United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM
9: - **Chapter**

#0.00 Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 201 at 1415 State Street, Santa Barbara, California, 93101**, by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

All parties making an appearance via ZoomGov video and audio connection **must** have their video on. Proper court attire is required of all parties appearing via ZoomGov video. Any virtual backgrounds are to be of a solid color, without pictures, videos, or scenes. No party may appear by ZoomGov from any place other than a quiet room in an office or home. Parties may not appear via ZoomGov from a vehicle of any kind, moving or not.

Regarding remote access to hearings, members of the public may NOT observe any hearing via ZoomGov web address or app. Members of the public may ONLY **listen to** non-evidentiary hearings, where no live testimony is being taken, via ZoomGov telephone conference line or in-person at the address listed above. If members of the public attempt to observe hearings remotely in any manner other than via ZoomGov telephone conference line, the Court will remove them from ZoomGov for the hearing(s). No members of the public will be permitted to observe, via telephone line or otherwise, trials, evidentiary hearings, hearings where live testimony will be taken, and hearings where sensitive information is being disseminated that may not be adequately safeguarded.

You may obtain the ZoomGov connection details by clicking the hyperlink below or copying and pasting the web address into your browser.

https://forms.office.com/g/d3SqfMtsuv

Neither a Zoom nor a ZoomGov account is necessary to participate, and no preregistration is required. The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing, or imaging Court proceedings by any means is strictly prohibited.

Docket 0

Tentative Ruling:

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

CONT... **Chapter**

- NONE LISTED -

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

9:20-10229 Nyla Lee Oyler **Chapter 13**

#1.00 Hearing RE: [50] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3252 Darby Street, Unit 134, Simi Valley, CA 93063 . , Motion for Relief from Co-Debtor Stay (Jafarnia, Merdaud)

Docket 50

***** VACATED *** REASON: Motion withdrawn by movant on 12/26/24.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nyla Lee Oyler	Represented By Ali R Nader

Movant(s):

Lakeview Loan Servicing, LLC	Represented By Merdaud Jafarnia

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:20-10857 Dana Louise Mcgunigale **Chapter 13**

#2.00 CONT'D Hearing RE: [56] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 954 Ann Arbor Avenue, Ventura, CA 93004 . (Ferry, Sean)

FR. 12-10-24

Docket 56

Tentative Ruling:

January 14, 2025

Appearances waived.

Counsel for the Movant appeared at the December 10, 2024, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Court's December 10, 2024 tentative ruling is adopted as the final ruling. The Motion is granted in part for the reasons set forth therein. Movant is to upload a conforming order within 7 days.

December 10, 2024

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1), including the request to waiver the co-debtor stay, for the reasons set forth *infra.* Deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Selene LP, as servicer for Wilmington Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 954 Ann Arbor Avenue, Ventura, CA 93004-2364 (the "Property") of Dana Louise Mcgunigale (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 56, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the

9:00 AM
CONT... Dana Louise Mcgunigale **Chapter 13**

"Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) termination of the co-debtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (5) if relief from stay is not granted, adequate protection be ordered. *See id.,* p. 5.

Notice

The Motion was filed on November 12, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 56, *Proof of Service of Document.* Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, non-filing co-debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 21, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of seven (7) unpaid postconfirmation payments of $2,261.41. *See* Docket No. 56, p. 9.

9:00 AM

CONT... Dana Louise Mcgunigale **Chapter 13**

Including attorneys' fees and costs of $1,249.00 and less an expense account of $1,048.54, Movant asserts that there is a total postconfirmation delinquency of $16,030.33 (as of the date of the Motion) with a payment of $2,261.41 becoming due December 1, 2024. *See id.* According to the Motion, the last monthly payment of $2,300.00 was received by Movant on July 23, 2024. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than seven (7) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Dana Louise Mcgunigale	Represented By Eric Ridley

Movant(s):

Wilmington Savings Fund Society,	Represented By Sean C Ferry Fanny Zhang Wan Theron S Covey David Coats

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:21-10379 Michael Falk and Ruth Falk **Chapter 13**

#3.00 Hearing RE: [96] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2281 Adrian St, Newbury Park, CA 91320 with proof of service. (Delmotte, Joseph)

Docket 96

***** VACATED *** REASON: Settled by stipulation; order entered 01/08/2025**

Tentative Ruling:

January 14, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

First Bank D/B/A First Bank Mortgage ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 2281 Adrian Street, Newbury Park, CA 91320 (the "Property") of Michael Falk and Ruth Falk (the "Debtors") on the grounds that the Debtors have failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 96, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtors, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be entered. *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on December 13, 2024, notifying the Debtors that pursuant to this

9:00 AM

CONT... Michael Falk and Ruth Falk **Chapter 13**

Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 14. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtors.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, the Debtors are required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 75, pp. 5-6, Class 2. Movant asserts that the Debtors defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of $4,417.86. *See* Docket No. 96, p. 10. Movant asserts that there is a total postconfirmation delinquency of $13,253.58 (as of the date of the Motion) with a payment of $4,417.86 becoming due December 1, 2024. *Id.* According to the Motion, the last two monthly payments of $4,417.86 were received by Movant on September 20, 2024. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtors' failure to make no less than three (3) postpetition/post-confirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis.

9:00 AM

CONT... Michael Falk and Ruth Falk **Chapter 13**

2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Michael Falk	Represented By Julie J Villalobos

Joint Debtor(s):

Ruth Falk	Represented By Julie J Villalobos

Movant(s):

First Bank dba First Bank Mortgage	Represented By Daniel K Fujimoto Wendy A Locke Joseph C Delmotte

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM
9:22-10548 David Medina **Chapter 13**

#4.00 Hearing RE: [48] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 446 Rincon Way, Oxnard, CA 93033 with proof of service. (Delmotte, Joseph)

Docket 48

Tentative Ruling:

January 14, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its requests that the Court terminate the co-debtor stay and waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Federal Home Loan Mortgage Corporation, as trustee for the Benefit of the Freddie Mac Seasoned Credit Risk Transfer Trust, Series 2017-1 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 446 Rincon Way, Oxnard, CA 93033 (the "Property") of David Medina (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 48, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the co-debtor stay of 11 U.S.C. § 1301(a), (4) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (5) if relief is not granted, adequate protection be ordered. *See id.* at p. 5.

Notice

Under LBR 4001-1(1)(C)(iii), the motion, notice of hearing, and all supporting

9:00 AM

CONT... David Medina **Chapter 13**

documents must be served by the moving party in the time and manner prescribed in LBR 9013-1(d) on any applicable co-debtor where relief is sought from the co-debtor stay under 11 U.S.C. §§ 1201 or 1301. Pursuant to this Court's LBR 9013-3(d)(2)(B), service by U.S. Mail must list the exact street address of each person or entity served.

The Motion and notice thereof were served upon the Debtor and non-filing co-debtor via U.S. Mail First class, postage prepaid on November 21, 2024, notifying the Debtor and non-filing co-debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See* Motion, *Proof of Service of Document*, p. 12. The Debtor did not identify a codebtor or list an address for a codebtor on his schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Adjustable Rate Note and the Deed of Trust list Sarahy Salas as "Borrower". *See* Docket 48, *Exhibits 1-2*. The Adjustable Rate Note and Deed of Trust are dated July 18, 2007. *See id.* There is no evidence before the Court that Sarahy Salas continues to receive mail at the Property given that the Adjustable Rate Note and Deed of Trust was executed more than seventeen (17) years ago, and she was not listed as a co-debtor on the Debtor's schedules. Therefore, the Court is unable to confirm that service upon the non-filing co-debtor was proper.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion have timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, except the non-filing co-debtor.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

9:00 AM
CONT... David Medina **Chapter 13**

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 22, pp. 5-6, Class 2. Movant asserts that the Debtor has not made Plan payments consisting of one (1) unpaid postpetition postconfirmation payments of $1,962.70 and four (4) unpaid postpetition postconfirmation payments of $1,920.90. *See* Docket No. 48, p. 10. Less a suspense account balance of $594.95, Movant asserts that there is a total postconfirmation delinquency of $9,051.35 (as of the date of the Motion) with a payment of $1,920.90 becoming due November 1, 2024. *See id*. According to the Motion, the last monthly payment of $1,962.70 was received by Movant on September 4, 2024. *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than five (5) postpetition postconfirmation mortgage payments pursuant to the terms of the Plan. Therefore, the Motion will be granted.

As to the request to terminate the co-debtor stay pursuant to 11 U.S.C. § 1301(a), the Court is unable to confirm that the non-filing co-debtor was properly served with the Motion at the proper address. Therefore, the request to terminate the co-debtor stay is denied.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

David Medina — Represented By
Julie J Villalobos

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

CONT... David Medina **Chapter 13**

Movant(s):

Federal Home Loan Mortgage — Represented By
Joseph C Delmotte

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

9:23-10929 Eric Wayne Robinson **Chapter 13**

#5.00 Hearing RE: [47] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2283 Northpark Street Thousand Oaks, CA 91362 (Ferry, Sean)

Docket 47

Tentative Ruling:

January 14, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Wells Fargo Bank, N.A. as Trustee for Harborview Mortgage Loan Trust 2007-3 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 2283 Northpark Street, Thousand Oaks, CA 91362 (the "Property") of Eric Wayne Robinson (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *3rd Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 47, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on December 16, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of*

9:00 AM

CONT... Eric Wayne Robinson **Chapter 13**

Service of Document, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On December 31, 2024, the Debtor filed *Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. §362* (the "Opposition"). *See* Docket No. 49. In the Opposition, the Debtor asserts that (1) he will pay $4,350.86 to Movant on December 31, 2024, (2) he will pay $13,752.58 to Movant on January 10, 2025, and (3) he requests an adequate protection order that allows him to repay the remaining delinquency of $8,701.72 over 12 equal installments of $725.14 beginning February 27, 2025, through January 27, 2026. *See id.*

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 28, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of $4,350.86. *See* Docket No. 47, p. 9. Including postpetition advances of $700.00, Movant asserts that there is a total postconfirmation delinquency of $13,752.58 (as of the date of the Motion) with a payment of $4,350.86 becoming due November 1, 2024. *Id.* According to the Motion, the last monthly payment of $4,350.86 was received by Movant on July 31, 2024. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than three (3)

9:00 AM

CONT... Eric Wayne Robinson **Chapter 13**

postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Eric Wayne Robinson	Represented By Gregory M Shanfeld

Movant(s):

Wells Fargo Bank, N.A.	Represented By Theron S Covey Dane W Exnowski Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

9:24-10269 Antonio Gabriel De La Torre, Jr. **Chapter 13**

#6.00 Hearing RE: [53] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 945 Caliente Way, Oxnard, CA 93036 . (Ferry, Sean)

Docket 53

Tentative Ruling:

January 14, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Deutsche Bank National Trust Company, as Trustee, on Behalf of the Holders of the WAMU Mortgage Pass-Through Certificates, Series 2005-AR2 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 945 Caliente Way, Oxnard, CA 93036 (the "Property") of Antonio Gabriel De La Torre, Jr. (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 53, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 27, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served

9:00 AM

CONT... Antonio Gabriel De La Torre, Jr. **Chapter 13**

no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 37, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of $2,486.50. *See* Docket No. 53, p. 9. Less a suspense account of $535.89, Movant asserts that there is a total postconfirmation delinquency of $6,923.61 (as of the date of the Motion) with a payment of $2,486.50 becoming due November 1, 2024. *Id.* According to the Motion, the last monthly payment of $2,486.50 was received by Movant on August 29, 2024. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis.

9:00 AM

CONT... Antonio Gabriel De La Torre, Jr. **Chapter 13**

2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Antonio Gabriel De La Torre Jr.	Represented By Matthew D. Resnik

Movant(s):

Deutsche Bank National Trust	Represented By Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM

9:24-10813 Raul Leopoldo Molina, Jr. **Chapter 11**

#7.00 CONT'D Hearing RE: [37] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2261 Hillsbury Road, Westlake Village, CA . , Motion for Adequate Protection

FR. 11-19-24

Docket 37

***** VACATED *** REASON: Order granting relief from stay entered 12/27/2024**

Tentative Ruling:

November 19, 2024

Appearances required.

Scott Winston Biggs and D'Anna Stephenson Biggs, Trustees of the Biggs Family Revocable Trust Date February 10, 2009 ("Movant") seek a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 2261 Hillsbury Road, Westlake Village, CA 91361 (the "Property") of Raul Leopoldo Molina, Jr. (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected by an adequate equity cushion, and the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against the decline, and (2) the bankruptcy case was filed in bad faith because other cases have been filed in which an interest in the Property was asserted. *See* Docket No. 37, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. Movant additionally seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(2)(A) because the Debtor has no equity in the Property; and, pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization. *See id*., p. 4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

9:00 AM

CONT... Raul Leopoldo Molina, Jr. **Chapter 11**

Background

On February 15, 2024, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10164-RC (the "First Case"). The First Case was dismissed on July 18, 2024, at the Chapter 13 confirmation hearing for failure to make plan payment, failure to file tax returns and mortgage declarations, and failure to provide proof of income. *See* First Case, Docket No. 44.

On July 22, 2024 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10813-RC (this "Case") (hereinafter all citations to the Docket will refer to this Case unless otherwise specified).

On July 23, 2024, the Debtor filed that *Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* seeking to continue the automatic stay as to all of his creditors related to the Property, a 2018 Mercedes-Benz C300, and 2019 Audi A4 pursuant to 11 U.S.C. § 362(c)(3). S*ee* Docket No. 9. On September 17, 2024, Movant filed that *Opposition of Creditors to Debtor's Motion to Continue the Automatic Stay. See* Docket No. 28. On September 26, 2024, the Court entered that *Order Granting Motion for Order Imposing a Stay or Continuing the Automatic Stay* (the "Stay Order"). *See* Docket No. 31.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on October 15, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12.

On November 5, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 45. In the Response, the Debtor asserts that (1) the value of the Property is $2,399,000.00 while the total debt on the Property is $2,093,700.00, (2) the Property is necessary for an effective reorganization, and the Debtor will file a plan that provides for the sale of the Property and pays Movant in full, (3) the case was not filed in bad faith, (4) no evidence in

9:00 AM

CONT... Raul Leopoldo Molina, Jr. **Chapter 11**

support of the allegation of declining value of the Property was provided, and (5) Movant has an equity cushion of $555,422.08 or 25% which is sufficient to provide adequate protection

Analysis

11 U.S.C. § 362(d)(1)- Lack of Adequate Protection

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

Here, Movant first contends that the loan matured on June 1, 2023, and arrearages total $52,293.33, which represents twenty-two (22) unpaid payments. *See* Docket No. 37, pp. 8-9. Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of

9:00 AM

CONT... Raul Leopoldo Molina, Jr. **Chapter 11**

$355,841.02. *See id.* at p. 7. As of the petition date of March 28, 2024, Movant asserts that the fair market value of the Property is $2,399,000.00 per the Debtor's Schedule A/B. *See id*. at *Exhibit C*, p. 1. Movant asserts that it maintains an equity cushion in the Property. *See id*. at p. 8. The equity cushion in the Property exceeding Movant's liens is $604,836.98 or 25.21% of the fair market value of the Property. *See id*. at p. 8. Movant enjoys a 25.21% equity cushion, which the Court finds to adequately protect Movant as to equity under *In re Mellor*.

Cause has not been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) as Movant's interest is adequately protected.

11 U.S.C. § 362(d)(1)- Bad faith

"The debtor's lack of good faith in filing a bankruptcy petition has often been used as cause for removing the automatic stay." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *Id.* "The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment." *Id.* The Ninth Circuit cited the Ninth Circuit Bankruptcy Appellate Panel regarding bad faith as follows:

If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses ... to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation ... good faith cannot be denied. *Id.*

"Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc.*, 30 B.R. 503, 505 (9th Cir. BAP 1983) (quotation omitted).

Movant asserts that the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted. *See* Docket No. 37, p. 3. The Debtor has only one prior case, the First Case. *See* First Case. Despite the prior filing, the Court is not persuaded that this case was filed in bad faith. The Debtor's primary motivation in filing bankruptcy may be to stop the litigation regarding the Property. However, the Debtor lists $17,058.94 in non-

9:00 AM

CONT... Raul Leopoldo Molina, Jr. **Chapter 11**

priority claims on his Schedule E/F, which he seeks to reorganize through the Chapter 11 process. Furthermore, the Stay Order specifically finds that "[t]his case was filed in good faith." *See* Docket No. 31, p. 2. Therefore, Movant has not established cause to grant relief under 11 U.S.C. § 362(d)(1) for bad faith.

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization."

Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of $355,841.02. *See* Docket No. 37, at p. 7. As of the petition date of July 22, 2024, Movant asserts that the fair market value of the Property is $2,399,000.00 per the Debtor's *Schedule A/B*. *See id.*, p. 1. Movant maintains an equity cushion in the Property. *See id.* at p. 8. The equity cushion in the Property exceeding Movant's liens is $604,836.98 or 25.21% of the fair market value of the Property. *See id*. Subtracting the total liens on the Property (including the senior lien of Planet Home Lending in the amount of $1,428,322.00, Movant's lien in the amount of $355,841.02, the junior lien of Montelongo in the amount of $200,000.00, the junior lien of New Era Agency in the amount of $389,900.00, HOA Dues- Southshore Hills POA in the amount of $804.00, junior lien of Montelongo in the amount of $50,000.00), the Debtor's equity in the Property is negative $35,867.02. *See* Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property.* According to the Debtor, New era Agency, Inc. has agreed to release its lien. *See* Docket No. 45, p. 5, lines 4-5. If that turns out to be the case, perhaps the Debtor will in-fact have equity in the Property when sold, if it is sold at the value posited by the Debtor.

Movant has established that the Debtor does not have equity in the Property, but the Movant has not established that the Property is not necessary to an effective reorganization. Therefore, cause has not been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

CONT... Raul Leopoldo Molina, Jr. **Chapter 11**

Party Information

Debtor(s):

Raul Leopoldo Molina Jr. — Represented By Thomas B Ure

Movant(s):

SCOTT WINSTON BIGGS AND — Represented By Benjamin R Levinson ESQ

9:00 AM
9:24-11060 Daniel Molina Jimenez **Chapter 13**

#8.00 CONT'D Hearing RE: [32] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 240 Vineyard Avenue, Oxnard, California 93030

FR. 12-10-24

Docket 32

Tentative Ruling:

January 14, 2025

Appearances required.

To date, the Debtor has not filed a further opposition to the Motion. On December 18, 2024, the Debtor filed that *Notice of Redemption of Subject Property* (the "Notice"). *See* Docket No. 44. In the Notice, the Debtor asserts that (1) he intends to redeem the Property, (2) he filed an amended plan to remove the Movant and add the new creditors, New Horizon Mortgage, Inc. and Reinvest Capital Partners, LLC (the "Creditors"), who purchased the Property at the foreclosure sale on September 20, 2024, (3) he will pay the full amount of the lien, plus interest, through the plan payment with the Chapter 13 trustee distributing funds to the Creditors, and (4) the amended plan now provides that the Creditors will receive equity proceeds in the approximate amount of $60,000.00 to $70,000.00 from the proceeds of a sale. *See id.*

On December 18, 2024, the Debtor filed that *1st Amended Chapter 13 Plan* (the "Amended Plan") in which he lists Movant's claim in Class 3C and proposes to pay the claim through the Plan by the Trustee. *See* Docket No. 43, p. 8, Class 3C. The Debtor appears to propose to cure the default owed to Movant through the Plan. As indicated in the December 10, 2024, tentative ruling, the Debtor's right to cure defaults pursuant to 11 U.S.C. § 1322(c) under the Plan terminated when the foreclosure sale concluded, which was before the petition was filed. *See In re Richter*, 525 B.R. 735 (Bankr. C.D. Cal. 2015). The Court will want to hear from the Debtor why its analysis under *In re Richter* is incorrect.

9:00 AM

CONT... Daniel Molina Jimenez **Chapter 13**

Furthermore, there is no reference to a proposed sale of the Property in the Amended Plan as suggested in the Notice.

December 10, 2024

Appearances required.

Orchard Lane Condominium Association - Oxnard ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the residential property located at 240 Vineyard Avenue, Oxnard, California 93030 (the "Property") of Daniel Molina Jimenez (the "Debtor") on the grounds that equitable title to the Property transferred to the third-party purchaser pre-petition, with legal title remaining with the Debtor. *See Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* (the "Motion") (Docket No. 32). In addition to lifting the stay, Movant requests that the stay be annulled retroactive to the bankruptcy petition date. *See id.* at p. 5.

Movant asserts that it completed a judicial foreclosure sale of the Property through the Ventura County Sheriff's Department on September 20, 2024, at 9:11 a.m. prior to the Debtor filing bankruptcy on September 20, 2024, at 9:23 a.m. *See* Docket No. 32, *Creditor Orchard Lane Condominium Association – Oxnard's Memorandum of Pints [sic] and Authorities in Support of Motion for Relief from the Automatic Stay*, p. 3. Movant further asserts that while equitable title to the Property transferred to the purchase pre-petition, legal title remains with the Debtor and is property of the estate. *See id.*, p. 4. Despite equitable title transferring pre-petition, the Sheriff requests an order lifting the stay to allow recordation of the Certificate of Sale. *See id.*, pp. 4-5.

Notice

The Motion and notice thereof were served upon the Debtor via personal delivery on November 19, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id., Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court

therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Section 362(d)(1) of the Bankruptcy Code provides that a bankruptcy court can grant relief from the stay "for cause, including lack of adequate protection of an interest in property of such party in interest."

"Each and every bid made by a bidder at a trustee's sale under a power of sale contained in a deed of trust or mortgage shall be deemed to be an irrevocable offer by that bidder to purchase the property being sold by the trustee under the power of sale for the amount of the bid." Cal Civ Code § 2924h. "For the purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid. . . " Cal Civ Code § 2924h. "As a general rule, a trustee's sale is complete upon acceptance of the final bid" under California law. *See Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 129 Cal. Rptr. 2d 436 (2003).

"When a purchaser receives equitable title at a [foreclosure] sale, but legal title remains in a debtor, and the debtor thereafter files for bankruptcy, cause exists to lift the stay to allow the equitable owner to gain legal title." *See In re Engles*, 193 B.R. 23, 26 (Bankr. S.D. Cal. 1996), *citing In re Golden*, 190 B.R. 52, 58 (Bankr.W.D.Pa.1995). Equitable title to the Property transferred to the purchaser prepetition. *See In re RW Meridian LLC*, 564 B.R. 21, 30 (B.A.P. 9th Cir. 2017); *In re Richter*, 525 B.R. 735, 749 (Bankr. C.D. Cal. 2015).

California Code of Civil Procedure § 729.035 provides that "[n]otwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to Sections 5700, 5710, and 5735 of the Civil Code, subject to the conditions of Sections 5705, 5715, and 5720 of the Civil Code."

11 U.S.C. § 108(b) provides "[e]xcept as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or

9:00 AM

CONT... Daniel Molina Jimenez **Chapter 13**

perform, as the case may be, before the later of--(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) 60 days after the order for relief."

"Exercising a right of redemption created under state law constitutes 'cur[ing] a default' or 'perform[ing] any other similar act,' falling within the scope of § 108(b)." *See In re Richter*, 525 B.R. 735, 749, citing *In re Connors*, 497 F.3d 314, 321 (3d Cir. 2007); *Canney v. Merchants Bank (In re Frazer)*, 284 F.3d 362, 372–73 (2d Cir.2002); *Goldberg v. Tynan (In re Tynan)*, 773 F.2d 177, 179 (7th Cir.1985); *Johnson v. First Nat'l Bank of Montevideo, Minn.,* 719 F.2d 270, 278 (8th Cir.1983). If the redemption right has not expired by the petition date, 11 U.S.C. § 108(b) permits its exercise in the bankruptcy case but only before the original expiration date under state law or 60 days after the petition date, whichever is later. *See id.*

Here, the foreclosure sale was completed on September 20, 2024, at 9:11 a.m. *See* Docket No., 32, *Supplemental Declaration of Daniel Medioni,* p. 2, ¶ 8. The Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code on September 20, 2024, at 9:23 a.m. *See* Docket No. 1. Since the foreclosure sale was completed prior to the filing of the petition, the Debtor did not hold equitable title to the Property when the petition was filed.

California law offers the Debtor 90 days or until December 19, 2024, to redeem the Property. Since the redemption right did not expire by the petition date, 11 U.S.C. § 108(b) permits its exercise in the bankruptcy case but only before the original expiration date under state law or 60 days after the petition date, November 19, 2024, whichever is later. *See* Cal.Civ.Proc.Code § 729.035; *See* 11 U.S.C. § 108(b). Here, the Debtor has until December 19, 2024, to exercise his right to redemption under 11 U.S.C. § 108(b). On October 3, 2024, the Debtor filed that *Original Plan* (the "Plan") in which he lists Movant's claim in Class 3C and proposes to pay the claim through the Plan by the Trustee. *See* Docket No. 13, p. 8, Class 3C. The Debtor appears to propose to cure the default owed to Movant through the Plan. However, the Debtor's right to cure defaults pursuant to 11 U.S.C. § 1322(c) under the Plan terminated when the foreclosure sale concluded, which was before the petition was filed. *See In re Richter*, 525 B.R. 735.

Conclusion

The Motion is premature in so far as the Debtor has until December 19, 2024, to exercise his right to redemption.

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

CONT... Daniel Molina Jimenez **Chapter 13**

Party Information

Debtor(s):

Daniel Molina Jimenez	Represented By Tom A Moore

Movant(s):

Orchard Lane Condominium	Represented By Daniel Medioni

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

9:00 AM

9:24-11067 Juan Israel Alcazar-Garcia **Chapter 7**

#9.00 Hearing RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2023 Chevrolet Blazer, VIN: 3GNKBERS7PS200341 . (lth, Sheryl)

Docket 9

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2) for the reasons stated *infra.* The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

On November 27, 2024, Americredit Financial Services, Inc. dba GM Financial ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2023 Chevrolet Blazer (the "Vehicle") of Juan Isreal Alcazar-Garcia (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) the Vehicle is subject to another pending bankruptcy case, Irlanda Orquidia Vela, case number 9:24-bk-11052-RC, in which an order granting relief was entered on November 20, 2024, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 9, pp. 3-4a.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, the Court order adequate protection. *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 27, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party

9:00 AM

CONT... Juan Israel Alcazar-Garcia **Chapter 7**

does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of $53,056.04 as of November 21, 2024. *See* Docket No. 9, at p. 8. According to the J.D. Power Used Cars/Trucks report, the Vehicle has a fair market value of $37,900.00. *See id.*, at *Exhibit C*. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

Here, Movant asserts a secured claim against the Vehicle in the amount of $53,056.04. *See* Docket No. 9, at p. 8. Movant asserts that the Debtor is in arrears in

9:00 AM

CONT... Juan Israel Alcazar-Garcia **Chapter 7**

the amount of $4,259.19. *See id.* It appears that the Debtor's last monthly payment of $835.33 was received by Movant on July 11, 2024. *See id*.

In light of the Debtor's failure to make post-petition payments, and the ever-eroding equity in the Vehicle due to the lack of payments, cause exists to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Fed. R. Bankr. P. 4001(a)

As to Fed. R. Bankr. P. 4001(a)(3), "'[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id*. No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Juan Israel Alcazar-Garcia	Represented By Christian J Younger

Movant(s):

AmeriCredit Financial Services, Inc.	Represented By Sheryl K Ith

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

9:00 AM
9:24-11191 James M. Lyons **Chapter 7**

#10.00 Hearing RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2023 Tesla Model Y, VIN: 7SAYGDEE8PA108601 . (Ith, Sheryl)

Docket 12

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2), including the request to waive Fed. R. Bankr. P. 4001(a), for the reasons stated *infra.* Movant to lodge a conforming order within 7 days.

On November 25, 2024, TD Bank, N.A. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2023 Tesla Model Y (the "Vehicle") of James M. Lyons (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Vehicle, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 12, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (3) if relief from stay is not granted, the Court order adequate protection. *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 25, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the

granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of $42,713.57 as of November 18, 2024. *See* Docket No. 12, at p. 8. According to the J.D. Power Used Cars/Trucks report, the Vehicle has a fair market value of $35,750.00. *See id.*, at *Exhibit C*. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

Here, Movant asserts a secured claim against the Vehicle in the amount of $42,713.57. *See* Docket No. 20, at p. 8. Movant asserts that the Debtor is in arrears in the amount of $1,732.64. *See id.* It appears that the Debtor's last monthly payment

9:00 AM

CONT... James M. Lyons **Chapter 7**

of $845.19 was received by Movant on August 20, 2024. *See id*. Additionally, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Vehicle. *See id.* at *Exhibit D*, p. 2.

The Debtor's delinquency, coupled with the Debtor's intention to surrender the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

James M. Lyons	Represented By Pamela J Marchese

Movant(s):

TD Bank, N.A.	Represented By Sheryl K Ith

Trustee(s):

Jerry Namba (TR)	Pro Se

9:00 AM

9:24-11219 Ricky Wayne Barton and Claudia Taylor Barton **Chapter 7**

#11.00 Hearing RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 540 South G Street, Oxnard, CA 93030 .

Docket 10

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is denied for the reasons stated *infra*. The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant is to lodge a conforming order within 7 days.

NewRez LLC d/b/a/ Shellpoint Mortgage Servicing as servicer for UMB Bank, National Association, not in its individual capacity but solely as owner trustee for Verus Securitization Trust 2023-5 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the residential real property located at 540 South G Street, Oxnard, California 93030 (the "Property") of Ricky Wayne Barton and Claudia Taylor Barton (the "Debtors") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Property and pursuant to 11 U.S.C. § 362(d)(2)(B) the Property is not necessary for an effective reorganization. *See* Docket No. 10, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion"). **[FN 1]**

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), (3) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtors be deemed a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.,* p. 5.

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on December 4, 2024, notifying the Debtors that pursuant to this

9:00 AM

CONT... Ricky Wayne Barton and Claudia Taylor Barton **Chapter 7**

Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*. at *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On December 31, 2024, the Debtors filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 15. In the Response, the Debtors assert that the Motion should be denied because (1) there is $244,331.48 in equity in the Property, (2) there is a 28% equity cushion in the Property, which is sufficient to provide adequate protection, (3) the Debtor's case is expected to close with a discharge shortly after January 27, 2025, at which time the automatic stay will terminate. *See id.*

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion

9:00 AM

CONT... Ricky Wayne Barton and Claudia Taylor Barton **Chapter 7**

alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

Here, Movant first contends that arrearages total $38,262.75, which represents seven (7) unpaid payments of $5,473.51 each (as of the date of the Motion) with a payment of $5,473.51 becoming due December 1, 2024. *See* Docket No. 10, p. 8. Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of $625,168.53. *See id*, p. 7. As of the petition date, Movant asserts that the fair market value of the Property is $869,500.00 per the Debtors' *Schedule D*. *See id., Exhibit D,* p. 3. Movant asserts that it maintains an equity cushion of $244,331.47 or 28% of the in the fair market value of the Property. *See id.,* p. 8.

Based upon the evidence presented in the Motion, Movant enjoys a 28% equity cushion, which the Court finds to adequately protect Movant under *In re Mellor*. Therefore, the Court denies the Motion as to its request under 11 U.S.C. § 362(d)(1).

[FN 1] Movant checks the box that grounds for relief from stay exist "[p]ursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property and pursuant to 11 U.S.C. § 362(d)(2)(B) the Property is not necessary for an effective reorganization." *See id.*, p. 4. However, Movant does not request relief pursuant to 11 U.S.C. § 362(d)(2). *See id.*, p. 5.

Party Information

Debtor(s):

Ricky Wayne Barton — Represented By Daniel A Higson

Joint Debtor(s):

Claudia Taylor Barton — Represented By Daniel A Higson

Movant(s):

NewRez LLC d/b/a Shellpoint — Represented By

9:00 AM

CONT... Ricky Wayne Barton and Claudia Taylor Barton **Chapter 7**

Darren J Devlin

Trustee(s):

Sandra McBeth (TR) Pro Se

9:00 AM

9:24-11226 Gerry D Stalker, Sr. and Jessie M Stalker **Chapter 7**

#12.00 Hearing RE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Forrester Stealth, VIN: 4X4TSJY28EC012312

Docket 14

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1), including the request to waive Fed. R. Bankr. P. 4001(a), and denied pursuant to 11 U.S.C. § 362(d)(2) for the reasons stated *infra.* Movant to lodge a conforming order within 7 days.

On December 23, 2024, Logix Federal Credit Union ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2014 Forrester Stealth Evo M-2360 (the "Vehicle") of Gerry D. Stalker and Jessie M. Stalker (the "Debtors") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 14, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on December 23, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the

9:00 AM

CONT... Gerry D Stalker, Sr. and Jessie M Stalker **Chapter 7**

granting or denial of the motion, as the case may be."

