United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Monday, May 15, 2023 **Hearing Room 1568**

10:00 AM
2:22-16483 Metallic Blue Development LLC **Chapter 7**

#1.00 HearingRE: [89] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 20330 Howard Court (aka 20130 Chapter Drive), Woodland Hills, California 91364 Hearing Date May 15, 2023 @ 10am in Ctrm 1568, with proof of service.

Docket 89

Tentative Ruling:

5/12/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf.* Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the Property in accordance with applicable law, but may not pursue a deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor has failed to make lease payments and continues to occupy the Property pursuant to a month-to-month tenancy that is in default. On February 22, 2023, the Movant caused a notice to quit to be served on the Debtor without knowledge of the involuntary bankruptcy filing. Per the Supplemental Declaration of Asher Harel, due to not being on the service list with the initial petition and schedules, the Movant was unaware of the automatic stay at the time the Notice to

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Quit was served on the Debtor. Therefore, the Movant requests that the stay be annulled to the petition date as to the Movant to account for the service of the Notice to Quit that was served on the Debtor prior to being notified of the instant bankruptcy case.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. The stay is annulled retroactive to the petition date, so that enforcement actions taken by the Movant before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Metallic Blue Development LLC Represented By
Richard A Marcus

Trustee(s):

Timothy Yoo (TR) Represented By

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Monday, May 15, 2023 **Hearing Room 1568**

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CONT... **Metallic Blue Development LLC** **Chapter 7**

Carmela Pagay

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2:23-11186 Alessandro James Hickey **Chapter 7**

#2.00 HearingRE: [11] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pending Lawsuit .

Docket 11

Tentative Ruling:

5/12/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Limited Opposition is **OVERRULED** and the Motion is **GRANTED**.

Pleadings Filed and Reviewed:
1) Notice of Motion and Motion for Relief from the Automatic Stay [Doc. No. 11] (the "Motion")
2) Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay as to Nonbankruptcy Action [Doc. No. 12]
3) Limited Opposition to the Motion [Doc. No. 15] (the "Limited Opposition")

I. Facts and Summary of Pleadings

On March 2, 2023, Alessandro James Hickey (the "Debtor") filed a voluntary Chapter 7 petition (the "Petition Date"). On April 20, 2023, Robert Villegas (the "Movant") filed the Motion to proceed with an action bearing the caption *Robert Villegas vs. Alessandro James Hickey, et al.*, Case No. 30-2020-01144317-CU-PO-CJC (the "State Court Action"), pending in Orange County Superior Court (the "State Court").

The Movant makes the following arguments in support of relief from stay:

1) The claims are nondischargeable in nature and can be most expeditiously

resolved in the nonbankruptcy forum;

2) The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum; and
3) The Debtor filed the bankruptcy case in bad faith to delay or interfere with the State Court Action.

The Movant commenced the State Court Action on May 26, 2020 by filing a complaint against the Debtor asserting claims for battery, intentional infliction of emotional distress, negligence, and negligent hiring, training, supervision, and/or retention (the "Complaint"). Trial was scheduled to begin on March 3, 2023.

On May 7, 2023, the Debtor filed the Limited Opposition, which was received approximately one week after the deadline to file a timely opposition. The Debtor does not oppose the State Court Action from proceeding but requests that the order granting the Motion state that any judgment or findings in the State Court Action will not bear, in any way, against the Debtor in the pending adversary proceeding filed by the Movant against the Debtor (2:23-ap-01146-ER) (the "Adversary Proceeding") under principles of claim or issue preclusion.

II. Findings of Fact and Conclusions of Law

Section 362(d)(1) provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause . . . ." 11 U.S.C. § 362(d)(1). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). "To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1)." *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). "Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted." *Id.*

In the Ninth Circuit, courts consider 12 non-exclusive factors to determine whether "cause" exists to grant relief to allow an entity to continue pending litigation against a debtor in non-bankruptcy forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the

bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
12. The impact of the stay on the parties and the "balance of hurt[.]"

