UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 20, 2018 at 10:00 a.m.

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1. 18-90029-E-11 JCW-1 | **JEFFERY ARAMBEL** | **Matthew Olson** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** | **6-4-18 [381]**

WELLS FARGO, N.A. 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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 4, 2018. By the court's calculation, 38 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 XXXX.

REVIEW OF MOTION

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the Estate's real property commonly known as 49 Echo Court, Patterson, California ("Property"). Movant has provided the Declaration of George Plowden, Jr., to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds upon which the particularly stated relief is based:

A. Debtor executed a promissory note that secured by a mortgage or deed of trust (it not being specified which legal document it is in the Motion).

B. The promissory note is either made payable to Movant or has been duly endorsed (Movant apparently not being able to state whether it is the named payee on the note or is asserting rights as the holder of an endorsed note).

C. Movant is either the original mortgagee or beneficiary (apparently unable to identify if the security interest is a mortgage or deed of trust) or an assignee (apparently unable to state if it is the original beneficiary or an assignee) of the mortgage or deed of trust.

D. Movant values the Property securing the claim at $450,000 (providing what is identified as a "Broker's Price Opinion" as evidentiary support).

E. After payment of Movant's secured claim and 8% for costs of sale, Movant computes there to be a negative equity for the Estate in the Property of ($370,000).

F. Debtor in Possession (Motion states "Debtor," but presumably Movant is referring to Debtor in Possession as the fiduciary of the bankruptcy estate in which all of Debtor's assets are now located) has not made four post-petition payments on the obligation.

G. Relief Requested: Based on the above grounds, Movant requests relief from the automatic stay to conduct a non-judicial foreclosure sale under the Deed of Trust, to apply the proceeds to the secured debt, and for the purchaser to obtain possession of the Property.

Motion, Dckt. 381. Movant also requests in the prayer attorneys' fees in an unspecified amount, with no grounds for such fees stated in the Motion. (Though the Federal Rules of Bankruptcy Procedure do not require a request for attorneys' fees be stated as a separate claim in the Motion and such fees may be allowed by post-judgment/order motion, if clearly stated in the Motion the court may be able to award such fees as part of the order granting relief, especially when no opposition is filed.)

In Movant's properly pleaded separate Points and Authorities, the legal basis for the relief is stated to arise pursuant to 11 U.S.C. § 362(c)(d)(2)—lack of equity for the Estate and not necessary for an effective reorganization. As provided in 11 U.S.C. § 362(g), Movant has the burden of proof on the equity issue, and Debtor in Possession has the burden of proof on the necessary for effective reorganization point.

Steve Ziettlow has provided his Declaration in Support of the Motion as the appraiser providing an expert opinion as to the value of the Property. Dckt. 385. His opinion is that the Property has a value of $450,000.00. Declaration ¶ 4, *Id.*

Though stated in the Motion and the Index to the Exhibits as a Broker's Price Opinion, both the above Declaration and Exhibit 3 filed in support of the Motion make it clear that it is an Appraisal, with the testimony being provided by a licensed real estate appraiser. Declaration ¶ 2, *Id.*

The Appraisal Report states that it is a "Desktop Appraisal" and is a "Restricted Appraisal Report." Exhibit C, Dckt. 383 starting at 38. On page 2 of the Desktop Appraisal, the following definitions and qualifications are provided:

> "PURPOSE:
> The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on a sales comparison analysis solely for the use by the client identified in the report."

The identified client is Wells Fargo Bank, N.A.

> "INTENDED USE:
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> The Intended use of this appraisal report is for internal asset review and/or loan servicing (Including default) by the client. The report is not intended for any other use."
>
> "INTENDED USER:
>
> The intended user of this report is limited solely to the identified client. This is a Restricted Appraisal Report and the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile."

