

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

December 17, 2024 at 1:30 p.m.

1. [24-21440](#)-E-13  
[RDW](#)-3

ERIKA NORMAN  
Peter Macaluso

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR ADEQUATE PROTECTION  
8-7-24 [66]

**RUDOLPH INCORPORATED 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 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 August 7, 2024. By the court's calculation, 34 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. At the hearing, opposition was stated by Debtor.

**The Motion for Relief from the Automatic Stay is granted pursuant to the terms of the Stipulation, Docket 161.**

December 17, 2024 Hearing

The court continued the hearing to allow Movant to file and serve a Notice of Continued Hearing that included the proposed stipulation terms that resolve this Motion. Order, Docket 152. Movant filed those documents on December 3, 2024. Dockets 159, 161. The essential terms of the Stipulation (with the court's additional text show in red courier font) are:

1. Debtors shall pay Creditor's claim at \$12,395.83, with interest accruing at the contract rate of 21.99%.
2. Debtors must maintain current monthly payments to the Chapter 13 Trustee pursuant to the terms of any confirmed Chapter 13 Plan.
3. Debtors must maintain insurance coverage on the Vehicle with Secured Creditor listed as the loss payee.
4. In the event that Debtor defaults under the terms and conditions of the Stipulation, Secured Creditor must serve written notice of default to Debtors and Debtors' attorney. If the Debtors fail to cure the default within 10 days after service of such written notice, Secured Creditor may file and serve a supplemental (under this Docket Control Number) ex parte motion for relief from the automatic stay to allow it to conduct a non-judicial foreclosure sale of the property and lodge a proposed order with the court. The ex parte motion shall be limited to the default grounds set forth in the notice of default.

Any opposition to the ex parte motion shall be in writing, filed with the court within 10 days of the mailing of the ex parte motion to the Debtor and Debtor's counsel, and limited to disputing the grounds arising under notice of default specified in the ex parte motion.

The Debtor shall set a hearing on its opposition to the ex parte motion for the first available regular Chapter 13 motion for relief from automatic stay calendar for this court that is more than 14 days after the date the ex parte motion was mailed to the Debtor.

The grounds specified herein for the ex parte motion procedure are without prejudice to Creditor filing a motion for relief from the automatic stay on any other grounds and setting the motion for hearing pursuant to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule.

5. Debtors shall be entitled to a maximum of three (3) notices of default and opportunities to cure pursuant to the preceding paragraph. Once the Debtors have defaulted this number of times on the obligations imposed by this

Order and has been served with this number of notices of default, Secured Creditor is relieved of any obligation to serve additional notices of default or to provide additional opportunities to cure. If an event of default occurs thereafter, Secured Creditor shall be entitled, without first serving a notice of default or providing the Debtors with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail the Debtors' failures to perform hereunder, together with a proposed order terminating the stay, which the court may enter without further notice or hearing.

Notice 2:8-3:2, Docket 159.

The Stipulation provides a good faith resolution of this Motion consistent with the rights of Debtor under Chapter 13.

At the hearing, **XXXXXXX**

The Motion is granted, with relief provided as set forth in the Stipulation of the Parties, as modified above for the supplemental *ex parte* motion provisions.

### **REVIEW OF MOTION**

Rudolph Incorporated, its successors and/or assignees in interest ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Ford F150 Regular Cab, VIN ending in 0916 ("Vehicle"). The moving party has provided the Declarations of Angela Hellman (Docket 68) and Reilly Wilkinson (Docket 69) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Erika Lizeth Norman ("Debtor").

Movant argues Debtor has not made four monthly post-petition payments, with a total of \$2,086.36 in post-petition payments past due. Declaration 4:8, Docket 68. Movant also provides evidence that there is one pre-petition payment in default, with a pre-petition arrearage of \$547.66. *Id.* According to Movant, relief should be granted pursuant to 11 U.S.C. § 362(d)(1) for this delinquency, and because Debtor misrepresented facts to Movant when obtaining the loan secured by the vehicle. Mot. 2:14-21, Docket 66. Movant further seeks an order granting relief pursuant to 11 U.S.C. § 362(d)(2), arguing there is no equity in the Property and it is not necessary for a reorganization. *Id.* at 2:25-26.

Movant further moves this court for its postpetition attorneys' fees and costs incurred in bringing the Motion. *Id.* at 3:10-12. No specific amount of attorney's fees is provided in the Motion, and no task billing summary is provided in the Exhibits.

