

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 17, 2020 at 10:00 a.m.

1. [20-90633-E-7](#)
[ASW-1](#)

TERESA TAYLOR
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-10-20 [26]**

LAKEVIEW LOAN SERVICING 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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Trustee's Attorney, Tax Lienholder, and Office of the United States Trustee on November 10, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion for Relief from the Automatic Stay is denied without prejudice.</p>
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Lakeview Loan Servicing LLC ("Movant") seeks relief from the automatic stay with respect to Teresa G. Taylor's ("Debtor") real property commonly known as 1505 Jackellen Lane, Modesto, California ("Property"). Movant has provided the Declaration of Melissa Riley 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 one (1) post-petition payment, with a total of \$954.46 in post-petition payments past due. Declaration, Dckt. 29. Movant also provides evidence that there are eight (8) pre-petition payments in default, with a pre-petition arrearage of \$7,635.68. *Id.*

CHAPTER 7 TRUSTEE'S OPPOSITION

Gary R. Farrar ("the Chapter 7 Trustee") filed an Opposition on November 30, 2020. Dckt. 37. The Chapter 7 Trustee opposes the motion on the basis that there is equity for the estate and Trustee wishes to sell the Property for an amount that exceeds Movant's lien as well as that of the Internal Revenue Service.

Trustee argues that after being authorized by the court, he has employed a realtor to market and sell the Property once Trustee is able to communicate with the present occupier of the residence in order to inspect and photograph the Property to determine the listing price. *Id.*, at 2-3. Moreover, according to Trustee, Movant did not communicate with Trustee inquiring as to Trustee's intentions with the Property. *Id.*, at 3:19-21.

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 \$112,553.35 (Declaration, Dckt. 29), while the value of the Property is determined to be \$303,782.00, as stated in Schedules A/B and D filed by Debtor.

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 existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movant's claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Trustee asserts that the value of the Property, \$303,782.00, exceeds the amount of the liens: Movant's lien for \$117,962.99 and the Internal Revenue Service's lien for \$104,787.00 (\$33,619.52 of which Trustee contends is avoidable), which leaves an equity cushion of \$81,031.98. Opposition, Dckt. 37, at 4:10-13. Further adding that after accounting for costs of sale of 8% or \$24,302.56, there is a total equity cushion of \$56,729.42. *Id.*, at 4:14-15.

Here, Trustee has been diligently working on investigating the Property. The case was filed on September 17, 2020 and since then Trustee has reviewed the relevant documents related to the Property, obtained information of the current occupier, moved the court to employ a realtor by October 14, 2020, and has been working on setting up an inspection of the Property in order to market and sell the Property.

The Motion for Relief is denied without prejudice.

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 Lakeview Loan Servicing 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 is denied without.

FINAL RULINGS

2. [20-90645](#)-E-11
[SSA-1](#)

MOHIT RANDHAWA
David Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-6-20 [25]

BIKRAM SAHA VS.

Final Ruling: No appearance at the December 17, 2020 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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2020. By the court's calculation, 41 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.

Pursuant to prior order of the court, and as stipulated by the parties, **the hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on January 14, 2020.**

Bikram Saha ("Movant") seeks relief from the automatic stay to allow *Saha v. Reply Logistics Inc., et al*, Case No. 19CV350171 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Bikram Saha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Mohit Singh Randhawa ("Debtor in Possession").

On December 11, 2020, the parties filed a joint request for the court to continue the hearing to 10:00 a.m. on January 14, 2020 on the basis that parties are in active settlement negotiations to resolve their differences. Dckt. 41. The court granted the request on December 14, 2020. Dckt. 42.