In reaching his opinion as to value, Mr. Ziettlow identified six comparable properties that he used for this Desktop Appraisal. These all are stated to be built in the same time period, are of similar construction and condition (though condition appears to be assumed because this is a "Desktop Appraisal"), and are not REO or shortsale properties.

Mr. Ziettlow provides a map of the comparables and the Property at issue, showing their physical proximity. *Id.* at 42. One difference between the Property and the comparables is that the size of the Property lot is two times that of the comparables: 19,131 square fee compared to 6,750–9,393 square feet.

The living area for the Property is 3,829 square feet (5 bedroom, 4 bath), while the comparables ranged from 2814 (4 bedroom 2 ½ bath) to 3825 (5 bedroom, 3 ½ bath) square feet.

For the comparable properties, five have sales closing dates range from July 7, 2017 through March 18, 2018 (with only one sale being in 2018). The closing for the sale of the sixth comparable has not closed, with a listing price of $440,000 shown for a 3,835 square foot home (5 bedrooms, 3 ½ bath) on a 6,750 square foot lot (approximately 35% the size of the lot for the property at issue).

The sales prices for the five comparables for which escrow has closed are (in order of comparable identification number): $451,000 (3,777 sq. ft. home), $450,000 (2,939 sq. ft. home), $439,000 (2,884 sq. ft. home), $438,000 (2,885 sq. ft. home), and $419,000 (2,814 sq. ft. home).

For the sixth comparable property, the listing price is $440,000 (3,835 sq. ft., with an "inferior view").

Using the five actual sales, it appears that the value per square foot of the home is $150.00. For the Property, with a 3,829 square foot home, that would equal $574,350.

In looking at the Desktop Appraisal the court could not find where Mr. Ziettlow made adjustments for differences in the value for things such as "inferior views" or "superior garages" or of the property lot being almost three times size of the comparables.

Thus, it appears from looking just at Movant's expert testimony, the value of the Property would be in excess of $600,000 (which is 133% of the value opined by Movant's expert).

Other than the Property being larger than the comparables and the house generally larger, the only identified difference appears to be that for two of the sales Mr. Ziettlow found that those two homes had "superior" garages.

Movant also provides the Plowden Declaration, which states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of $25,192.60 in post-petition payments past due. The Declaration also provides evidence that there are pre-petition defaults, with a pre-petition arrearage of $2,405.49.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 28, 2018. Dckt. 447. Debtor in Possession asserts that it has obtained its own broker's price opinion reflecting that the Property has a value of at least $925,000.00. Debtor in Possession argues that this matter should be set for an evidentiary hearing to determine the Property's value and whether there is sufficient equity to afford Movant adequate protection and whether the Property is necessary for an effective reorganization.

Debtor in Possession provides the Declaration of George MacMaster, a licensed real estate broker, to provide his opinion as to the value of the Property. Dckt. 448. While testifying that he is licensed real estate broker, he purports to have "appraised" the Property and concluded that it is worth $925,000. *Id.*, ¶ 4. He then continues to state that his "Residential Broker Price Opinion" is filed as Exhibits A in opposition to the Motion. *Id.*, ¶ 5. Presumably, his use of the "appraisal" work was a slip of the tongue and not intended to represent that he is a licensed appraiser, as is Movant's expert.

Mr. MacMaster's Broker Price Opinion is filed as Exhibit A, Dckt. 449, starting at 3. He too identifies six comparables, with the homes ranging from 3,215 square feet to 4,045 square feet. *Id.* at 3–4.

For lot size, he identifies the Property as being 0.4392 acres, with the comparables ranging from 0.23 to 0.5168 acres.

Most of the comparables used by Mr. MacMaster have a pool, which the Property at issue does not.

The sales dates for Mr. MacMaster's comparables range from June 1, 2018 to 22, 2018, for which only three sales are provided. The other three comparables only provide the listing price. Though Mr. Ziettlow identified additional actual sales within the past year, Mr. MacMaster only provided three.