### **Kelley Blue Book Valuation Report Provided**

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70. 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 \$14,489.60 (Declaration 4:14-15, Docket 68), while the value of the Vehicle is determined to be \$13,268, as stated in the Kelley Blue Book Valuation Report for the Vehicle. Ex. 8, Docket 70.

### **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).

### **11 U.S.C. § 362(d)(2)**

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 rehabilitation. 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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

However, as noted in the related matter, relief from the stay would not allow Movant to pursue repossession where Debtor’s spouse’s (“Mr. Norman”) individual bankruptcy case is currently ongoing, there being a stay present there. Debtor’s case has been transferred to Department E, and Debtor indicates there is a Motion to Consolidate that will be filed soon, consolidating Debtor and Mr. Norman’s cases into one.

### **Co-Debtor Stay**

Additionally, Movant has not provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1301(a). Movant has not established, pursuant to 11 U.S.C. § 1301(a), that the Co-Debtor stay is in effect, Debtor’s spouse having his own bankruptcy stay in place under 11 U.S.C. § 362(a).

### **Attorneys’ Fees Requested Request for Attorneys’ Fees**

Movant requests that it be allowed attorneys’ fees. Movant seeks the fees pursuant to the “Security Agreement securing Movant’s claim or 11 U.S.C. § 506(b).” Mot. 3:10-13, Docket 66. 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.

### **Continuance of September 10, 2024 Hearing**

At the September 10, 2024 hearing, the Parties and counsel, including counsel for Kevin Norman, appeared. Additionally, a Motion to Consolidate the Debtor's case with that of her spouse, Kevin Norman, will be filed. The Chapter 13 case will be prosecuted as a joint case.

The hearing is continued to 1:30 p.m. on October 22, 2024. Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024.

### **October 22, 2024 Hearing**

The court continued this hearing to afford Debtor time to get a Motion to Consolidate on file and provide for Movant's claim moving forward. The court set the deadlines: "Opposition pleadings shall be filed and served on or before October 10, 2024, and Reply pleadings, if any, filed and served on or before October 17, 2024." Order, Docket 115.

On October 9, 2024, Debtor filed an Opposition to the Motion. Docket 134. Debtor states the Vehicle is being paid in full and is protected. *Id.* at 2:9-10. However, there is no Chapter 13 Plan on the Docket that reflects such treatment.

The hearing on the Motion for Relief from the Automatic Stay is continued to 2:00 p.m. on November 5, 2024, (Specially Set Time) to be conducted in conjunction with the hearing on the Motion for Joint Administration.

### **November 5, 2024 Hearing**

The court continued the hearing on this Motion to be heard in conjunction with the Motion for Joint Administration. As of the court's review of the Docket on October 30, 2024, nothing new has been filed with the court under this Docket Control Number.

At the hearing, the Parties informed the court that terms of a settlement have been reached.

The hearing on the Motion for Relief from the Automatic Stay is continued to 1:30 p.m. on December 17, 2024.

Notice of the continued hearing and settlement terms shall be filed and served on or before December 2, 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 Rudolph Incorporated, its successors and/or assignees 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** the hearing on the Motion for Relief from the Automatic Stay is granted pursuant to the terms of the Stipulation at Docket 161. The essential terms of the Stipulation are:

1. Debtors shall pay Creditor's claim at \$12,395.83, with interest accruing at the contract rate of 21.99%.
2. Debtors must maintain current monthly payments to the Chapter 13 Trustee pursuant to the terms of any confirmed Chapter 13 Plan.
3. Debtors must maintain insurance coverage on the Vehicle with Secured Creditor listed as the loss payee.
4. In the event that Debtor defaults under the terms and conditions of the Stipulation, Secured Creditor must serve written notice of default to Debtors and Debtors' attorney. If the Debtors fail to cure the default within 10 days after service of such written notice, Secured Creditor may file and serve a supplemental (under this Docket Control Number) ex parte motion for relief from the automatic stay to allow it to conduct a non-judicial foreclosure sale of the property and lodge a proposed order with the court. The ex parte motion shall be limited to the default grounds set forth in the notice of default.

Any opposition to the ex parte motion shall be in writing, filed with the court within 10 days of the mailing of the ex parte motion to the Debtor and Debtor's counsel, and limited to disputing the grounds arising under notice of default specified in the ex parte motion.

The Debtor shall set a hearing on its opposition to the ex parte motion for the first available regular Chapter 13 motion for relief from automatic stay calendar for this court that is more than 14 days after the date the ex parte motion was mailed to the Debtor.