On December 28, 2024, the Debtors filed that *Notice of Non-Opposition* (the "Non-Opposition") to the Motion. *See* Docket No. 16.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Vehicle in the amount of $24,197.91. *See* Docket No. 14, at p. 8. Movant asserts that the Debtors defaulted on the loan secured by the Vehicle and that it obtained a judgment in the amount of $21,364.86 plus interest and/or for possession of the Vehicle prepetition. *See id., Supplemental Declaration of Tommi Williams*, p. 2, ¶ 4. Additionally, the Debtors have not provided evidence that the Vehicle is insured.

The Debtors' delinquency, coupled with the Debtor's failure to maintain insurance on the Vehicle and the Debtor's Non-Opposition to the Motion, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

9:00 AM

CONT... Gerry D Stalker, Sr. and Jessie M Stalker **Chapter 7**

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant asserts a secured claim against the Vehicle in the amount of $24,197.91 as of December 13, 2024. *See* Docket No. 14, at p. 8. According to the J.D. Power report, the Vehicle has a fair market value of $25,816.00. *See id.*, at *Exhibit D*. According to the Motion, there is $1,618.09 in equity in the Vehicle. Therefore, the Motion is denied pursuant to 11 U.S.C. § 362(d)(2).

Party Information

Debtor(s):

Gerry D Stalker Sr.	Represented By Kenneth H J Henjum

Joint Debtor(s):

Jessie M Stalker	Represented By Kenneth H J Henjum

Movant(s):

LOGIX FEDERAL CREDIT	Represented By Lior Katz

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

9:00 AM

9:24-11237 Joshua Michael Patrick **Chapter 7**

#13.00 Hearing RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2024 VOLKSWAGEN ATLAS, VIN: 1V2KR2CA9RC500361 (Martinez, Kirsten)

Docket 13

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2) for the reasons stated *infra*. Deny the request to waive Fed. R. Bankr. P. 4001(a). Movant to lodge a conforming order within 7 days.

On November 25, 2024, VW Credit Leasing LTD as serviced by VW Credit, Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2024 Volkswagen Atlas (the "Vehicle") of Joshua Michael Patrick (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, (3) the Debtor filed a statement of intention that indicates the Debtor intends to surrender the Vehicle, and (4) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 13, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 25, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does

9:00 AM

CONT... Joshua Michael Patrick **Chapter 7**

not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of $49,202.63 as of November 12, 2024. *See* Docket No. 13, at p. 8. The Vehicle is subject to a lease agreement with Movant, therefore, there is no equity in the Vehicle. *See id, Exhibit 1.* As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said

9:00 AM

CONT... Joshua Michael Patrick **Chapter 7**

collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Vehicle in the amount of $49,202.63. *See* Docket No. 13, at p. 8. Movant asserts that the Debtor is in arrears in the amount of $8,517.17. *See id.* It appears that the Debtor's last monthly payment of $699.36 was received by Movant on February 5, 2024. *See id*. Additionally, the Debtor filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtor intends to surrender the Vehicle and there is no evidence that the Debtor has insurance on the Vehicle. *See id.* at *Exhibit 4*.

The Debtor's delinquency, coupled with the Debtor's failure to insure the Vehicle and intention to surrender the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Fed. R. Bankr. P. 4001(a)

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Joshua Michael Patrick	Represented By Daniel A Higson

Movant(s):

VW Credit Leasing LTD as serviced	Represented By Kirsten Martinez

Trustee(s):

Sandra McBeth (TR)	Pro Se

9:00 AM
9:24-11281 Oscar Lomeli **Chapter 13**

#14.00 Hearing RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: RE: 868 Montgomery Avenue Ventura, CA 93004

Docket 12

Tentative Ruling:

January 14, 2025

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4), including the request to waive the co-debtor stay, for the reasons set forth *infra*. The request to waive Fed. R. Bankr. P. 4001(a)(3) is denied. Movant to upload a conforming order within 7 days.

U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(4) in relation to the real property located at 868 Montgomery Avenue, Ventura, CA 93004 (the "Property") of Oscar Lomeli (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected, (2) the bankruptcy case was filed in bad faith, (3) the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"), and (4) pursuant to 11 U.S.C. § 362(d)(4), the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy cases affecting the Property. *See* Docket No. 12, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-5.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) termination of the co-debtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), (5) relief from the stay be granted under 11 U.S.C. § 362(d)(4): if recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order be binding in any

other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing, and (6) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor be deemed a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C). *See id.* at p. 5.

Notice

The Motion was filed on December 5, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On December 31, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 15. In the Response, the Debtor asserts that the Motion should be denied because (1) the bankruptcy case was filed in good faith and the Debtor has proposed a confirmable plan that will repay Movant's arrears in full, (2) the Debtor is current on postpetition mortgage payments, (3) extraordinary relief is not justified because the Debtor has not acted in bad faith and did not file the bankruptcy petition as part of a scheme to delay, hinder, or defraud creditors, (4) Movant is adequately protected, (5) the Property is necessary for an effective reorganization, and (6) there is no presumption of bad faith. *See id.*

Analysis

11 U.S.C. § 362(d)(1)- Lack of Adequate Protection

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic

stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Movant provides no analysis as to why its interest in the Property is not adequately protected. *See* Docket No. 12. Therefore, Movant has not established cause sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for lack of adequate of protection.

11 U.S.C. § 362(d)(1) – Bad Faith

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1).

"The debtor's lack of good faith in filing a bankruptcy petition has often been used as cause for removing the automatic stay." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *Id.* "The bankruptcy court should examine the debtor's financial status, motives, and the local economic environment." *Id.* The Ninth Circuit cited the Ninth Circuit Bankruptcy Appellate Panel regarding bad faith as follows:

> If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist. But if it is apparent that the purpose is not to delay or defeat creditors but rather to put an end to long delays, administration expenses ... to mortgage foreclosures, and to invoke the operation of the [bankruptcy law] in the spirit indicated by Congress in the legislation ... good faith cannot be denied. *Id.*

"Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." *Id.* (citing *In re Thirtieth Place, Inc*., 30 B.R. 503, 505 (9th Cir. BAP 1983) (quotation omitted).

9:00 AM

CONT... Oscar Lomeli **Chapter 13**

Movant asserts that "[t]he bankruptcy case was filed in bad faith. Other bankruptcy cases have been filed in which an interest in the Property was asserted." *See* Docket No. 12, p. 3. On November 7, 2018, the Debtor and the non-filing co-debtor Deirdre Lomeli (the "Co-debtor") filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:18-bk-11864-DS (the "First Case"). The Property was listed on that *Schedule A/B: Property* in the First Case. *See* First Case, Docket No. 1. The First Case was closed without a discharge on February 7, 2022. *See* First Case, Docket No. 26.

On September 6, 2022, Movant recorded a Notice of Trustee's Sale scheduling a foreclosure sale on the Property for October 27, 2022. *See* Docket No. 12, *Exhibit 7*.

On September 30, 2022, the Co-debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:22-bk-10792-RC (the "Second Case"). The Property was listed on that *Schedule A/B: Property* in the Second Case. *See* Second Case, Docket No. 1. On March 25, 2024, the *Order Granting Motion for Relief from the Automatic Stay* regarding the Property was entered after the Co-debtor defaulted on a stipulated adequate protection agreement. *See* Second Case, Docket 54. On April 19, 2024, Movant recorded a Notice of Trustee's Sale scheduling a foreclosure sale on the Property for May 28, 2024. *See* Docket No. 12, *Exhibit 8.* The Second Case was dismissed for failure to make plan payments on April 22, 2024. *See* Second Case, Docket No. 54.

On May 27, 2024, the Co-debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:24-bk-10592-RC (the "Third Case"). The Property was listed on that *Schedule A/B: Property* in the Third Case. *See* Third Case, Docket No. 1. On November 1, 2024, the *Order Granting Motion for Relief from the Automatic Stay* regarding the Property was entered after the Co-debtor defaulted on a stipulated adequate protection agreement. *See* Third Case, Docket 44.

On November 8, 2024, the Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Case No. 9:24-bk-11281-RC ("This Case"). The Debtor lists the Property on his bankruptcy petition and includes the Property in the Plan in This Case. *See* Docket No. 1, *Schedule A/B: Assets*; *see* Docket No. 2, pp. 5-6, Class 2.

9:00 AM

CONT... Oscar Lomeli **Chapter 13**

There have been four bankruptcy filings between the Debtor and the Co-debtor within the last two (2) years. In the Second and Third Cases, relief from stay was granted after default under a stipulated adequate protection agreement. In the Response, the Co-debtor asserts that the multiple bankruptcy filings and dismissals were the result of a series of unfortunate events, including significant medical issues and expenses incurred by the Co-debtor. *See* Docket No. 15, *Declaration of Deidre Nollaig Lomeli.* The Co-debtor's medical issues appear to be ongoing. *See id.*, ¶17. The Response is not supported by a declaration by the Debtor that his case was filed in good faith. While the Court understands that the Co-debtor has suffered recurring medical issues, the repeated bankruptcy filings just before each scheduled foreclosure sale show that the Debtor and Co-Debtor are attempting unreasonably to deter and harass Movant in its bona fide efforts to realize upon its securities. Therefore, the Court finds a lack of good faith.

11 U.S.C. § 362(d)(4)

Movant asserts that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under § 362(d)(4), the court must find the following three elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, *266 hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC. (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

As outlined above, the Debtor and Co-debtor have four bankruptcy filings within the last two (2) years. In the Second Case and Third Case, relief from stay regarding the Property was granted after the Co-debtor defaulted under a stipulated adequate protection agreement. The repeated bankruptcy filings just before each scheduled foreclosure sale illustrate that the Debtor's bankruptcy filing was part of a scheme to hinder and delay Movant. Therefore, Movant has established cause to grant relief under 11 U.S.C. § 362(d)(4).

Fed. R. Bankr. P. 4001(a)

9:00 AM
CONT... Oscar Lomeli **Chapter 13**

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Oscar Lomeli	Represented By Steven A Alpert

Movant(s):

U.S. Bank Trust National	Represented By Shannon A Doyle

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

9:00 AM
9:24-11321 Elaine Cornelia Snyder **Chapter 7**

#15.00 Hearing RE: [20] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2553 Neptune Place, Port Hueneme, CA 93041

Docket 20

Tentative Ruling:

January 14, 2025

Appearances are waived. The Court denies the Motion for the reasons set forth *infra*. Movant to upload a conforming order within 7 days.

US Bank Trust National Association as trustee for LB-Treehouse Series VI Trust. ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the residential real property located at 2553 Neptune Place, Port Hueneme, CA 93041 (the "Property") of Elaine Cornelia Snyder (the "Debtor") on the grounds that Movant's interest in the Property is not protected by an adequate equity cushion. *See* Docket No. 20, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* (the "Motion").

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor be deemed a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C). *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on December 20, 2024, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*. at *Proof of*

Service of Document, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

Here, Movant first contends that arrearages total $73,544.72, which represents twenty-three (23) unpaid payments of $3,227.38 each (as of the date of the Motion) with a payment of $3,227.38 becoming due January 1, 2025. *See* Docket No. 20, p. 8.

9:00 AM

CONT... Elaine Cornelia Snyder **Chapter 7**

Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of $487,762.55. *See id.* at p. 7. Movant asserts that the Small Business Administration claims a lien of $56,700 against the Property. *See id.* at p. 8; *see also* Docket No. 12, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 16. As of the petition date of November 20, 2024, Movant asserts that the fair market value of the Property is $650,000.00 per the Debtor's *Schedule A/B*. *See* docket No. 12, *Schedule A/B: Property,* p. 1. Movant asserts that it maintains an equity cushion in the Property. *See* Docket No. 20, p. 8. The equity cushion in the Property exceeding Movant's lien is asserted to be "$54,2929.90 and is 9.21% of the fair market value of the Property." *See id.*, p. 8. The Court calculates the equity cushion in the Property exceeding Movant's lien to be $162,237.45 or 25%.

Movant enjoys 25% equity cushion, which the Court finds to adequately protect Movant under *In re Mellor*. Therefore, the Court denies the Motion as to its request under 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

Elaine Cornelia Snyder	Represented By Steven J Renshaw

Movant(s):

US Bank Trust National Association	Represented By Shannon A Doyle

Trustee(s):

Sandra McBeth (TR)	Pro Se

9:00 AM

9:24-11326 Damian Silvestre Lopez Ramirez and Darlene Guadalupe **Chapter 7**

#16.00 Hearing RE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 TOYOTA SIENNA, VIN: 5TDKZ3DC6HS796749 . (Martinez, Kirsten)

Docket 15

Tentative Ruling:

January 14, 2025

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2), including the request to waive Fed. R. Bankr. P. 4001(a), for the reasons stated *infra.* Movant to lodge a conforming order within 7 days.

On December 20, 2024, Toyota Motor Credit Corporation ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2017 Toyota Sienna (the "Vehicle") of Damian Silvestre Lopez Ramirez and Darlene Guadalupe Ambriz (the "Debtors") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, (3) the Debtors filed a statement of intention that indicates the Debtors intend to surrender the Vehicle, and (4) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 15, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on December 20, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*. Pursuant to this Court's Local Rule 9013-1(h), "if a party does

9:00 AM

CONT... Damian Silvestre Lopez Ramirez and Darlene Guadalupe **Chapter 7**

not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtors.

Analysis

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Movant first contends that its interest in the Vehicle is not adequately protected. Movant asserts a secured claim against the Vehicle in the amount of $28,068.23 as of December 11, 2024. *See* Docket No. 15, at p. 8. According to the J.D. Power Used Cars/Trucks report, the Vehicle has a fair market value of $18,150.00. *See id.*, at *Exhibit 4*. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002). Courts have held that the failure of a debtor to maintain insurance over a secured creditor's

9:00 AM

CONT... Damian Silvestre Lopez Ramirez and Darlene Guadalupe **Chapter 7**

collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief.").

Here, Movant asserts a secured claim against the Vehicle in the amount of $28,068.23. *See* Docket No. 15, at p. 8. Movant asserts that the Debtors are in arrears in the amount of $3,279.76. *See id.* It appears that the Debtors' last monthly payment of $640.42 was received by Movant on July 25, 2024. *See id*. Additionally, the Debtors filed that *Statement of Intention for Individuals Filing Under Chapter 7* that indicates that the Debtors intend to surrender the Vehicle. *See id.* at *Exhibit 5*, p. 1.

The Debtors' delinquency, coupled with the Debtors' failure to maintain insurance on the Vehicle and the Debtors' intention to surrender the Vehicle, constitute cause to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Party Information

Debtor(s):

Damian Silvestre Lopez Ramirez	Represented By Melody D. Morris

Joint Debtor(s):

Darlene Guadalupe Ambriz	Represented By Melody D. Morris

Movant(s):

Toyota Motor Credit Corporation	Represented By Kirsten Martinez

Trustee(s):

Sandra McBeth (TR)	Pro Se

1:00 PM
9:19-11625 Shane Patrick Mahan **Chapter 7**

#17.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Faith. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pca))

Docket 375

Tentative Ruling:

January 14, 2025

Appearances waived.

Before the Court is *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Jeremy W. Faith (the "Trustee"), for the bankruptcy estate of Shane Patrick Mahan (the "Debtor") on December 16, 2024. *See* Docket No. 375.

On September 30, 2024, Levene, Neale, Bender, Yoo & Golubchik, L.L.P. ("LNBYG"), in its capacity as counsel to the Trustee, filed that *Application for Payment of: Final Fees And/Or Expenses (11 U.S.C. § 330* (the "LNBYG Application"), covering the period from May 13, 2020 through September 22, 2024, through which LNBYG requested allowance on a final basis of fees of $50,000.00 and reimbursement of expenses in the amount of $14,036.52. *See* Docket No. 371. Through the LNBYG Application, LNBYG has written off approximately $195,000 in fees. *See id.* at p. 13.

On October 7, 2024, Grobstein Teeple LLP ("Grobstein"), in its capacity as accountant to the Trustee, filed that *First and Final Application for Compensation and Reimbursement of Expenses of Grobstein Teeple, LLP as Accountants for the Chapter 7 Trustee* (the "Grobstein Application"), covering the period from May 13, 2020 through and including October 4, 2024, through which Grobstein requested allowance on a final basis of fees of $34,537.50 and reimbursement of expenses in the amount of $328.47. *See* Docket No. 373.

On December 16, 2024, that *Notice of Trustee's Final Report and Applications for*

1:00 PM

CONT... Shane Patrick Mahan **Chapter 7**

Compensation and Deadline to Object (the "Notice") was filed with the Court and served via BCN. *See* Docket Nos. 375 and 376.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report and the Griffith Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately $201,814.49 in cash on hand. *See* Docket No. 375 at p. 1. The Trustee seeks to make a proposed payment of $40,070.22 to secured creditor the Internal Revenue Service which will effectively reduce the cash on hand to $161,744.27. *See id.* at *Exhibit D*.