For the three actual sales, the prices per square foot of the residence range from $224 to $3,282. For the last one, Comparable 3, with a $3,282 per square foot allocation of the sales price, it appears to be a gross outlier and not a reliable comparable. The court also notes that this home was built in 1992, a decade prior to the Property at issue and the other comparables, and may be a substantially different type of property.

For the three comparables that have not sold, the listing prices range from $797,000 to $1,395.000.

From the two comparable sales, for which the properties appear to be similar to the Property at issue, based on the testimony of Mr. MacMaster, a per square foot price of $210 could be found. That would equate to a value around $800,000.

Debtor in Possession then argues that the Property does have sufficient equity above Movant's lien and that it is necessary for an effective reorganization because it will be retained as Debtor's home.

JULY 12, 2018, HEARING

At the July 12, 2018, hearing, the court continued the hearing to August 23, 2018, at the joint request of the Parties. Civil Minutes, Dckt. 504.

AUGUST 23, 2018 HEARING

At the hearing August 23, 2018, Debtor in Possession and Movant advised the court that they have agreed to terms for an adequate protection stipulation, which will be reduced to writing and presented to the court. Under the terms of the Stipulation, the Debtor in Possession will make adequate protection payments of $6,036.87.

The amount of the adequate protection payment raised consternation from several creditors, but in the context of whether Debtor in Possession was working for a liquidation of assets to pay creditors, or merely maintaining a standard of living based on impractical financial "beliefs."

The court continued the hearing on the Motion to November 8, 2018 at 1:30 p.m. to provide time for the filing of a settlement and any supplemental pleadings.

SEPTEMBER 24, 2018 STIPULATION

On September 24, 2018 Movant and Debtor filed an Adequate Protection Stipulation and Request to Continue the Motion For Relief From Automatic Stay. Dckt. 643. The Stipulation provides the following:

1. Commencing August 1, 2018, Debtor shall make regular monthly post-petition payments under the Note and Deed of Trust to Movant to be paid towards contractual arrears on the loan. These payments shall be applied contractually to the loan.

2. The current PITI is $6,036.87 ($5,399.45 plus $637.42 in taxes). The loan is an adjustable rate mortgage and payment amounts are subject to change.

3. Payments shall be made directly to Wells Fargo Bank, NA , P.O. Box 14507, Des Moines IA 50306.

4. Debtor shall timely perform all of their obligations under Movant's loan documents as they become due, including the payment of real estate taxes and maintaining insurance coverage.

5. Debtor shall continue to make timely post-petition payments until claim treatment can be determined via the Chapter 11 Plan and/or a Stipulation for Claim Treatment.

6. Movant shall notify Debtor and counsel, in writing, if Debtor defaults or untimely performs any obligations under the stipulation. Debtor has 10 calendar days from the date of the written notification to cure the default.

OCTOBER 9, 2018, STATUS REPORT

Movant and Debtor filed a Status Report on October 9, 2018. Dckt. 674. The Status Report Debtor shall continue regular monthly post-petition payments (pursuant to the aforementioned Stipulation) until claim treatment can be determined via the Chapter 11 Plan. The parties anticipate a Chapter 11 Plan will be filed by the end of October, 2018, and will provide for arrears to be cured. It is also anticipated that the parties will extend the Stipulation pending plan confirmation.

NOVEMBER 8, 2018 HEARING

At the November 9, 2018 hearing, the court continued the hearing on the Motion to November 20, 2018, at 3:00p.m. Dckt. 695.

NOVEMBER 20, 2018 HEARING

At the November 20, 2018 hearing, the court continued the hearing on the Motion to November 20, 2018, at 3:00p.m. Order, Dckt. 724.