The grounds specified herein for the ex parte motion procedure are without prejudice to Creditor filing a motion for relief from the automatic stay on any other grounds and setting the motion for hearing pursuant to the Federal Rule of Bankruptcy Procedure and Local Bankruptcy Rule.

5. Debtors shall be entitled to a maximum of three (3) notices of default and opportunities to cure pursuant to the preceding paragraph. Once the Debtors have defaulted this number of times on the obligations imposed by this Order and has been served with this number of notices of default, Secured Creditor is relieved of any obligation to serve additional notices of default or to provide additional opportunities to cure. If an event of default occurs thereafter, Secured Creditor shall be entitled, without first serving a notice of default or providing the Debtors with an opportunity to cure, to file and serve a declaration under penalty of perjury setting forth in detail the Debtors' failures to perform hereunder, together with a proposed order terminating the stay, which the court may enter without further notice or hearing.

2. [22-21474-E-13](#)      **PATRICK/CELESTE JOCSON**      **CONTINUED MOTION FOR RELIEF**  
[NLG-1](#)      **Arasto Farsad**      **FROM AUTOMATIC STAY**  
           **10-9-24 [44]**  
**NEW AMERICAN FUNDING, 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, Debtor's Attorney, Chapter 13 Trustee, other parties in interest, and Office of the United States Trustee on October 9, 2024. 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Relief from the Automatic Stay is <span style="color: red;">XXXXXXX</span>.</b>
---

## **December 17, 2024 Hearing**

The court continued this hearing, having been informed at the prior hearing that the Parties were working on a Stipulation for adequate protection payment of Movant's collateral. A review of the Docket on December 12, 2024 reveals nothing new has been filed in the case.

At the hearing, **XXXXXXX**

### **REVIEW OF MOTION**

New American Funding, LLC ("Movant") seeks relief from the automatic stay with respect to Patrick Blue Wong Jocson and Celeste Maria Gil Jocson's ("Debtor") real property commonly known as 6704 Rawley Way, Elk Grove, CA 95757-4035 ("Property"). Movant has provided the Declaration of Robert Moreno to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 51.

Movant argues Debtor has not made three post-petition payments, with a total of \$7,153.73 in post-petition payments past due. Declaration ¶ 9, Docket 48. Debtor had been making payments under the terms of the confirmed Plan until falling behind on June 1, 2024.

### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on October 17, 2024. Docket 50. Debtor explains that the reason for the delinquency in payments arose due to a severe and unexpected medical issue preventing Debtor from working. Debtor has offered a compromise to Movant to cure the arrearage over a four month period.

### **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 \$447,858.36 (Declaration ¶ 10, Docket 48), while the value of the Property is determined to be \$555,398.00, as stated in Schedules A/B and D filed by Debtor. Schedule A/B at 12, Docket 1.

### **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).



## **NOVEMBER 19, 2024 HEARING**

At the November 19, 2024 hearing the Parties reported that they are working on an adequate protection stipulation. Movant and Debtor requested that the hearing be continued approximately 30 days.

The hearing is continued to 1:30 p.m. on December 17, 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 New American 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** that the Motion for Relief from the Automatic Stay is  
**XXXXXXX.**

PATRICK HANEGAN 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2024. By the court’s calculation, 7 days’ notice was provided. The court set the hearing for December 17, 2024. Dckt. 45.

The Motion for Relief was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. At the hearing -----.

<b>The Motion for Relief is granted.</b>
--

Creditor Patrick Hanegan (“Movant”) moves the court for an order pursuant to 11 U.S.C. § 362(d)(4), arguing it is now the owner of the real property commonly known as 1908 New Jersey St., Fairfield, Ca 94533 (“Property”), having purchased the Property after a foreclosure sale. There have been a string of bankruptcies effecting Movant’s rights to gain repossession of the Property. Movant alleges:

Debtor has filed two bankruptcy petitions in the last 12 months: Eastern District Case No. 24-25140 filed on July 1, 2024, and dismissed on July 19, 2024, and the present case which was initially filed in the Northern District on October 18, 2024, but subsequently transferred to the Eastern District as Case No. 24-25140. Five (5) separate individuals have filed claims of possession to the Property as purported tenants within the pending eviction proceedings, and two (2) of those individuals have also filed bankruptcy: Roberto Rojas in Eastern District Case No. 24-24421 filed on October 1, 2024, and dismissed on October 30, 2024, and Richard Mendoza

in Northern District Case No. 24-41763 filed on November 5, 2024 which is still pending. Thus, there have been four (4) bankruptcy petitions filed by three (3) separate individuals within the last 12 months, all relating to the Property.