Through the Report, the Trustee, *inter alia*, seeks (1) the reduced payment of the Trustee's statutory fee of $37,116.13 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of $75.65, (2) the payment of Untied States Trustee fees in the amount of $650, (3) the reduced payment of $50,000.00 in fees and reimbursement of $14,036.52 in expenses related to the LNBYG Application, and (4) the payment of $34,537.50 in fees and reimbursement of $328.47 in expenses related to the Grobstein Application. *See id.* at *Exhibit D*.

After payment to secured creditors, professionals, and the Trustee, the balance of cash on hand for priority claims is $25,000.00. *See id.* Timely claims of general (unsecured) creditors totaling $381,870.62 have been allowed and will be paid a *pro rata* distribution of approximately 0.0%. *See id.*

Pursuant to 11 U.S.C. § 330, the Court (1) approves the LNBYG Application, on a final basis, for fees in the amount of $50,000.00 and expenses of $14,036.52, and approves the reduced, allowed payment, on a final basis, for $50,000.00 in fees and $14,036.52 in expenses, (2) approves the Grobstein Application, on a final basis, for fees in the amount of $34,537.50 and expenses of $328.47, and approves payment of the allowed fees for $34,537.50 and reimbursement of expenses for $328.47, and (3) approves the Report as in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their reduced statutory fee in the amount of $37,116.13, and reimbursement of the Trustee's expenses in the amount of $75.65.

The Trustee is to upload a confirming order within 7 days.

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

CONT... Shane Patrick Mahan **Chapter 7**

Party Information

Debtor(s):

Shane Patrick Mahan	Represented By Michael J Glenn

Trustee(s):

Jeremy W. Faith (TR)	Represented By Todd A. Frealy Lindsey L Smith Richard P Steelman Jr

1:00 PM
9:22-10977 Lee Allan Hess **Chapter 7**

#18.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Sandra K. McBeth, Trustee. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pca))

Docket 93

Tentative Ruling:

January 14, 2025

Appearances waived.

Before the Court is *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Lee Allan Hess (the "Debtor") on December 16, 2024. *See* Docket No. 93.

On October 7, 2024, Sandra K. McBeth, A Professional Law Corporation ("McBeth"), in its capacity as counsel to the Trustee, filed that *Application for Payment of: Final Fees And/Or Expenses (11 U.S.C. § 330* (the "McBeth Application"), covering the period from October 25, 2023 through October 4, 2024, through which McBeth requested allowance on a final basis of fees of $3,442.50 and reimbursement of expenses in the amount of $25.50. *See* Docket No. 90.

On October 14, 2024, Hahn Fife & Company ("Hahn Fife"), in its capacity as accountant to the Trustee, filed that *First and Final Application of Hahn Fife & Company for Allowance of Fees and Expenses From January 24, 2024 Through October 9, 2024* (the "Hahn Fife Application"), covering the period from January 24, 2024 through and including October 9, 2024, through which Hahn Fife requested allowance on a final basis of fees of $1,938.00 and reimbursement of expenses in the amount of $271.50. *See* Docket No. 91.

On December 16, 2024, that *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Notice") was filed with the Court and

1:00 PM

CONT... Lee Allan Hess **Chapter 7**

served via BCN. *See* Docket Nos. 94 and 95.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report and the Griffith Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately $68,427.73 in cash on hand. *See* Docket No. 93 at p. 1.

Through the Report, the Trustee, *inter alia*, seeks (1) the payment of the Trustee's statutory fee of $6,742.75 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of $355.38, (2) the payment of $3,442.50 in fees and reimbursement of $25.50 in expenses related to the McBeth Application, and (3) the payment of $1,938.00 in fees and reimbursement of $271.50 in expenses related to the Hahn Fife Application. *See id.* at *Exhibit D*.

After payment to professionals and the Trustee, the balance of cash on hand for general unsecured claims is $55,652.10. *See id.* Timely claims of general (unsecured) creditors totaling $581,344.73 have been allowed and will be paid a *pro rata* distribution of approximately 9.573%. *See id.*

Pursuant to 11 U.S.C. § 330, the Court (1) approves the McBeth Application, on a final basis, for fees in the amount of $3,442.50 and expenses of $25.50, and approves the allowed payment, on a final basis, for $3,442.50 in fees and $25.50 in expenses, (2) approves the Hahn Fife Application, on a final basis, for fees in the amount of $1,938.00 and expenses of $271.50, and approves payment of the allowed fees for $1,938 and reimbursement of expenses for $271.50, and (3) approves the Report as in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their reduced statutory fee in the amount of $6,742.75, and reimbursement of the Trustee's expenses in the amount of $355.38.

The Trustee is to upload a confirming order within 7 days.

Party Information

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

CONT... Lee Allan Hess **Chapter 7**

Debtor(s):

Lee Allan Hess — Represented By
Creighton A Stephens

Trustee(s):

Sandra McBeth (TR) — Represented By
Sandra McBeth

1:00 PM
9:24-10286 Jay K Kamiya **Chapter 7**

#19.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Sandra K. McBeth, Trustee. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (pca))

Docket 15

Tentative Ruling:

January 14, 2025

Appearances waived.

Before the Court is *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Jay K Kamiva (the "Debtor") on November 20, 2024. *See* Docket No. 15.

On November 20, 2024, that *Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object* (the "Notice") was filed with the Court and served via BCN. *See* Docket Nos. 16 and 17. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report and the Griffith Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately $7,697.28 in cash on hand. *See* Docket No. 15 at p. 1. Through the Report, the Trustee, *inter alia*, seeks the payment of the Trustee's statutory fee of $1,525.93 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of $110.11. *See id.* at *Exhibit D*. After payment to the Trustee, the balance of cash on hand for general unsecured claims is $6,061.25. *See id.* Timely claims of general (unsecured) creditors totaling $28,154.83 have been allowed and will be paid a *pro rata* distribution of approximately 51.528%.

1:00 PM

CONT... Jay K Kamiya **Chapter 7**

See id.

Pursuant to 11 U.S.C. § 330, the Court approves the Report as in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their reduced statutory fee in the amount of $1,525.93, and reimbursement of the Trustee's expenses in the amount of $110.11.

The Trustee is to upload a confirming order within 7 days.

Party Information

Debtor(s):

Jay K Kamiya	Represented By Michael B Clayton

Trustee(s):

Sandra McBeth (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:23-10174 Jonathan Alan Stein **Chapter 7**

#20.00 HearingRE: [293] Motion to compel trustee to abandon interest in property of estate MTC Abandonment #3 SBSC Action. (Stein, Jonathan)

Docket 293

Tentative Ruling:

January 14, 2025

Appearances waived.

The record is closed. The Court will consider all timely filed pleadings. This matter is continued for ruling to January 28, 2025, at 1:00 p.m.

Party Information

Debtor(s):

Jonathan Alan Stein — Represented By
Jonathan Stein

Trustee(s):

Jerry Namba (TR) — Represented By
Laila Masud
Sarah Rose Hasselberger
D Edward Hays
Sarah Cate Hays

1:00 PM
9:23-10174 Jonathan Alan Stein **Chapter 7**

#21.00 Hearing RE: [344] Application to Employ Dickinson, Bradshaw, Fowler and Hagen P.C. as Special Litigation Counsel with Proof of Service (Masud, Laila)

Docket 344

Tentative Ruling:

January 14, 2025

Appearances required.

Background

The State Court Judgment

The Gabrielino-Tongva Tribe (the "Tribe") relates to the indigenous people of the Los Angeles Basin known as the "Gabrielinos" due to their association with the San Gabriel Mission. *See* Docket No. 71, *Notice of Issuance of Appellate Opinion*, *Attachment 1*, p. 6. In 2006, the Tribe filed an action against Jonathan Stein (the "Debtor"), the Law Offices of Jonathan Stein, and Santa Monica Development Company, LLC (an entity formed by the Debtor "to develop casino gaming with the Tribe") in the Superior Court of California for the County of Los Angeles (the "LA State Court") alleging fifteen (15) causes of action, including fraud (the "State Court Action"). *See id.* at p. 20. On November 8, 2018, the LA State Court "ruled in favor of the Tribe and against [the Debtor], Law Offices, and SMDC, on all causes of action [regarding the State Court Action]." *See id.* at p. 34. The LA State Court found that the Debtor, Law Offices of Jonathan Stein, and Santa Monica Development Company, LLC "acted with malice, oppression, and fraud." *See id.* As to the fraud finding, the LA State Court "found [the Debtor] had committed multiple acts of fraud against the Tribe." *See id.* Including $7 million in punitive damages, the LA State Court awarded the Tribe, and as against the Debtor, Law Offices of Jonathan Stein, and Santa Monica Development Company, LLC, a total judgment of $20,411,067.23 in the State Court Action (the "Judgment"). *See id.* at p. 42. Apart from a reduction in the amount of the Judgement from $20,411,067.23 to $19,161,067.23, the Court of Appeal of the State of California, Second Appellate District, Division Five affirmed the LA State Court's Judgment in the State Court Action. *See id.*, generally. Chora

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

Young & Manasserian LLP ("CYM") represented the Tribe at trial in the LA State Court, and in the Debtor's appeal of the Judgment.

The Malpractice Action

On September 27, 2018, Glenn Golden and G2 Database Marketing, Inc. (collectively, hereinafter, "Golden") filed a complaint against the Debtor in the U.S. District Court for the Southern District of Iowa (the "Iowa District Court"), alleging professional negligence (the "Malpractice Action"). *See* Docket No. 65, *Exhibit 3*, pp. 68-80. In response to Golden's complaint, the Debtor in the Malpractice Action filed a counterclaim against, among others, Golden, for unpaid legal fees in the amount of $880,825 (the "Counterclaim"). *See id.* at pp. 81-106. According to the Debtor's wife, Hong Sun ("Sun"), between the dates of December 1, 2018 and February 1, 2019, two (2) assignments were entered into as between the Debtor and Sun whereunder the Debtor assigned certain of his interests in the Counterclaim to Sun in exchange for $900,000, "'which [was] paid in cash and cancellations of indebtedness.'" *See* Docket No. 87, *Chapter 7 Trustee's Omnibus Reply In Support of Motion to Approve Compromise with Gabrielino-Tongva Tribe Including Partial Subordination and Release of Claims*, *Exhibit 1*, Bates stamped pp. 17-18. On October 16, 2020, the Tribe filed in the Malpractice Action that *Motion to Stay Trial* and that *Motion to Intervene*. *See id.* at p. 20. The Iowa District Court granted the *Motion to Intervene* on February 5, 2021. *See id.* The Tribe filed that *Complaint in Intervention* on that same date. *See id.* "The primary basis for the Tribe's first cause of action is that [the Debtor] fraudulently conveyed his rights to the Federal Deposit and [the Counterclaim] to [Sun] through the two written Assignments to obstruct and evade the Tribe's levies on those assets." *See id.* The Tribe alleges that pursuant to Iowa Code § 630.18, "upon service of the Complaint In Intervention on [Sun], the Tribe is entitled to a lien on [the Debtor's] causes of action in [the Counterclaim] and the Federal Deposit, which were wrongfully conveyed from [the Debtor to Sun], whether in the possession of [the Debtor or Sun]." *See id.* In granting in part and denying in part the Tribe's motion for summary judgment on the *Complaint In Intervention*, the Iowa District Court found that the Tribe was "entitled to summary judgment on some of the 'badges of fraud' on which the Tribe relies," but that "there are genuine issues of material fact on both the 'good faith' and 'reasonably equivalent value' elements of [the Debtor's] defense" to the Counterclaim." *See id.* at p. 41. As

with the State Court Action, CYM represented the Tribe in the Malpractice Action and the Counterclaim.

During the above Iowa litigation, the Tribe employed Dickinson, Bradshaw, Fowler and Hagen P.C. ("DBFH") as its local counsel, as no attorneys of CYM are licensed to practice law in Iowa, and DBFH is based in Iowa. *See* Docket No. 344, p. 5 lines 16-19.

The Debtor's Bankruptcy Case

On March 10, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code (this "Bankruptcy Case"). *See* Docket No. 1. Jerry Namba (the "Trustee") is serving as the duly appointed Chapter 7 trustee.

The Tribe's Claims

On April 18, 2023, the Tribe filed Claim No. 1 in the amount of $37,065,922.66 related to the Judgment. *See* Claim No. 1.

The Employment Order and Employment Application

On July 30, 2024, the Court issued that *Order Granting Application by Chapter 7 Trustee to Employ Chora Young & Manasserian LLP as Special Litigation Counsel* in which the Court approved the Trustee's employment of CYM as special litigation counsel in the Malpractice Action and the Counterclaim. *See* Docket No. 240.

On November 26, 2024, the Trustee filed that *Application by Chapter 7 Trustee to Employ Dickinson, Bradshaw, Fowler and Hagen P.C. as Special Litigation Counsel* (the "Application"). *See* Docket No. 344. Through the Application, the Trustee seeks to employ DBFH as special litigation counsel pursuant to 11 U.S.C. §§ 327(a) and (c) to serve as local Iowa counsel in the Malpractice Action and the Counterclaim. *See id.* The Application proposes that DBFH will be paid by CYM for its work in the Malpractice Action and the Counterclaim which CYM will seek reimbursement from the estate as part of its costs. *See id.* at p. 5 lines 16-23. DBFH will not seek compensation directly from the Debtor's bankruptcy estate, and any costs of CYM are subject to approval by the Court after notice and a hearing pursuant to 11 U.S.C. § 330. *See id.*

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

The Adversary Actions

On June 23, 2023, the Tribe filed that *Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523, and Denial of Discharge Under 11 U.S.C. § 727*. *See* Docket No. 63. On November 26, 2024, the Tribe filed that *First Amended Complaint for Determination that Debt is Excepted from Discharge Under 11 U.S.C. § 523* seeking to except from the Debtor's discharge the Judgment through various theories only under 11 U.S.C. § 523. *See* Case 9:23-ap-01023-RC Docket No. 152.

On December 13, 2023, the Debtor filed that *Initial Complaint by Debtor Jonathan Stein and Demand for Jury Trial* (the "Stein Adversary"). *See* Docket No. 161. The Stein Adversary was filed as against CYM, certain of CYM's partners individually, and the Tribe for (1) declaratory relief as to the Tribe's capacity to maintain actions in this Bankruptcy Case, the Idaho District Court and the SB State Court, (2) violation of the automatic stay, (3) violation of the anti-alienation provisions of the ERISA Act and ERISA plan, (4) equitable action to dissolve preliminary injunction on ERISA plan assets, (5) assault, (6) intentional infliction of physical harm and emotional distress, (7) willful misconduct, (8) elder abuse violations, (9) malicious prosecution, (10) abuse of process, (11) intentional interference with contract, and (12) violation of Cal. Bus. & Prof. Code § 6129. *See id.*

On January 19, 2024, the Trustee filed that *Complaint to Deny Discharge Pursuant to 11 U.S.C. §§ 727(a)(2)(A), (a)(2)(B), (a)(4)(A), (a)(4)(D), and (a)(6)(A)* (the "Trustee Adversary"). *See* Docket No. 170. The Trustee Adversary seeks denial of the Debtor's discharge through sixteen (16) causes of action under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(3), 727(a)(4)(A), 727(a)(4)(D), and 727(a)(6)(A). *See id.*

The 9019 Order

On July 3, 2023, the Trustee filed *Chapter 7 Trustee's Motion to Approve Compromise with Gabrielino-Tongva Tribe Including Partial Subordination and Release of Claims* (the "9019 Motion"). *See* Docket No. 65. Through the 9019 Motion the Trustee ultimately sought approval of a settlement agreement reached among the Trustee and the Tribe, which agreement was memorialized through that *Amended Subordination Agreement and Release* (the "Agreement"). *See id.* at *Exhibit 1*. The Agreement addresses the liens of the Tribe against the Debtor's estate's

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

personal and real property, reduces the Tribe's unsecured claim by $200,000, and discounts any fees to be charged by CYM for prosecution of the Malpractice Action, Counterclaim and a UVTA Action pending in the state court in Santa Barbara by $25,000. *See* Docket No. 111, *Exhibit 1*. Upon approval of the 9019 Motion, the Tribe would be deemed to have valid and unavoidable liens against certain of the Debtor's real property, and a valid and unavoidable lien against the Debtor's estate's personal property, subject to a sharing of any recoveries on the Counterclaim and the UVTA Action between the Debtor's estate and the Tribe on its liens. *See id.* The Agreement also provided a release to the Tribe and CYM from the Trustee and the Debtor's bankruptcy estate for any claims that "may have arisen prior to the Petition Date," but "[t]he Estate is not releasing any rights held by the Estate, or any other party-in-interest in this case, to seek disallowance of the Tribe's Claim, including filing any objection to such claim after the California Supreme Court rules on the Petition for Review." *See id.* On February 21, 2024, the Court entered that *Order Granting Chapter 7 Trustee's Motion to Approve Compromise with Gabrielino-Tongva Tribe Including Partial Subordination and Release of Claims* (the "9019 Order"), granting the 9019 Motion. *See* Docket No. 177.