DISCUSSION

The Debtor in Possession has been now serving as debtor in possession for twelve months. During that time, he has worked on various ideas for plans of reorganization, while in the interim marketing and selling several properties in this case and the related Chapter 11 case of Filbin Land & Cattle Co (18-90030). Some of the approved sales have closed, others are still pending. For one, there is required lot-split and related lot line adjustments which require a modicum of cooperation between this Debtor, serving as the responsible representative for the debtor in possession in the Filbin Land & Cattle Co case and creditors who are looking to be paid from the sales proceeds. However, the animosity between the parties and what creditors question as Debtor's acceptance of his financial reality while serving as debtor in possession and the representative in the Filbin case, obtaining the $8,000,000+ in sales proceeds has eluded all of these Parties.

The court has issued orders authorizing the use of cash collateral to pay necessary costs and expenses in this case, as well as provide for the reasonable and necessary expenses of the Debtor while serving as the Debtor in Possession in this case. The debtor in possession in the Filbin Land & Cattle Co case has elected to proceed with that case without the authorization to use cash collateral.

As the court was authorizing the most recent use of cash collateral in this case (Order, Dckt. 384), several of the creditors (including those who have been challenged in addressing the lot split in the Filbin bankruptcy case) pointed out to the court the property securing this Creditor's claim, for which the estate is making a $6,036.87 to preserve this property for the Estate, is "just" the Debtor's residence and does not include any orchard or income producing property.

Creditor asserts a claim of ($784,961) secured by the Property. Motion, p. 2:17; Dckt. 381. As discussed above, the evidence presented by the Parties leads the court to an initial value range of $600,000 (Creditor's low end value) and $800,000 (Debtor's high end value).

There is no evidence that the Property is declining in value, to the extent that the court were to determine the value a Creditor's low end, and that Creditor's interest in the Property is not adequately protected. *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

Creditor's note is provided as Exhibit 2. Dckt. 386 at 32-37. The Note is for a $964,750.00 loan, to be repaid over thirty years, with an adjustable interest rate starting at 6.950%. Note ¶ 3, *Id.* at 32. The initial monthly payment on the notes was $6,386.15.

Creditor's expert states in his Broker's Opinion that the Property was purchased by Debtor for $450,000. Broker's Price Opinion, Sales Comparison Analysis Chart, Sale Price (3rd Line). Exhibit 3, Dckt. 386 at 38. This does not appear to be the actual "sale price," but the Expert's opinion of current value.

In the Listing and Transfer History section of his Broker's Opinion it is stated that the Property was transferred in 2007 for $120,000. *Id.* at 38.

Debtor in Possession's appraiser provides additional information in her Appraisal Report. Exhibit A, Last Market Sale & Sales History Section, Dckt. 449 at 5. Here is it stated that Debtor purchased the Property January 31, 2007 (deed recording date) for $1,201,609. A loan of $964,750 is 80% of the $1,201,609 purchase price. Creditor's Deed of Trust states that it is a purchase money mortgage. Deed of Trust, Exhibit 1; Dckt. 386 at 6.

Adequate Protection Payments

As authorized by the court, Creditor has been receiving monthly payments of $6,036.87 commencing August 1, 2018 ($5,399,45, Creditor's computed principal and interest, plus $637.42 for property taxes). Through December 2018, Creditor has received $30,184.35,which after excluding the $637.42 which is specifically earmarked to pay the property taxes, results in there being $26,997.25 in additional adequate protection cushion already for Creditor.

If Creditor is correct and it's Broker's low end value of $450,000 is correct as the value of the Property, this $26,997.25 represents fourteen months of "adequate protection" once the estate exceeds the "reasonable" period to prosecute a plan as discussed in *Timbers* [($450,000 x .05)/12 = $1,875 per month x 14 months]. If the court uses the higher end value of $800,000, Creditor has an equity cushion in addition to the $26,997.25 in payments to date providing even more protection for its secured claim.