Mot. 2:4-13, Docket 46.

As a result of these systematic filings, Movant alleges Debtor is involved in a scheme, through multiple filings, to hinder, delay and defraud Movant's efforts to enforce his rights under the note and deed of trust and take possession of the Property.

### **11 U.S.C. § 362(d)(4)**

#### **Prospective Relief from Future Stays**

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* The following cases have been filed in the past 12 months that affect the Property:

- A. Case No. 24-25140 - Debtor Jane S. Pacheco
  - 1. Filed: October 18, 2024
  - 2. Chapter 13
  - 3. Dismissal Date: Current Chapter 13
  - 4. Reason for Dismissal: N/A
- B. Case No. 24-22880 - Debtor Jane S. Pacheco
  - 1. Filed: July 1, 2024
  - 2. Chapter 13
  - 3. Dismissal Date: July 19, 2024
  - 4. Reason for Dismissal: Failure to timely file documents
- C. Case 24-22565 - Debtor Jane S. Pacheco
  - 1. Filed June 13, 2024
  - 2. Chapter 13
  - 3. Dismissal Date: July 1, 2024
  - 4. Reason for Dismissal: Failure to timely file documents
- D. Case No. 24-24421 - Debtor Roberto Rojas
  - 1. Filed: October 1, 2024
  - 2. Chapter 13

3. Dismissal Date: October 30, 2024
  4. Reason for Dismissal: Failure to timely file documents
- E. Case No. 24-41763 (Northern District California) - Debtor Richard Mendoza
1. Filed: November 5, 2024
  2. Chapter 13
  3. Dismissal Date: Open
  4. Reason for Dismissal: N/A

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any *bona fide*, good faith reason in light of multiple bankruptcies being filed by multiple debtors in an effort to hinder Movant exercising his rights of possession. In effect, this is a series of bankruptcy attempts by Debtor.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

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 Creditor Patrick Hanegan (“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 granted, and 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 1908 New Jersey St., Fairfield, Ca 94533 (“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 above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

“If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

No other or additional relief is granted.

# FINAL RULINGS

4. [24-25341-E-13](#)  
[KH-1](#)

MAHER ATTAYA  
Michael Benavides

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-2-24 [\[13\]](#)

ARDEN BUSINESS CENTER, LLC  
VS.

**Final Ruling: No appearance at the December 17, 2024 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, Chapter 13 Trustee, and Office of the United States Trustee on December 2, 2024. 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 xx 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The Motion for Relief from the Automatic Stay is dismissed without prejudice, this Bankruptcy Case having been dismissed by prior order of the court.**

Arden Business Center, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 3409 Fulton Avenue, Sacramento, California 95821 (“Property”). The moving party has provided the Declaration of Pete Halimi to introduce evidence as a basis for Movant’s contention that Maher Rachid Attaya (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property.

Movant presents evidence that it is the owner of the Property. Decl. ¶ 3, Docket 15. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on July 12, 2024, case no. 24CV006285. Exhibit 5, Dckt. 23. No judgment has yet been reached, the trial being delayed by this filing.

The Motion requests prospective relief pursuant to 11 U.S.C. § 362(d)(1).

Movant has provided a properly authenticated copy of the Assignment and Assumption of Lessor's Interest in Lease to substantiate its claim of ownership. Ex. 1, Docket 19. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor or the Chapter 13 Trustee, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective rehabilitation in this Chapter 13 case.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 2005 Bankr. LEXIS 3427, at \*8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

**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.

**DISMISSAL WITHOUT PREJUDICE**

On December 13, 2024, the court entered an order dismissing this Bankruptcy Case. Order; Dckt. 28. This order was entered by the Clerk of the Court due to Debtor's failure to file necessary documents in this Bankruptcy Case. *Id.*

With the dismissal of this Bankruptcy Case, the automatic stay has terminated by operation of law - 11 U.S.C. § 362(c)(2)(B).

The dismissal of this case rendering the Motion moot, the Motion is dismissed 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 Arden Business Center, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, this Bankruptcy Case having been dismissed on December 13, 2024 (Order; Dckt. 26); and good cause appearing,

**IT IS ORDERED** that the Motion for Relief From the Automatic Stay is dismissed without prejudice, it having been rendered moot by operation of law, the provisions of 11 U.S.C. § 362(c)(2)(B) terminating the automatic stay upon the dismissal of this Bankruptcy Case.