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to proceed with consummation of the sale of the Property as ordered by the State Court judge. This necessitates the payments of all costs and expenses to consummate the sale. It is projected that there will be approximately \$340,000.00 of net sales proceeds to be divided between the Debtor and Movant.

However, with respect to the sales proceeds, Debtor has made, through the Chapter 13 Trustee, some additional payments on the obligation secured by the Property.

Movant also requests attorney’s fees and costs in the Motion, but no contractual or statutory basis for such attorney’s fees is stated in the Motion.

Therefore, while modifying the stay to allow the sale to be completed and the net sales proceeds determined, the court does not modify the stay to determine what portion of the proceeds constitute property of the bankruptcy estate. The court continues to exercise the exclusive federal

jurisdiction granted pursuant to 28 U.S.C. § 1334(e) to determine the property of the bankruptcy estate based on the agreements and orders of the state court. If further state court proceedings are required, the parties may seek discretionary abstention from this court.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees (other than to state Movant seeks the fees "pursuant to the Security Agreement"). No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by 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.

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.

No other or additional relief is granted by the court.

Pending further order of this court determining what portion of the sales proceeds constitute property of the bankruptcy estate (11 U.S.C. § 541), the net sales proceeds shall be held by **XXXXXXX** pending further order of the court.

Counsel for Movant shall prepare a proposed order consistent with the above Ruling and lodge it with the court.

FINAL RULINGS

4. [17-23287-E-13](#) **ROBERT AMADOR** **MOTION FOR RELIEF FROM**
[RTD-2](#) **Mikalah Liviakis** **AUTOMATIC STAY AND/OR MOTION**
SCHOOLS FIRST FEDERAL CREDIT **FOR RELIEF FROM CO-DEBTOR STAY**
UNION VS. **11-30-20 [136]**

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

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Co-Obligor, Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 30, 2020. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The hearing on the Motion for Relief from the Automatic Stay has been continued to 1:30 p.m. on January 12, 2020, with the agreement of Movant as stated on the record at the December 8, 2020 hearing on the Motion for Relief From the Stay filed by NewRez, LLC.

Continuance of Hearing

At the December 8, 2020 hearing on the Motion for Relief From the Automatic Stay filed by New Rez, LLC (DCN: RAS-1) Counsel for SchoolsFirst Federal Creditor Union, which holds the junior deed of trust on the Property, appeared and agreed on the record to continue the hearing on this Motion to 1:30 p.m. on January 12, 2021 as well, to afford Debtor the opportunity to focus on the cure proposal.

SchoolsFirst Federal Credit Union (“Movant”) seeks relief from the automatic stay with respect to Robert Marciano Amador’s (“Debtor”) real property commonly known as 12121 Gold Pointe Lane, Gold River, California (“Property”). Movant has provided the Declaration of Dioselin Hernandez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

A Motion for Relief from the Automatic Stay filed by NewRez LLC, creditor with the first deed of trust over the Property, was set to be heard on December 8, 2020. Dckt. 125. Movant argues that their security interest is not adequately protected and may be lost if the motion is granted.

Movant also provides evidence that there are 85 pre-petition payments in default, with a pre-petition arrearage of \$74,789.74. Declaration, Dckt. 1396.

CHAPTER 13 TRUSTEE'S NON-OPPOSITION

David P. Cusick ("the Chapter 13 Trustee") filed an Opposition on December 7, 2020. Dckt. 145. Trustee asserts that Debtor is delinquent \$3,250 in plan payments and that Movant is included in the confirmed plan. *Id.* Trustee notes that Trustee to date has been paid a total of \$90,243.88 to Movant. *Id.* Trustee further notes that Movant requests relief from the co-debtor stay as to Olga Amador, where co-debtor is listed as a borrower on the Note and trustor on the Deed of Trust, but Debtor's Amended Schedule D does not list co-debtor as also owing the debt. *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 \$132,356.63 (Declaration, Dckt. 139), 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).

Co-Debtor Stay

Additionally, Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has established, pursuant to 11 U.S.C. § 1301(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because the superior deed of trust is in default and Movant is seeking relief to protect its interest in the entire 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 generally does not grant additional relief merely stated in the prayer.

5. [20-20168-E-7](#) **SHAWN MYERS**
[20-2023](#)

ADRIAN, JR. V. MYERS

**CONTINUED PRE-TRIAL
CONFERENCE RE: AMENDED
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF
DEBT ARISING FROM FRAUD AND
DECEIT BY THE DEBTOR TO THE
PLAINTIFF
3-12-20 [7]**

Final Ruling: No appearance at the December 15, 2020 Pre-Trial Conference is required.

ADVERSARY DISMISSED 12/5/20

Plaintiff's Atty: Pamela Nelson
Defendant's Atty: Len ReidReynoso

Adv. Filed: 3/5/20
Answer: none
Amd. Cmplt. Filed: 3/12/20
Answer: 4/1/20
Amd. Answer: 4/20/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:
Continued from 11/12/20. Pretrial conference statement to be filed on or before 11/25/20.

Plaintiff's Pretrial Statement filed 11/24/20 [Dckt 47]

Stipulation Memorializing Settlement Agreement filed 12/3/20 [Dckt 49]; Order approving and dismissing adversary filed 12/5/20 [Dckt 51]

<p>The Adversary Proceeding having been dismissed by Order of the court (Dckt. 51), the Pretrial Conference is concluded and removed from the calendar.</p>
--