Plumberex, 311 B.R. at 559. Not all the factors are relevant in every case, and the Court is not required to give equal weight to each factor. *Id.* at 560.

The Court finds that the Movant has established a prima facie case that "cause" exists to grant relief from stay under § 362(d)(1). First, granting stay relief will promote interests of judicial economy and avoid piecemeal or redundant litigation. Second, the State Court is more intimately familiar with the parties' disputes and the applicable state law to move the litigation more expeditiously to final judgment. The State Court, rather than the Bankruptcy Court, is best equipped to decide these issues related to substantive non-bankruptcy law. Third, allowing the Movant to litigate the State Court Action will best promote judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim, and/or whether it is appropriate to bring an adversary action against the Debtor.

The Court does not find that the Debtor filed the present case in bad faith. In

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support of a finding of bad faith, the Motion asserts that (i) the Debtor filed the instant bankruptcy case on the eve that trial was set to begin solely to delay or hinder the prosecution of the State Court Action, and (ii) the Movants are one of very few creditors listed in the Debtor's schedules. The Movant is among one of the Debtor's various scheduled creditors, including Wells Fargo Dealer Services, the Internal Revenue Service, Capital One Bank USA, N.A., ED Financial, and LendingPoint. The factors alleged in the Motion do not warrant a finding of bad faith.

The Limited Opposition is overruled. A motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

> Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995). The Motion only concerns whether the Court should lift the automatic stay. Whether any judgment or findings in the State Court Action have preclusive effect in the Adversary Proceeding must be determined in the Adversary Proceeding. The Debtor's request that the order granting the Motion state that any judgment or findings in the State Court Action will not bear against the Debtor in the Adversary Proceeding under principles of claim or issue preclusion is inappropriate as it is outside the scope of the Motion. Therefore, the Limited Opposition is overruled and the Debtor's request is denied.

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The Movant may not pursue any deficiency

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CONT... Alessandro James Hickey **Chapter 7**

claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim, and the Movant's rights are preserved with respect to an adversary complaint filed under §§ 523 and 727 (to the extent applicable). This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

The Court also finds it appropriate to waive the 14-day stay prescribed by Federal Rule 4001(a)(3). All other relief is denied.

III. Conclusion

For the reasons set forth above, the Limited Opposition is **OVERRULED** and the Motion is **GRANTED**. The Movant is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Alessandro James Hickey	Represented By Sevan Gorginian

Trustee(s):

Carolyn A Dye (TR)	Pro Se

10:00 AM
2:23-11473 Dusan Stanisavljevic **Chapter 7**

#3.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Holder Movant has physical possession of a promissory note on Property at 3401 Glendale Ave, Toledo, OH 43614.

Docket 18

Tentative Ruling:

5/12/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the Trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf*. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit the Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the Property in accordance with applicable law. The Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a Chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the Property. *See*, *e.g.*, *Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (B.A.P. 8th Cir. 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (B.A.P. 9th Cir. 1981).

The Property has a value of approximately $450,000.00. The Movant holds a perfected mortgage that encumbers the Property. The lien against the Property and the expected costs of sale total approximately $691,320.00. The Court finds there is no

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CONT... Dusan Stanisavljevic **Chapter 7**

equity and there is no evidence that the Trustee can administer the Property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. The following requests for relief are denied: (i) the order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion; and (ii) the order is binding and effective in any future bankruptcy case, no matter who the debtor may be. All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dusan Stanisavljevic — Represented By
Raj T Wadhwani

Trustee(s):

Carolyn A Dye (TR) — Pro Se

10:00 AM
2:23-12156 Leopoldo Ochoa **Chapter 7**

#4.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Nissan Rogue, VIN: 5N1AT2MT5HC874071 . (Ith, Sheryl)

Docket 7

Tentative Ruling:

5/12/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf*. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a Chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload

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CONT... **Leopoldo Ochoa** **Chapter 7**

system within 7 days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Leopoldo Ochoa	Represented By Ameet Gandhi

Trustee(s):

Elissa Miller (TR)	Pro Se