Analysis

Request for Judicial Notice

Pursuant to Fed. R. Evid. 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Judicial notice may be taken "of bankruptcy records in the underlying proceeding…" *In re Tuma*, 916 F.2d 488, 491 (9th Cir. 1990); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001) ("[A] court may take judicial notice of 'matters of public record.'"); *Minden Pictures, Inc. v. Excitant Group, LLC*, 2020 WL 80525311, *2 (C.D. Cal. 2020) ("A court may take judicial notice of 'court records available to the public through the PACER system.'"); *Neylon v. County of Inyo*, 2016 WL 6834097 *2 (E.D. Cal. 2016) ("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts").

Pursuant to Fed. R. Evid. 201(e), "[o]n timely request, a party is entitled to be heard

on the propriety of taking judicial notice and the nature of the fact to be noticed."

On November 26, 2024, the Trustee filed that *Request for Judicial Notice in Support of Application by Chapter 7 Trustee to Employ Dickinson, Bradshaw, Fowler and Hagen, P.C. as Special Litigation Counsel* (the "RJN") seeking the Court to take judicial notice of various court filings by the Tribe and the Debtor and various court orders. *See* Docket No. 346.

Here, there has been no objection the RJN and the RJN requests judicial notice of the types of documents that are appropriate for this Court to take judicial notice of. As such, the Court takes judicial notice of Exhibits 1-13 of the RJN.

11 U.S.C. § 327(a)

Section 704(a)(1) of the Bankruptcy Code provides that, as one of their duties, "[t]he trustee shall [] collect and reduce to money the property of the estate for which such trustee serves…" 11 U.S.C. § 704(a)(1).

Section 327(a) of the Bankruptcy Code provides that "the trustee, with the court's approval, may employ one or more attorneys [] that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." At least one trial court in this Circuit has held that "a separate order of approval of employment of local counsel should not be absolutely required but, rather, in certain circumstances, the right of local counsel to compensation may be dependent upon the approval of employment of primary counsel. The fees and expenses of local counsel in such a situation would be submitted by, and encompassed within the § 330 request of, the approved primary counsel." *In re Bear Lake West, Inc.*, 32 B.R. 272, 278 (Bankr. D. Id. 1983).

"A bankruptcy court's decisions regarding the employment and qualification of professionals are reviewed for abuse of discretion." *In re Tevis*, 347 B.R. 679, 685 (9th Cir. BAP 2006)(internal citations omitted).

"Section 327(a) requires the application of a two-pronged test for the employment of professional persons. A [] trustee may employ attorneys with court approval only if (1) they do not hold or represent an interest adverse to the estate, and (2) they are

disinterested persons." *In re Tevis*, 347 B.R. at 687.

"The term 'adverse interest' is not defined in the Bankruptcy Code. The reported cases have defined what it means to hold an adverse interest as follows: (1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate." *In re Tevis*, 347 B.R. at 688 (internal citations omitted). "To represent an adverse interest means to serve as an attorney for an entity holding such an adverse interest." *Id.* (internal citations omitted). "Section 327(a) has been interpreted 'to mean that the attorney must not represent an adverse interest relating to the services which are to be performed by that attorney.'" *In re Hummer Transportation*, 2014 WL 412534 at *4 (Bankr. E.D. Cal. 2014)(citing *In re Fondiller*, 15 B.R. 890, 892 (9th Cir. BAP 1981)).

A disinterested person is defined as a person that (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. § 101(14). Section 101(14)(C) of the Bankruptcy Code is referred to as a catch-all clause. "The purpose of the catch-all clause is to prevent a conflict even if the professional person under consideration promises to report such conflict if it arises." 3 *Collier on Bankruptcy* ¶ 327.04 2[a][iii][E] (Richard Levin & Henry J. Sommer eds., 16th ed)(internal citations omitted). "Caution must be exercised to avoid the application of the catch-all provision to the detriment of the case." *Id.*

"The Code's definition of disinterestedness 'covers not only actual impropriety, but the appearance of impropriety as well.'" *In re AFI Holding, Inc.*, 530 F.3d 832, 850 (9th Cir. 2008)(internal citations omitted). "For the purposes of disinterestedness, a lawyer has an interest materially adverse to the interest of the estate if the lawyer either holds or represents such an interest." *Id.* at 848. "Whether an interest is 'materially adverse' necessarily requires an objective and fact-driven inquiry." *In re AFI Holding, Inc.*, 530 F.3d at 848 (internal citations omitted). "'A person who is not disinterested as that term is defined in §101(14) is disqualified from acting as a

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

professional for the estate.'" *In re Hummer Transportation*, 2014 WL 412534 at *4 (citing *In re Capitol Metals Co., Inc.*, 228 B.R. 724, 726-727 (9th Cir. BAP 1998)).

"There is, as courts have observed, an overlap between 'disinterestedness' and 'interest adverse.'" 3 *Collier on Bankruptcy* ¶ 327.04 2[b] (Richard Levin & Henry J. Sommer eds., 16th ed)(internal citations omitted). "Some courts have held that the two tests are fundamentally the same." *Id.*

In terms of disinterestedness, 11 U.S.C. § 101(14)(C) is the sole subpart at issue in the Application. Sun's objection to the Application argues that DBFH is not disinterested due to DBFH's prior representation of the Tribe, the lack of a written retention agreement with the Trustee, and issues as to whom is owed a fiduciary duty by DBFH.

CYM represents the Tribe, and the Tribe is a creditor of the Debtor's estate, the largest creditor, in-fact. DBFH was employed by the Tribe to serve as local counsel to the Tribe in the Malpractice Action and the Counterclaim. CYM was acting as primary counsel to the Tribe in the Malpractice Action and the Counterclaim. Although DBFH's retention agreement with the Tribe was signed by CYM, it is clear to the Court that DBFH was representing the Tribe in the Iowa District Court, as local counsel.

Employment by the Trustee as general insolvency counsel involves different issues than employment for other limited purposes. Here, the Trustee is seeking solely to employ DBFH for the limited purpose of serving as local Iowa counsel litigating to conclusion the Malpractice Action and the Counterclaim. *See* Docket No. 344.

Keeping the limited tasks that DBFH is to perform under the Application in mind, the Court will determine whether DBFH has an adverse interest to the Debtor's bankruptcy estate and is disinterested.

The Court finds that DBFH does not have an economic interest that conflicts with the Debtor's bankruptcy estate. First, DBFH has filed no claim against the Debtor's estate, and the bar date to file proofs of claim has now passed. Second, DBFH is receiving no retainer to complete the services it is being employed to render. Third, the Debtor's estate has little to no cash. The recoveries from the Counterclaim is one of few sources from which the Debtor's estate can pay administrative expense claims, including any reimbursement of CYM for its payments of the fees and costs of DBFH.

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

Further, DBFH has no economic interest that would tend to lessen the value of the Debtor's bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant. In fact, just as the Court previously found that CYM's efforts would, if successful, add value to the Debtor's bankruptcy estate, so the Court finds that DBFH's efforts would add value to the Debtor's bankruptcy estate.

It is also important to note that the Tribe has secured, unavoidable liens in the recoveries of the Counterclaim, and through the Agreement has partially subordinated these liens in favor of the Debtor's bankruptcy estate's unsecured creditors. *See* Docket No. 111, *Exhibit 1*. The Trustee, the Tribe and CYM were all parties to the Agreement, which sets forth the distribution of any recoveries from this litigation. The Trustee believes that after payment of administrative expenses, there will be substantial recoveries from these actions for the Debtor's bankruptcy estate outside the Tribe's secured claims. *See* Docket No. 111, p. 17, lines 7-9.

The Tribe's, CYM's, and the Debtor's unsecured creditors' interests are aligned in seeking to liquidate these litigation assets. Since these interests are aligned, as local counsel to the Trustee, DBFH's interest are aligned as well, and the Court does not find Sun's arguments otherwise convincing.

The Court finds that employment is appropriate under 11 U.S.C. § 327(a), as DBFH does not hold or represent an adverse interest to the Debtor's bankruptcy estate and is disinterested. However, when an applicant for employment by a trustee has been, or is currently employed by a creditor, and a creditor or the Office of the United States trustee opposes the application, 11 U.S.C. § 327(c) applies, which the Court now turns to.

11 U.S.C. § 327(c)

Pursuant to 11 U.S.C. § 327(c), "a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." "When 'the trustee seeks to appoint counsel only as special counsel for a specific matter, there need only be no conflict between the trustee and counsel's creditor client with respect to the specific matter itself.'" *In re Hummer*

Transportation, 2014 WL 412534 at *5 (citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir. 1993)); *see also In re Arochem Corp.*, 176 F.3d at 622. "'Thus, where the interest of the special counsel and the interest of the estate are identical with respect to the matter for which special counsel is retained, there is no conflict and the representation can stand.'" *In re Hummer Transportation*, 2014 WL 412534 at *5 (citing *In re AroChem Corp.*, 176 F.3d at 622). "A conflict of interest is 'actual and warrants disqualification under § 327(c) if there is active competition between two interests, in which one interest can only be served at the expense of the other.'" *Id.* (citing *In re Johnson*, 312 B.R. 810, 822 (E.D. Va. 2004)). "When 'an attorney is employed by both the trustee and a creditor, there is no actual conflict of interest' warranting disqualification unless (i) the interests of the trustee and the creditor are in fact directly conflicting or (ii) the creditor is actually afforded a preference that is denied to other creditors.'" *Id.*

Here, despite DBFH representing the Tribe in the Counterclaim and the Malpractice Action as local counsel, DBFH does not represent the Tribe in this Bankruptcy Case. Further, it is the Trustee, now having taken the place of the Tribe, that is advancing the Counterclaim and the Malpractice Action. The Tribe is no longer litigating against the Debtor in the Iowa Action. With the distribution of any recoveries from the Iowa Action on the part of the Debtor's bankruptcy estate already determined through the 9019 Order, the creditors of the Debtor's bankruptcy estate's interests, including administrative expense creditors' interests, are aligned. There is no preference afforded either the Tribe or the balance of the Debtor's estate that has not already been negotiated and approved by this Court through the 9019 Order.

Additionally, Sun raises concerns about the $20,000 that remains owed DBFH. DBFH has not requested that it be paid these amounts from the Debtor's estate through the Application, nor has it filed a proof of claim in this Bankruptcy Case. In fact, as noted, the bar date to file proofs of claim in this Bankruptcy Case has passed.

The Court finds no actual conflict of interest. The Court finds that employment of DBFH under 11 U.S.C. § 327(c) is appropriate.

Rule 2014

Pursuant to Fed. R. Bankr. P. 2014, an order authorizing the employment of a professional under 11 U.S.C. § 327 must be preceded by an application of the trustee

1:00 PM

CONT... Jonathan Alan Stein **Chapter 7**

that states "to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."

Sun argues that the Application fails to satisfy Fed. R. Bankr. P. 2014 because it is not accompanied by a declaration outlining the issues she believes to present actual conflicts of interest as between CYM, DBFH, the Tribe, and the Debtor's bankruptcy estate. *See* Docket No. 360, p. 6, lines 7-15. The *Declaration of Bradley R Kruse* provides that "[a]s of the Petition Date, [DBFH] entered into an engagement letter with CYM wherein [DBFH] agreed to assist CYM as its local counsel in the Southern District of Iowa." *See* Docket No. 344, p. 20 ¶ 8. It is clear to all in this Bankruptcy Case that DBFH represented the Tribe in the Iowa Action. The Application meets Fed. R. Bankr. P. 2014.

Conclusion

The Application is granted. The Trustee is to upload a conforming order within seven (7) days.

Party Information

Debtor(s):

Jonathan Alan Stein	Represented By Jonathan Stein

Trustee(s):

Jerry Namba (TR)	Represented By Laila Masud Sarah Rose Hasselberger D Edward Hays Sarah Cate Hays

1:00 PM
9:24-10572 Thomas Anthony Ferro **Chapter 7**

#22.00 CONT'D (as a Status Conference) Hearing RE: [9] Motion to Avoid Lien Judicial Lien with Cal-West Equities, Inc.

FR. 9-10-24

Docket 9

Tentative Ruling:

January 14, 2025

Appearances required.

Background

On May 22, 2024, Thomas Anthony Ferro (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On July 3, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"). *See* Docket No. 9. Through the Motion, the Debtor seeks to avoid the judgment lien assigned to Cal-West Equities, Inc. ("Cal-West") pursuant to 11 U.S.C. § 522(f) as impairing the Debtor's homestead exemption in a parcel of real property located at 23448 W. Moon Shadows Drive, Malibu, CA 90265 (the "Property"). *See id.*

On July 17, 2024, Cal-West filed that *Notice of Opposition and Request for a Hearing* (the "Opposition"). *See* Docket No. 18. Through the Opposition, Cal-West argues that the Motion must be denied in that (1) the Debtor's spouse's joint tenancy interest in the Property must be included in the Debtor's estate as community property, (2) Cal-West must first conduct discovery as to other alleged consensual liens on the Property, which liens may be inferior to that of Cal-West's lien, (3) the Debtor's homestead exemption should be reduced to $175,000 based on the Debtor's bad faith, and (4) Cal-West's lien cannot be avoided because its underlying claim is non-dischargeable. *See id.*

On September 3, 2024, the Debtor filed *Debtor's Reply to Opposition of Cal-West*

1:00 PM

CONT... Thomas Anthony Ferro **Chapter 7**

Equities, Inc.'s to [sic] Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f). *See* Docket No. 40.

The Non-Dischargeability of Cal-West's Claim

Cal-West argues that the hearing on the Motion should be continued to "allow a determination of nondischargeability to be made…" *See* Docket No. 18. The Court does not follow. "Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt." *In re Hunnicutt*, 457 B.R. 463, 464 (Bankr. D.S.C. 2011)(internal citations omitted). "Lien avoidance and dischargeability of debts are not dependent on each other." *In re Sirikanjanachai*, 628 B.R. 562, 570 (1st Cir. BAP 2021)(citations omitted). "The 'avoidance of a lien does not destroy the underlying debt but rather changes the status of a creditor from a secured creditors to an unsecured position.'" *Id.* at 569. "Thus, a creditor whose judgment lien has been avoided under § 522(f), but whose claim is nondischargeable, may seek to recover from non-exempt property after the debtor's discharge." *Id.*

Cal-West seems to agree that a determination of the dischargeability of its claim by this Court has no bearing on the Debtor's ability to avoid Cal-West's lien under 11 U.S.C. § 522(f). *See* Docket No. 18, fn 6. Cal-West, however, argues that "equity demands that the Court not allow Debtor to avoid the Cal-West lien." *Id.* Again, the Court does not follow. "[E]quitable considerations do not allow a bankruptcy court to contravene express provisions of the Bankruptcy Code." *In re Betteroads Asphalt, LLC*, 594 B.R. 516, 560 (Bankr. D. P.R. 2018)(citing *Law v. Siegel*, 571 U.S. 415 (2014)).

The Court will inquire with Cal-West about the authority this Court has to contravene the auspices of 11 U.S.C. § 522(f) based on what Cal-West believes to be the non-dischargeable nature of its claims against the Debtor under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6). *See* Docket No. 21.

The Debtor's Claimed Exemption

"'When a debtor files for bankruptcy, it creates an estate that includes virtually all the debtor's assets.'" *In re Masingale*, 108 F.4th 1195, 1197 (9th Cir. 2024)(internal citations omitted). "But to help debtors get back on their feet, the Bankruptcy Code permits them to exempt interests in specified property from the estate…" *Id.* "The

debtor 'shall file a list of property that the debtor claims as exempt' under § 522(b), and '[u]nless a party in interest objects, the property claimed as exempt on such list is exempt.'" *Id.* "'The effect of an exemption is that the debtor's interest in the property is withdrawn from the estate (and hence from the creditors) for the benefit of the debtor.'" *Id.* "Under the Bankruptcy Rules, a party in interest (such as a trustee or creditor) has thirty days from the date of the creditors' meeting to object to the claimed homestead exemption." *Id.* at 1198; *see also* Fed. R. Bankr. P. 4003(b)(1) ("a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.").