Further Proceedings

The Parties have not provided the court with supplemental pleadings. Debtor in Possession and the Summit Creditors presented the court with Settlement in which the Debtor in Possession sought to fix plan terms in this case. Motion, Dckt. 558. The Settlement provided for a liquidation under a Chapter 11 Plan to be prosecuted by the Debtor in Possession, funding to be provided by Summit, and Summit having the power to control the liquidation of the properties. While the court did not approve the Settlement (concluding that many fo the terms therein had to be confirmed as part of a Chapter 11 plan, not through a settlement), it set forth an intended prosecution of this case by the Debtor in Possession to administer the assets of this bankruptcy estate. The order denying the proposed Settlement was field on October 1, 2018. Dckt. 661.

Debtor in Possession and Summit have not proceeded with a plan on the terms that they sought to bind them (along with the estate and all other parties in interest) they advocated for at the September 27, 2018 hearing on the Motion to Approve Settlement.

When presented with further opposition to the adequate protection payment being made to this Creditor at November 2018 hearing on the Motion to Cash Collateral, the court questioned the Debtor in Possession as to where in the process was the Debtor in Possession-Summit stipulated plan so that creditors could vote on it. The Debtor in Possession advised the court that he had now decided to go another way (disposing of the "plan" he was advocating for at the September 27, 2018 hearing).

At the hearing, **XXXXXXXXXXXXXX**.

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 Wells Fargo, N.A. ("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 **XXXXXXXXXXXXXXXX**.

2. 18-90829-E-7 BPC-1 | **SARGIZ GREGORBABRODY** **Jessica Dorn** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** **11-28-18 [9]**

THE GOLDEN 1 CREDIT UNION
VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 28, 2018. By the court's calculation, 22 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 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no

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

The Motion for Relief from the Automatic Stay is granted.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Chrysler 300, VIN ending in 1858 ("Vehicle"). The moving party has provided the Declaration of Jesus Vasquez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sargiz Gregorbabrody ("Debtor"). The Motion states grounds exist for relief here because Debtor stopped making payments, indicated on his Statement of Intention an intent to surrender the Vehicle, and lacks equity in the Vehicle.

The Vasquez Declaration provides testimony that Debtor has not made a payment since October 2018, and defaulted on the loan agreement on November 18, 2018.

Movant also provides as Exhibit D a Kelley Blue Book "quick values" report on the Vehicle. Though authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common hearsay exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

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 $21,211.23, as stated in the Vasquez Declaration, while the value of the Vehicle is determined to be $16,926.00, as stated in Schedules B and D filed by Debtor.

DISCUSSION

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 default in post-petition payment and Debtor's indicated intent to surrender the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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. This part of the requested relief is not granted.

No other or additional relief is granted by 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 The Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Chrysler 300 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

3. **18-90339-E-7** **KIMBERLY SOLARIO** **MOTION FOR RELIEF FROM**
JMP-1 **Pro Se** **AUTOMATIC STAY**
11-2-18 [48]

JPMORGAN CHASE BANK, N.A.
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*) and Chapter 7 on November 2, 2018. By the court's calculation, 48 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.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Infiniti QX50, VIN ending in 1498 ("Vehicle"). The moving party has provided the Declaration of Robert L. Kammeyer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kimberly Rose Solario aka Kim Solario aka Kim Bellino ("Debtor").

The Kammeyer Declaration provides testimony that Debtor's last payment was on February 23, 2018. Dckt. 52. The Declaration also provides evidence that a total arrearage of $4,574.71.

Movant has also provided a copy of the Kelley Blue Book Valuation Report for the Vehicle. 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).

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 $27,180.46, as stated in the Kammeyer Declaration, while the value of the Vehicle is determined to be $23,600.00, as stated in Schedules B and D filed by Debtor, which is slightly less than the retail value as stated on the Kelly Blue Book Valuation Report.

DISCUSSION

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.

Prior Discharge

Debtor was granted a discharge in this case on September 4, 2018. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 because the Vehicle is a rapidly depreciating asset.

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.

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 JPMorgan Chase Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Infiniti QX50 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Kimberly Rose Solario ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

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.