In the instant case, the Debtor claimed as exempt, $699,426 in the Property pursuant to Cal. Code of Civ. P. § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*. The meeting of creditors under 11 U.S.C. § 341(a) is to take place on February 24, 2025. *See* Docket No. 66. The deadline for parties-in-interest to object to the Debtor's claimed exemption has not yet lapsed. At the moment, the Debtor has a valid exemption in the Property, but subject to any objection to the claimed exemption.

The Nature of the Debtor's Interest in the Property

"As a general principle, a debtor's property rights that become part of the bankruptcy estate under § 541 are determined by applicable nonbankruptcy law." *In re Khalil*, 2015 WL 2213696 *6 (9th Cir. BAP 2015).

"California is a community property state, which characterizes marital property as either community property or separate property." *In re Brace*, 908 F.3d 531, 536 (9th Cir. 2018)(internal citations omitted). Pursuant to Cal. Fam. Code § 760, "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." "'Property that a spouse acquired before the marriage is that spouse's separate property.'" *Id.* at 537. "[F]or property acquired on or after January 1, 1985, married persons may change – i.e., transmute – the character of property from community to separate, or vice versa, if the transmutation is 'made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse

1:00 PM

CONT... Thomas Anthony Ferro **Chapter 7**

whose interest in the property is adversely affected.'" *In re Brace*, 470 P.3d 15, 20 (2020); *see also* Cal. Fam. Code § 852(a). "[A] valid transmutation under Family Code 852, subdivision (a), can be divided into two basic components: (1) a writing that satisfies the statute of frauds; and (2) an expression of intent to transfer a property interest." *In re Bibb*, 87 Cal.App.4th 461, 468 (2001). Specifically, Cal. Fam. Code. § 852(a) "require(s) that a writing effecting a transmutation of property contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence." *Id.* A grant deed signed by the party adversely affected by the purported transmutation constitutes a writing "made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." *Id.* A deed that purports to transmute separate property of one spouse into the separate property of both spouses as joint tenants is satisfied when the deed reads, "[Separate Property Holding Spouse] hereby grant(s) to [themselves and their spouse], as joint tenants the following described real property…" *Id.* Use of the word "grant" in the deed "satisfies the express declaration requirement of section 852, subdivision (a)." *Id.*

Under California law, as to real property, "[i]f the debtor holds property in joint tenancy, only his one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 979 F.3d 1228, 1230 (9th Cir. 2020)(citing *In re Reed*, 940 F.2d 1317, 1332 (9th Cir. 1991)); *see also In re Brace*, 470 P.3d at 21 ("joint tenants typically have separate property interests in the property.").

Here, the deed of the Property reads, "THOMAS FERRO, A MARRIED MAN WHO ACQUIRED TITLE AS THOMAS FERRO, AND UNMARRIED MAN hereby GRANT(S) to THOMAS FERRO AND ROSA FERRO, HUSBAND AND WIFE AS JOINT TENANTS." *See* Docket No. 9, *Exhibit B*. The Debtor testified that he "acquired title to [the Property] in 1986," "as an unmarried man," and then, after his 2006 marriage to Rosa Ferro, conveyed a joint tenancy interest in the Property to he and his wife, Rosa Ferro, recording a grant deed regarding the same in 2012. *See* Docket No. 9, p. 7, lines 6-15. Ergo, the Property was separate property of the Debtor, and then conveyed by the Debtor to he and his spouse as joint tenants. This conveyance effected a valid transmutation of the Property.

Cal-West argues, citing *In re Brace*, that as to "real property [] acquired after January 1, 1975, the form of title does not govern the character of the property; instead, the

general community property presumption applies." *See* Docket No. 18, p. 14, lines 24-26. Cal-West also argues, citing *In re Bibb*, that "a grant deed signed by a husband conveying separate real property to himself and his wife as 'joint tenants' meets the express declaration requirement for transmitting [sic] the property from separate property to community property." *See id.* at p. 15, lines 8-18. Cal-West then argues that the aforementioned deed of trust transmuted the Property to community property. *See id.* at lines 19-21. Lastly, Cal-West argues, citing *In re Bibb*, that since Rosa Ferro obtained her interest in the Property after the marriage, her interest is presumed to be community property, and because there was no written transmutation, the Property is in-fact community property. *See id.* at lines 21-24. The Court disagrees.

The Court in *In re Bibb* held just the opposite from Cal-West's final conclusion. There, a spouse that held separate property, transmuted their separate property to them and their spouse as joint tenants. This was held to meet the strictures of Cal. Fam. Code. § 852(a). This same analysis applies to the instant case, as Cal-West seems to agree, at least in part. The Debtor transmuted their separate property to them and their spouse as joint tenants. The Ninth Circuit has held that "[u]nder California law, if the property at issue is held in joint tenancy, only the debtor's one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 908 F.3d at 537. Cal-West appears to be arguing that after the Debtor executed the deed of trust titling the Property into a joint tenancy, the spouse's interest in-fact became community property, presumptively, and a further writing would need to be produced proving that the Property was transmuted into the Debtor's spouse's separate property as a joint tenant. This appears to the Court to cut against the *In re Bibb* holding.

In the *In re Brace* matter, the monies used to purchase the property after the marriage were community property. Title in the property was taken as a joint tenancy. The California Supreme Court held that "when a married couple uses community funds to acquire property with joint tenancy title on or after January 1, 1975, the property is presumptively community property under Family Code section 760 in a dispute between the couple and a bankruptcy trustee." *In re Brace*, 470 P.3d at 18. This factual scenario would partially support Cal-West's argument. That is not the factual scenario here. Here, this was separate property of the Debtor, obtained prior to the marriage, and transmuted to the spouses as joint tenants after the marriage. The California Supreme Court specifically held that "we do not address interspousal deeds

1:00 PM

CONT... Thomas Anthony Ferro **Chapter 7**

by which one spouse conveys his or her separate property to both spouses as joint tenants, as in *Bibb*." *See id.* at 936.

Cal-West has failed to advance a valid argument illustrating that the Property is not owned by the Debtor and Rosa Ferro as joint tenants, and thus only the Debtor's interest in the Property constitutes property of the Debtor's bankruptcy estate.

Value of the Property

On August 27, 2024, Cal-West filed that *Supplemental Opposition to Debtor's Motion to Avoid Lien of Cal-West Equities, Inc. Under 11 U.S.C. 525(f)* (the "Supplement"). *See* Docket No. 38. Through the Supplement, Cal-West argues that the Property's value is $2.6 million instead of $2.3 million. Unless one or more of the consensual liens on the Property is avoided, the increased valuation matters not.

Next Steps

With the above analysis in mind, the Court will meet with the parties about next steps regarding the resolution of the Motion.

Party Information

Debtor(s):

Thomas Anthony Ferro	Represented By Keith S Dobbins

Movant(s):

Thomas Anthony Ferro	Represented By Keith S Dobbins Keith S Dobbins

Trustee(s):

Jerry Namba (TR)	Represented By Timothy J Yoo

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:24-11269 Gloria Snyder **Chapter 7**

#23.00 ORDER TO SHOW CAUSE FOR FAILURE TO COMPLY WITH 11 U.S.C. Section 109(h) (A certificate of pre-petition credit counseling was not filed)

Docket 1

Tentative Ruling:

January 14, 2025

Appearances waived.

On December 31, 2024, the Court entered that *Order and Notice of Dismissal for Failure to Appear at 341(a) Meeting of Creditors*. *See* Docket No. 24. That *Order to Show Cause for Failure to Comply with 11 U.S.C. Section 109(h)* is therefore, moot.

Party Information

Debtor(s):

Gloria Snyder — Represented By Brian Nomi

Trustee(s):

Jerry Namba (TR) — Pro Se

1:00 PM
9:24-11344 Kim Michelle Ferry **Chapter 7**

#24.00 Hearing RE: [9] Motion to Seal Document (RE: related document(s)[8] Notice to Filer of Error and/or Deficient Document). (with proof of service)

Docket 9

Tentative Ruling:

January 14, 2025

Appearances waived.

Background

On November 26, 2024, Kim Michelle Ferry (the "Debtor") filed that petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. This bankruptcy case is a no asset case. *See* Docket No. 12.

Before the Court is that *Application of Proposed Next Friend, Everett Serge, In Connection with the Captioned Bankruptcy Case, to Seal Certain Letters from Medical Provider(s) as to Debtor's Medical Conditions* (the "Motion"). *See* Docket No. 9. The Motion seeks the Court's approval to file various medical documents and letters (the "Documents") regarding the Debtor's medical condition in support of that *Application for the Appointment of Proposed Next Friend, Everett Serge in Connection with the Captioned Bankruptcy Case* (the "Motion to Appoint Next Friend"). *See* Dockets Nos. 9 and 13. The Motion contends that various Documents are needed for the Court to consider the Motion to Appoint Next Friend. Further, the Motion asserts that the Documents should be permitted to be file under seal due to the confidential nature of the Debtor's medical conditions. *See* Docket No. 9.

Notice

On December 5, 2024, the Debtor filed *Notice of Motion for: 1) Appointment of Proposed Next Friend, Everett Serge in Connection with the Captioned Bankruptcy Case (Filed 12/5/24 on as Dkt. 13) and 2) Motion to Seal Certain Letters of Medical Providers as to Debtor's Medical Conditions* (the "Notice"). *See* Docket No. 14. The

1:00 PM

CONT... Kim Michelle Ferry **Chapter 7**

Notice was served via Notice of Electronic Filing on the United States Trustee, Jerry Namba, the Chapter 7 Trustee, and the Debtor's attorney. *See id.* at *Proof of Service of Document*, p. 3. The Notice was also served on the creditor mailing matrix via Untied States mail, first class, postage prepaid on December 5, 2024. *See id*. at pp. 3-4. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with notice of the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

Pursuant to Fed. R. of Bankr. P. 9018 "[o]n motion…with or without notice, the court may make an order which justice requires…to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code." *See* 11 U.S.C. § 107(b)(2).

Access to papers and documents filed in a bankruptcy matter is controlled by 11 U.S.C. §107(a), which "creates a strong presumption in favor of public access to all papers filed in a bankruptcy case." *In re laurel Canyon MK2, LLC,* 2015 Bankr. LEXIS 3396 at *2 (Bankr. C.D. Cal. 2015). Section 107(b)(2) of the Bankruptcy Code provides that "[o]n request of a party in interest, the bankruptcy court shall…protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title." "[T]he strength of the public's interest in a particular judicial record is irrelevant; if the exception pertains, the bankruptcy court must issue a protective order on a motion by the affected person." *In re Roman Catholic Archbishop,* 661 F.3d 417, 431 (9th Cir. 2011).

The Bankruptcy Code does not define scandalous nor defamatory. Instead, the Ninth Circuit has turned to the words' ordinary dictionary meaning, holding scandalous to mean "bringing discredit on one's class or position or grossly disgraceful." *In re Roman Catholic Archbishop*, 661 F.3d at at 432-33. "For a matter in a document to be considered defamatory, it must 'damage the reputation, character, or good name of by slander or libel." *In re Khan*, 2013 WL 6645436 at *3 (B.A.P 9th Cir. 2013). Both libel and slander require false statements that damage a person's reputation. *Id*.

1:00 PM

CONT... Kim Michelle Ferry **Chapter 7**

"Inherent in the language of §107(b) is the requirement that the [moving party] provide the court with specific factual and legal authority demonstrating that a particular document at issue is properly classified as confidential or scandalous…[O] nly clear evidence…can justify protection under §107(b)(2)." *In re Anthracite Capital, Inc.*, 492 B.R. 162, 171 and 174 (Bankr. S.D.N.Y. 2013). It is the moving party's burden with evidence to show the document at issue is scandalous or defamatory. *Id*.

Moreover, "[w]here material contain personal identifiers, paired with confidential medical information, the potential risk to privacy interest in disclosure is self-evident. As [] there can be no question that medical records, which may contain intimate facts of a personal nature, are well within the ambit of materials entitled to privacy protection." *In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733, 752 (D. Del. 2018) (citing *United States v. Westinghouse Elec. Corp.,* 668 F. 2d 570, 577 (3d Cir. 1980) (quotations omitted and cleaned up); s*ee also Deide v. Day*, 2023 U.S. Dist. LEXIS 220896 at *4-5 (S.D.N.Y. 2023) ("should be sealed in its entirety as it is a medical record signed by a doctor and therefore, presents a 'compelling countervailing interest' against the presumption of public access").

Although the Motion does not assert that the Documents contain scandalous or defamatory information, the Motion does assert that the Documents should be protected because they concerns confidential medical information.

The Court grants the Motion due the confidential nature of the Debtor's medical condition. An order granting the Motion is to be lodged within 7 days.

Party Information

Debtor(s):

Kim Michelle Ferry — Represented By Marcus G Tiggs

Trustee(s):

Jerry Namba (TR) — Pro Se

1:00 PM
9:24-11344 Kim Michelle Ferry **Chapter 7**

#25.00 Hearing RE: [13] Application For the Appointment of Proposed Next Friend, Everett Serge in Connection with the Captioned Bankruptcy Case; Declaration of Everette Serge (Successor Agent for Debtor) and Dawn Ferry (Agent for Debtor), In Support Thereof; and Declaration of Marcus G. Tiggs as to the Use of Electronic Signatures for Declarants (with proof of service)

Docket 13

Tentative Ruling:

January 14, 2025

Appearances required.

Background

On November 26, 2024, Kim Michelle Ferry (the "Debtor") filed that petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. This bankruptcy is a no asset case. *See* Docket No. 12.

Before the Court is that *Application for the Appointment of Proposed Next Friend, Everett Serge in Connection with the Captioned Bankruptcy Case* (the "Motion"). *See* Dockets No 13. The Motion seeks to have Everette Serge (the "Applicant"), the son of the Debtor, appointed as the Debtor's Next Friend. The Motion asserts that the Debtor has been diagnosed with and experiences various cognitive challenges that "makes it difficult, if not impossible for Debtor to manage her financial affairs, including an inability to fully recall all of the contents of the Petition, Schedules and States or competently testify as the 341(a) Meeting." *See id.* at *Declaration of Everett Serge in Support of Application*, p. 4 ¶ 8. On March 12, 2024 and as amended on November 20, 2024, the Debtor executed a power of attorney and granting such power to the Applicant. *See id.* at *Exhibit A*, pp. 11-20.

Notice

On December 5, 2024, the Debtor filed that *Notice of Motion for: 1) Appointment of*

1:00 PM

CONT... Kim Michelle Ferry **Chapter 7**

Proposed Next Friend, Everett Serge in Connection with the Captioned Bankruptcy Case (Filed 12/5/24 on as Dkt. 13) and 2) Motion to Seal Certain Letters of Medical Providers as to Debtor's Medical Conditions (the "Notice"). *See* Docket No. 14. The Notice was served via Notice of Electronic Filing on the United States Trustee, Jerry Namba, the Chapter 7 Trustee, and the Debtor's attorney. *See id.* at *Proof of Service of Document*, p. 3. The Notice was also served on the creditor mailing matrix via Untied States mail, first class, postage prepaid on December 5, 2024. *See id*. at pp. 3-4. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with notice of the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

Pursuant to Fed. R. Bankr. P. 1016, "[i]n a Chapter 7 case, the debtor's death or incompetency does not abate the case. The case continues, as far as possible, as though the death or incompetency had not occurred."

Further, pursuant to Fed. R. Bankr. P. 1004.1 "[t]he court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor."

Although there is "authority for the appointment of a next friend [… s]uch cases contain no real analysis or rational for appointment of a next friend…Fed. R. Bankr. P. 1004.1 explicitly speaks only to the appointment of a guardian ad litem…it is critical for duties to be identified through the Bankruptcy Code and, in this Court's view, to be performed by a fiduciary through the Bankruptcy Code…Instead the Court determines that it must appoint a guardian ad litem." *In re Maes*, 616 B.R. 784, 801 (Bankr.D.Colo. 2020) (citing *In re Myers*, 350 B.R. 760, 764 (Bankr.N.D. Ohio 2006); and *In re Lane*, 2012 WL 5296122 (Bankr. D. or. 2012)). *See In re Inyard*, 532 B.R. 364, 368 (Bankr.Kan. 2015) ("some party must act on the Debtor's behalf, if the case is to continue as permitted by Rule 1016"); and *In re Levy,* 2014 WL 1323165, at *1 (Bankr. N.D. Ohio 2014) (permitting a person with specific knowledge of the deceased debtor's finances to act on behalf of the debtor).

1:00 PM

CONT... Kim Michelle Ferry **Chapter 7**

Here, the Debtor appears to be incompetent to administer her bankruptcy case due to her current medical condition. As such, the Court is inclined to appoint the Applicant as the Debtor Next Friend to act on behalf of the Debtor so that this bankruptcy case may be fully administered.

The Applicant is upload a conforming order within 7 days.

Party Information

Debtor(s):

Kim Michelle Ferry	Represented By Marcus G Tiggs

Trustee(s):

Jerry Namba (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:24-10181 Alan J Cavaletto **Chapter 12**

#26.00 Hearing RE: [114] Application to Employ Beall & Burkhardt, APC as Attorney for the Debtor with proof of service

Docket 114

Tentative Ruling:

January 14, 2025

Appearances required.

Party Information

Debtor(s):

Alan J Cavaletto	Represented By William C Beall Carissa N Horowitz

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:24-10270 Efren Sta Mina De Jesus III **Chapter 13**

#27.00 Hearing RE: [30] Objection to Claim #1 by Claimant LVNV Funding, LLC. in the amount of $ 2731.55

Docket 30

Tentative Ruling:

January 14, 2025

Appearances waived.

On November 22, 2024, Resurgent Capital Services filed that *Withdrawal of Claim*, related to Claim No. 1. *See* Docket No. 38. This appears to moot *Debtor's Objection to Claim Filed by LVNV Funding, LLC as Claim Number 1*. *See* Docket No. 30.

Party Information

Debtor(s):

Efren Sta Mina De Jesus III — Represented By H. Jasmine Papian

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:24-10270 Efren Sta Mina De Jesus III **Chapter 13**

#28.00 HearingRE: [31] Objection to Claim #2 by Claimant Merrick Bank. in the amount of $ 2812.65

Docket 31

Tentative Ruling:

January 14, 2025

Appearances waived.

On November 22, 2024, Resurgent Capital Services filed that *Withdrawal of Claim*, withdrawing Claim No. 2. *See* Docket No. 39. This appears to moot *Debtor's Objection to Claim Filed by Merrick Bank as Claim Number 2*. *See* Docket No. 31.

Party Information

Debtor(s):

Efren Sta Mina De Jesus III — Represented By H. Jasmine Papian

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

1:00 PM
9:24-10270 Efren Sta Mina De Jesus III **Chapter 13**

#29.00 HearingRE: [32] Objection to Claim #3 by Claimant Quantum3 Group LLC. in the amount of $ 1861.92

Docket 32

Tentative Ruling:

January 14, 2025

Appearances required.

On March 13, 2024, Efren Sta Mina De Jesus III (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On May 9, 2024, Quantum3 Group LLC (the "Claimant") as agent for CF Medical LLC filed Claim No. 3, asserting a claim in the amount of $1,861.92 for "Medical Debt" (the "Claim"). *See* Claim No. 3. That *Bankruptcy Rule 3001(c)(3)(A) Statement of Account Information* attached to the Claim provides that it relates to account number 3456 for services originally provided by Adventist Health, at 60 Adventist Health Simi Valley. *See id.* at p. 4.

On November 13, 2024, the Debtor filed *Debtor's Objection to Claim Filed by Quantum3 Group LLC as Agent for CF Medical LLC as Claim Number 3* (the "Claim Objection"). *See* Docket No. 32. Through the Claim Objection, the Debtor seeks disallowance of the Claim in that (1) the Claim lists a different person than the Debtor, (2) there is no documentation of transfer as between CF Medical LLC and Adventist Health, and (3) there is "no copy of the original writing for the account or any type of invoice showing date of service, amount owed or the correct name of the debtor." *See id.* at p. 3, lines 16-21.

On December 13, 2024, the Claimant filed that *Response to Debtor's Objection to Claim Filed by Quantum3 Group LLC as Agent for CF Medical LLC as Claim Number 3* (the "Response"). *See* Docket No. 42. Through the Response, the Claimant argues that "[the Debtor] obtained medical services from Adventist Health Services West in the total amount of $1,861.92," "[s]aid claim was thereafter transferred to CF Medical LLC for whom [the Claimant] serves as agent." *See id.* at p. 2, lines 6-9.

1:00 PM

CONT... Efren Sta Mina De Jesus III **Chapter 13**

The Claimant further agreed that the Claim "does not contain a copy of the billing statement." *See id.* at lines 10-11. As to the records, the Claimant asserts that as the attachment to the Claim provides, such records were not attached to the Claim "[d]ue to federal and state medical privacy laws." *See id.* at lines 23-29.

The Debtor does not dispute that they are indebted to Adventist Health Simi Valley c/o of CMRE Financial Services, Inc. in the amount of $1,893.00. *See* Docket No. 1, *Schedule E/F: Creditors Who Have Unsecured Claims*, p. 29. It appears that the Debtor is seeking to confirm to whom the debt is owed. The Court will inquire if the transfer of claim has been provided to the Debtor, and, if so, whether the Claim Objection stands.

Party Information

Debtor(s):

Efren Sta Mina De Jesus III	Represented By H. Jasmine Papian

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM

9:24-10270 Efren Sta Mina De Jesus III **Chapter 13**

#30.00 Hearing RE: [33] Objection to Claim #5 by Claimant LVNV Funding, LLC. in the amount of $ 5999.02

Docket 33

Tentative Ruling:

January 14, 2025

Appearances waived.

On November 22, 2024, Resurgent Capital Services filed that *Withdrawal of Claim*, withdrawing Claim No. 5. *See* Docket No. 40. This appears to moot *Debtor's Objection to Claim Filed by LVNV Funding, LLC as Claim Number 5*. *See* Docket No. 33.

Party Information

Debtor(s):

Efren Sta Mina De Jesus III — Represented By H. Jasmine Papian

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

1:00 PM
9:24-10578 Underground Solutions LLC **Chapter 11**

#31.00 HearingRE: [127] Application for Compensation First Interim Application Of The Fox Law Corporation, Inc. for Steven R Fox, Debtor's Attorney, Period: 5/23/2024 to 11/15/2024, Fee: $48,300, Expenses: $2551.82.

Docket 127

Tentative Ruling:

January 14, 2025

Appearances required.

Before the Court is that *First Interim Application of The Fox Law Corporation, Inc. for Compensation as Counsel for Debtor* (the "Application"), filed by The Fox Law Corporation, Inc. ("Applicant"), general insolvency counsel to Underground Solutions, LLC (the "Debtor") for the time period of May 23, 2024, through November 15, 2024, requesting allowance, on an interim basis, of fees in the amount of $48,300.00 and expenses of $2,551.82. *See* Docket No. 127. The Applicant is holding $35,167.50 in its trust account from a prepetition retainer. *See id.* at p. 6, lines 12-17. As of the date that the Application was filed, the Debtor was in possession of "approximately $100,000 in funds including $55,000 set aside for items such as fee applications." *See id.* at lines 27-28.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(6), Applicant "shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] a hearing on any entity's request for compensation or reimbursement of expenses of the request exceeds $1,000." This Court's Local Rule 2016-1(a)(2)(B) provides that "Applicant must serve not less than 21 days notice of the hearing on the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002."

Here, the Court finds no notice of the hearing on the Application. Further, even if the

1:00 PM

CONT... Underground Solutions LLC **Chapter 11**

Court were to take the Application as sufficing for the requisite notice, the Application was not served on all creditors in compliance with the Bankruptcy Rule and this Court's Local Rules.

The Court is inclined to continue the hearing on the Application to allow Applicant to provide notice of the continued hearing on the Application.

Party Information

Debtor(s):

Underground Solutions LLC — Represented By
Steven R Fox

1:00 PM
9:23-10672 S&W Blue Jay Way, LLC **Chapter 11**

#32.00 Hearing RE: [224] Motion RE: Objection to Claim Number by Claimant Grover-Hollingsworth & Associates, Inc..

Docket 224

Tentative Ruling:

January 14, 2024

Appearances waived.

Before the Court is that *Objection to Scheduled Claim of Grover-Hollingsworth & Associates, Inc.* (the "Objection") in which S&W Blue Jay Way, LLC (the "Reorganized Debtor") seeks disallowance of the scheduled claim of Grover-Hollingsworth & Associates, Inc. (the "Claimant") pursuant to 11 U.S.C. § 502(b)(1). *See* Docket No. 224. The Claimant has not filed any proof of claim. *See id.* at p. 4, line 23.

Through the Objection, the Reorganized Debtor asserts that the $20,000 debt to the Claimant was paid prepetition by a lienholder on the Reorganized Debtor's primary prepetition assets. *See id.* at pp. 4-5.

Pursuant to Fed. R. Bankr. P. 3007, "[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing," and the "objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated." Fed. R. Bankr. P. 3007(a)(1), (2)(A).

The Objection was provided to the Claimant via U.S. Mail, first class, postage prepaid using the address listed in the creditor mailing matrix. *See* Docket No. 224, *Proof of Service of Document*, p. 13.

Further, "[a] response must be filed and served not later than 14 days prior to the date

1:00 PM

CONT... S&W Blue Jay Way, LLC **Chapter 11**

of hearing set forth in the notice," and if a response is "not timely filed and served, the court may grant the relief requested in the objection without further notice or hearing." *See* LBR 3007-1(b)(3).

Additionally, pursuant to this Court's Local Rule 3007-1(a)(1), "[a]n objection to claim is a 'contested matter' under FRBP 9014." Pursuant to Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Pursuant to this Court's Local Rule 3007-1(b)(4), "[t]he court will conduct a hearing on a claim objection to which there is a timely response." LBR 3007-1(b)(4).

Here, the Claimant did not timely file a response to the Objection. The Court takes the default of the Claimant. Accordingly, the Court sustains the Objection without further notice or hearing, and for the reasons provided in the Objection.

The Reorganized Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC — Represented By
Roye Zur

1:00 PM
9:23-11095 FGH, LLC **Chapter 11**

#33.00 Hearing RE: [149] Motion to Dismiss Debtor after payment of claims pro rata with proof of service

Docket 149

Tentative Ruling:

January 14, 2025

Appearances required.

On November 20, 2023 (the "Petition Date"), FGH, LLC, (the "Debtor') filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the U.S. Code. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. The Debtor is a single asset real estate debtor as defined under 11 U.S.C. §101(51B). *See id.* at p. 7. The Debtor's sole asset was a commercial property located at 2320 N. Rose Avenue, Oxnard, CA, APN 213-0-011-225 (the "Property"). *See id.* at *Schedule A/B: Assets – Real and Personal Property*, p. 2. The Property was valued at $5,000,000 on the Petition Date. *See id.* The Property was sold pursuant to that *Order on Motion to Sell Property of the Estate Free and Clear of Liens under 11 U.S.C. 363(f)* with all liens encumbering the Property attaching to the sale proceeds in the same validity and priority as on the Property. *See* Docket No. 53.

On March 14, 2024, the Debtor filed an adversary proceeding against the fourteen (14) lienholders against the Property to determine the validity, extent, and priority of their liens against the Property (the "Adversary"). *See* Case No. 9:24-ap-01009-RC, Docket No. 1, *Complaint to Determine the Validity, Extent and Priority of Liens, and to Avoid Unperfected Liens.* As of December 2, 2024, the Court entered judgment as to thirteen of the fourteen defendants in the Adversary. *See* Docket No. 153. The only remaining defendant is Officemax Inc. which only held a possessory lien on the Property. *See id.*

The Debtor has yet to file a plan of reorganization. The Debtor's sole remaining asset after the sale of the Property was cash on hand.

On October 10, 2024, the Court approved the Debtor paying creditors secured by the

1:00 PM

CONT... FGH, LLC **Chapter 11**

Debtor's Property from the sale proceeds. *See* Docket No. 127. As of December 1, 2024, after payment of said secured claims and other administrative expenses of the Debtor's estate, the Debtor has $122,376.05 in cash on hand for payment of remaining administrative, priority, and general unsecured claims. *See* Docket No. 149, p 3.

Before the Court is that *Motion to Pay Claims Pro Rata and Dismiss Case* (the "Motion") in which the Debtor seeks to be dismissed from bankruptcy after paying all administrative claims in full, priority claims in full, and paying general unsecured creditors a *pro rata* distribution from all remaining funds. *See* Docket No. 149. The Debtor estimates that after payment of administrative and priority claims there will be $98,847.30 remaining to pay general unsecured claims totaling $2,239,919.55, and that there is no other assert or way to pay creditors outside of the cash on hand. *See id.* at *Declaration of Vanessa Hernandez*, pp. 6-8.

As such, the Motion alleges that dismissal is in the best interest of creditors as dismissal avoids the administrative expenses of a Chapter 7 distribution.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(4), "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] the hearing on the dismissal of the case or the conversion of the case to another chapter…"

On December 19, 2024, the Debtor filed that *Notice of Motion to Pay Claims Pro Rata and Dismiss Case* (the "Notice"). *See* Docket No. 150. The Notice was served on the creditor matrix via Notice of Electronic Filing [NEF] and U.S. Mail first class, postage prepaid. *See id.* at *Proof of Service of Document*, pp. 5-9. No oppositions or objections have been filed.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." The Court therefore takes the default of all properly served non-responding parties.

Analysis

Pursuant to 11 U.S.C. § 1112(b)(1), "[e]xcept as provided in paragraph (2) and

1:00 PM

CONT... FGH, LLC **Chapter 11**

subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause…"

A motion to dismiss or convert a Chapter 11 case under 11 U.S.C. § 1112(b) normally requires a two-step analysis: (1) determine whether "cause" exists to dismiss or convert; and (2) then determine which option is in the best interest of creditors and the estate. *See* 11 U.S.C. § 1112(b); *see also In re Marciano*, 459 B.R. 27, 48 (9th Cir. BAP 2011).

The burden of establishing "cause" for dismissal under 11 U.S.C. § 1112(b) rests with the party seeking dismissal. *See In re Rosenblum*, 608 B.R. 529, 536 (Bankr. D. Nev. 2019). The movant must show "cause" by a "preponderance of the evidence." *In re Woodbrook Assocs.*, 19 F.3d 317 (7th Cir. 1994).

Section 1112(b)(4) of the Bankruptcy Code sets forth a non-exhaustive list of sixteen (16) circumstances amounting to "cause." *See* 11 U.S.C. § 1112(b)(4)(A-P).

Moreover, "[t]he bankruptcy court has broad discretion in determining what constitutes 'cause' under section 1112(b)." *In re Sullivan*, 522 B.R. 604, 614 (9th Cir. BAP 2014) (citing *In re Chu*, 253 B.R. 92, 95 (S.D. Cal. 2000)). *See In re* Ditter, 13 F.App'x 686, 687 (9th Cir. 2001) ("We review for abuse of discretion the bankruptcy court's grant of a voluntary motion for dismissal" (citing *In re Int'l Airport Inn P'ship*, 517 F.2d 510, 511 (9th Cir. 1975))).

Further, "the 9th Circuit Court of Appeals created a test for voluntary dismissals by holding that 'unless dismissal will cause some plain legal prejudice to the creditors, it normally will be proper.'" *In re Hall*, 15 B.R. 913, 917 (9th Cir. BAP 1981). *See also In re Kimble*, 96 B.R. 305, 308 (Bankr. D. Mont. 1988) (case dismissed pursuant to 11 U.S.C. § 1112(b) because the DIP requested the dismissal and there was no prejudice to the creditor).

Here, cause exists under 11 U.S.C. § 1112(b) to dismiss the instant case. To begin with, the Debtor requests that the instant case be dismissed. Second, the only source of recovery for creditors is the Debtor's cash on hand. Third, all secured claims

1:00 PM

CONT... FGH, LLC **Chapter 11**

appear to have been paid. Fourth, no creditors or other parties-in-interest have opposed the Debtor's request to dismiss the instant case. Lastly, the Debtor has failed to file a confirmable plan in this matter, and no evidence has been advanced that the Debtor will file a confirmable plan of reorganization.

Having found cause, the Court must determine whether dismissal or conversion is in the best interest of the creditors.

Here, conversion of the matter would cause a trustee to be appointed which will undoubtably cause further administrative costs to be incurred. Dismissal of the matter ceases the accrual of administrative expenses, at least as they relate to the bankruptcy proceeding. Further, with dismissal, each creditor will retain its respective remedies and rights to pursue the Debtor in whatever debt collection manor it so chooses. Further, the Motion seeks to pay creditors all remaining funds as part of its dismissal. Additionally, no creditor has filed an objection or opposition to the requested dismissal. The Court finds that dismissal is appropriate, and in the best interest of creditors of the Debtor's estate.

An issue the Court raises, though, is that of the fees and expenses of LMW Financial ("LMW"). Thus far, the Court has awarded LMW fees and expenses on an interim basis pursuant to 11 U.S.C. § 331. *See* Docket No. 144, *Order on Application for Payment of: Interim Fees and/or Expenses (11 U.S.C. § 331)*. It is not clear to the Court whether there are any other fees or expenses to be requested by LMW. Further, pursuant to this Court's Local Rule 2016-1(c)(1), "each professional person employed in the case must file a final fee application." It seems to the Court that prior to the instant case being dismissed, any fees and expenses of LMW, both previously allowed on an interim basis, and any other fees and expenses LMW wishes to be paid, should be part of a final fee application.

Party Information

Debtor(s):

FGH, LLC

Represented By
William C Beall
Carissa N Horowitz

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 14, 2025 **Hearing Room 201**

1:00 PM
9:23-11095 FGH, LLC **Chapter 11**

#34.00 Hearing RE: [151] Application for Compensation with proof of service for William C Beall, Debtor's Attorney, Period: 11/1/2023 to 1/31/2025, Fee: $104715, Expenses: $3588.08.

Docket 151

Tentative Ruling:

January 14, 2025

Appearances waived.

Before the Court is that *Application for Payment of: Interim Fees and/or Expenses (11 U.S.C. § 331) Final Fees and/or Expenses (11 U.S.C. § 330)* (the "Application"), filed by Beall and Burkhardt, APC ("Applicant"), general insolvency counsel to FGH, LLC (the "Debtor") requesting allowance and payment of fees in the amount of $11,565.00 and expenses in the amount 212.10, on a final basis, and allowance on a final basis of previously allowed interim fees in the amount of $93,150.00 and expenses in the amount of $3,375.98. *See* Docket No. 151.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(6), Applicant "shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] a hearing on any entity's request for compensation or reimbursement of expenses of the request exceeds $1,000." This Court's Local Rule 2016-1(a)(2)(B) provides that "Applicant must serve not less than 21 days notice of the hearing on the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002."

On December 19, 2024, that *Notice of Hearing on Application for Payment of Final Fees and Expenses* (the "Notice") was served via Notice of Electric Filing [NEF] on the NEF parties and served via U.S. mail, first class, postage prepaid on the creditor

1:00 PM
CONT... FGH, LLC **Chapter 11**

mailing matrix. *See* Docket No. 152.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No response was filed in opposition to the Application. The Court therefore takes the default of all non-responding parties that were served with the Notice.

11 U.S.C. § 330

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." *See* 11 U.S.C. §§ 330(a)(1)(A) and (B). Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors…" *See* 11 U.S.C. § 330(a)(3). "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

In the instant case, Applicant's employment by the Debtor as its general insolvency counsel was approved through that *Order on Application of Debtor and Debtor-In-Possession to Employ Counsel. See* Docket No. 17. In reviewing the invoices attached to the Application, the Court finds that the services performed by Applicant on behalf of the Debtor were necessary and beneficial to the administration of the estate, were properly documented, and are reasonable.

The Court approves the Application, on a final basis, pursuant to 11 U.S.C. §§ 330, allowing Applicant total fees in the amount of $104,715.00 and expenses of $3,375.98, and the Debtor is authorized to pay the outstanding fees of $11,565 and

1:00 PM

CONT... FGH, LLC **Chapter 11**

expenses of $212.10. Applicant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

FGH, LLC

Represented By
William C Beall
Carissa N Horowitz

1:00 PM
9:24-10044 FRINJ Coffee, Incorporated. **Chapter 11**

#35.00 CONT'D Hearing (**As a Holding Date**) Objection (related document(s): [155] Motion - Request for Payment of Administrative Expense with proof of service filed by Creditor SUN BZL, LLC) Debtor's Objection to Administrative Expense Claim of BZL, LLC; Memorandum of Points and Authorities; Declaration of John A. Ruskey III In Support Thereof Filed by Debtor FRINJ Coffee, Incorporated. (Berger, Michael)

FR. 12-3-24

Docket 205

Tentative Ruling:

January 14, 2025

Appearances required.

The parties have resolved the Motion. *See* Docket No. 246, *Motion to Confirm Debtor's Amended Subchapter V Chapter 11 Plan of Reorganization Dated November 1, 2024*, pp. 12-13. A stipulation allowing the purported administrative expense claim is to be filed prior to the hearing on the Motion. No such stipulation has yet been filed. The Court will inquire with the parties as to next steps regarding the Motion.

December 3, 2024

Appearances required.

On April 16, 2024, FRINJ Coffee, Inc. (the "Debtor") filed that *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* (the "SOFA") in which the Debtor asserted that it was in possession of the property of SUB BZL LLC's ("Sun") consisting of 827.8 pounds of processed coffee (the "Coffee"). *See* Docket No. 71, p. 23. Apparently, the Debtor would process coffee harvested by Sun, sell the processed coffee, and share in the proceeds of the sold coffee with Sun. As it pertains to the Coffee, the Debtor asserts that of the 827.8 pounds in the Debtor's possession when the SOFA was filed, 382.7 pounds comprised sellable coffee "[a]fter sorting, and

1:00 PM

CONT... FRINJ Coffee, Incorporated. **Chapter 11**

removal of defects…" *See* Docket No. 205, *Debtor's Objection to Administrative Expense Claim of BZL, LLC* (the "Opposition"), p. 4, lines 20-21. As Sun notes, however, the SOFA description of the Coffee considers that the 827.8 pounds was processed coffee, meaning "sorted, fermented, dried, and quality sampling." *See* Docket No. 71, p. 23. However, utilizing the 382.7 pounds figure, the Debtor asserts that it sold 103.61 pounds and returned the balance to Sun.

On July 10, 2024, Sun filed that *Request for Payment of Administrative Expense* (the "Motion"). *See* Docket No. 155. Sun asserts that the agreement between it and the Debtor was that "for coffee sold, the Debtor and [Sun] would share equally in the proceeds." *See id.* at p. 1, lines 23-24. Sun asserts that 76.8 pounds of the Coffee was sold, and 115.9 pounds returned. *See id.* at p. 2, lines 5-9. According to Sun, the Debtor's "literature" provides that the Debtor "averages $200 per pound for coffee sales." *See id.* at p. 3, *Declaration of Chris McCausland*, lines 6-8. With 635.1 pounds of the Coffee unaccounted for, at $200 per pound, Sun seeks an administrative expense priority claim in the amount of $63,510, representing 50% of the value of the remaining 635.1 pounds of the Coffee. *See id.* at p. 2, lines 11-14.

There are a number of facts that are not clear to the Court. First, it is not clear how much of the Coffee has been returned to Sun by the Debtor. The Debtor asserts that a total of 330.18 pounds of the Coffee was returned to the Debtor. *See* Docket No. 205, p. 4, lines 15-18. Exhibit 3 to the Opposition contains a page showing 329.7 pounds of the Coffee having been returned to the Debtor, and with a "Customer Signature" dated May 21, 2024, to that point. *See id.* at p. 17, *Exhibit 3*. Sun asserts that it only ever received 115.9 pounds of the Coffee back from the Debtor. The parties disagree about whether 213.8 pounds of the Coffee was ever returned to Sun by the Debtor.

Second, the parties disagree about the agreement as to the sale proceeds from the sale of the Coffee. As noted, Sun asserts that the agreement was that the parties "would share equally in the proceeds," and that the amount that the Coffee was to be sold for was to "average" $200 per pound. *See* Docket No. 155, p. 1, lines 22-24. The Debtor asserts that it "did not guarantee a $200/lb. sale price for [the Coffee]." *See* Docket No. 205, p. 5, lines 5-7. The amount of the Coffee that the Debtor sold averaged $145.31/lb. according to the Debtor. *See id.* at lines 3-7.

Lastly, the parties appear to disagree on how much of the Coffee remained at the time

1:00 PM

CONT... FRINJ Coffee, Incorporated. **Chapter 11**

the balance of the Coffee was returned to Sun in May 2024. Sun argues that 827.8 pounds, less the amount sold and returned remained, and must be paid for. The Debtor argues that of the 827.8 pounds, all that was not sold or returned, was lost to quality control, samples and moisture loss. *See* Docket No. 205, p. 5, lines 7-10. Oddly enough, while the SOFA provides that the Coffee was processed, taking into account sorting and removal of defects, an invoice was sent to Sun to "process" the remaining Coffee in May 2024, which processing included milling and sorting. *See id.* at *Exhibit 5*.

The Court is inclined to set an evidentiary hearing on the Motion to take place on April 17, 2025, at noon.

Party Information

Debtor(s):

FRINJ Coffee, Incorporated. Represented By
Michael Jay Berger

Trustee(s):

Mark M Sharf (TR) Pro Se

1:00 PM
9:24-10909 Ramiro S Silva **Chapter 11**

#36.00 Hearing RE: [74] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Notice of Motion for: Debtor and Debtor-in-Possession's Motion to Extend Exclusivity Period Pursuant to 11 U.S.C. § 1121 and Obtain Acceptance Thereof; Memorandum of Points and Authorities; Declaration of Ramiro S. Silva in Support Thereof

Docket 74

Tentative Ruling:

January 14, 2025

Appearances waived.

Background
On August 8, 2024, Ramiro S. Silva (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. Pursuant to 11 U.S.C. § 1121(b), "only a debtor may file a plan until after 120 days after the date of the order for relief under this chapter." Section 1121(d) of the Bankruptcy Code provides that "on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." The Bankruptcy Code does not define "cause" as it relates to Section 1121(d) of the Bankruptcy Code, but courts have held that such determination lies within the trial court's discretion. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 407-409 (E.D.N.Y. 1989). The Ninth Circuit BAP has set forth certain relevant factors that bankruptcy courts should consider in determining whether cause exists to extend or shorten the period of exclusivity, including: (1) the size and complexity of the case; (2) the necessity of sufficient time to permit the debtor to negotiate a reorganization plan and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the fact that the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time that has elapsed in the case; (8)

1:00 PM

CONT... Ramiro S Silva **Chapter 11**

whether the debtor is seeking an exclusivity extension in order to pressure creditors to submit to the debtor's reorganization demands; and (9) whether an unresolved contingency exist. *See In re Henry Mayo Newhall Memorial Hosp.*, 282 B.R. 444, 452 (9th Cir. BAP 2002).

In the instant case, the Debtor's period of exclusivity to file a plan of reorganization, and to obtain acceptances of that filed plan are December 6, 2024, and February 4, 2025, respectively. Before the Court is *Debtor and Debtor-in-Possession's Motion to Extend Exclusivity Period Pursuant to 11 U.S.C. § 1121 and Obtain Acceptances Thereof* (the "Motion"). *See* Docket No. 74.

Notice

The Motion, and notice of the hearing thereon, were served on all creditors of the Debtor and the Office of the United States Trustee on December 6, 2024. *See id.* at *Proof of Service of Document*. The notice of the Motion informs parties-in-interest that this Court's Local Rule 9013-1(f) requires any response to the Motion to be filed at least 14 days prior to the designated hearing on the Motion. *See id.* at p. 2. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

The instant case is not overly complex or large, but the Debtor's stated exit strategy relies on certain asset sale milestones that will not occur until after the current periods of exclusivity lapse. The Debtor appears to the Court to be making a good faith effort towards reorganization, including their being in compliance with all, or most of the requirements of debtors-in-possession, as set forth by the Office of the United States Trustee's guidelines regarding the same. The Debtor appears to be paying their obligations as they become due on a post-petition basis. It seems to the Court that the Debtor is making progress towards their purported exit strategy, largely through listing for sale the assets the Debtor intends on funding any such plan with. The Motion is the first of its kind filed by the Debtor, and the Court finds no evidence that the Motion is being utilized by the Debtor to pressure creditors. Lastly, there has been

1:00 PM

CONT... Ramiro S Silva **Chapter 11**

no opposition to the Motion.

The Court finds cause to extend the period of exclusivity for the Debtor to file a plan of reorganization to March 1, 2025, and the period to obtain acceptances of said filed plan to May 30, 2025. The Motion is, therefore, granted *in toto*. The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Ramiro S Silva

Represented By
Jeremy Faith
Samuel Mushegh Boyamian

1:00 PM
9:24-10954 Ronald E. Sweeney **Chapter 11**

#37.00 Hearing RE: [58] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors Notice of Motion and Motion for Entry of an Order Extending Exclusivity Periods for Debtor to File a Plan of Reorganization and Obtain Acceptances Thereof; Memorandum of Points and Authorities; Declaration of Ronald E. Sweeney in Support

Docket 58

Tentative Ruling:

January 14, 2025

Appearances waived.

Background
On August 21, 2024, Ronald E. Sweeney (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. Pursuant to 11 U.S.C. § 1121(b), "only a debtor may file a plan until after 120 days after the date of the order for relief under this chapter." Section 1121(d) of the Bankruptcy Code provides that "on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." The Bankruptcy Code does not define "cause" as it relates to Section 1121(d) of the Bankruptcy Code, but courts have held that such determination lies within the trial court's discretion. *See In re Gibson & Cushman Dredging Corp.*, 101 B.R. 405, 407-409 (E.D.N.Y. 1989). The Ninth Circuit BAP has set forth certain relevant factors that bankruptcy courts should consider in determining whether cause exists to extend or shorten the period of exclusivity, including: (1) the size and complexity of the case; (2) the necessity of sufficient time to permit the debtor to negotiate a reorganization plan and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the fact that the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time that has elapsed in the case; (8) whether the debtor is seeking an exclusivity extension in order to pressure creditors to

1:00 PM

CONT... Ronald E. Sweeney **Chapter 11**

submit to the debtor's reorganization demands; and (9) whether an unresolved contingency exist. *See In re Henry Mayo Newhall Memorial Hosp.*, 282 B.R. 444, 452 (9th Cir. BAP 2002).

In the instant case, the Debtor's period of exclusivity to file a plan of reorganization, and to obtain acceptances of that filed plan are December 19, 2024, and February 17, 2025, respectively. Before the Court is *Debtor's Notice of Motion and Motion for Entry of an Order Extending Exclusivity Periods for Debtor to File a Plan of Reorganization and Obtain Acceptances Thereof* (the "Motion"). *See* Docket No. 58.

Notice

The Motion, and notice of the hearing thereon, were served on all creditors of the Debtor and the Office of the United States Trustee on December 13, 2024. *See id.* at *Proof of Service of Document*. The notice of the Motion informs parties-in-interest that this Court's Local Rule 9013-1(f) requires any response to the Motion to be filed at least 14 days prior to the designated hearing on the Motion. *See id.* at p. 3, lines 14-15. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties.

Analysis

The instant case is not overly complex or large, but the Debtor's stated exit strategy relies on certain asset sale milestones that will not occur until after the current periods of exclusivity lapse. The Debtor appears to the Court to be making a good faith effort towards reorganization, including their being in compliance with all, or most of the requirements of debtors-in-possession, as set forth by the Office of the United States Trustee's guidelines regarding the same. The Debtor appears to be paying their obligations as they become due on a post-petition basis. *See* Docket No. 63, *Monthly Operating Report*, p. 2. It seems to the Court that the Debtor is making progress towards their purported exit strategy, largely through listing for sale the assets the Debtor intends on funding any such plan with. The Motion is the first of its kind filed by the Debtor, and the Court finds no evidence that the Motion is being utilized by the Debtor to pressure creditors. Lastly, there has been no opposition to the Motion.

1:00 PM

CONT... Ronald E. Sweeney **Chapter 11**

The Court finds cause to extend the period of exclusivity for the Debtor to file a plan of reorganization to March 19, 2025, and the period to obtain acceptances of said filed plan to May 19, 2025. The Motion is, therefore, granted *in toto*. The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Ronald E. Sweeney

Represented By
David B Zolkin
James R Selth

1:00 PM
9:24-11150 Rosa Araceli Contreras **Chapter 13**

#38.00 Hearing RE: [34] Motion to Dismiss Case for Failure to Make Plan Payments Motion to Dismiss Chapter 13 Case; Memorandum of Points and Authorities in Support Thereof (Weifenbach, Diane)

Docket 34

Tentative Ruling:

January 14, 2025

Appearances required.

On December 27, 2024, Truman Capital Holdings, LLC ("Movant") filed that *Motion to Dismiss Chapter 13 Case* (the "Motion"), regarding the bankruptcy case of Rosa Araceli Contreras (the "Debtor"), on the basis that the Debtor has failed to make post-petition mortgage payments to Movant as required by the Debtor's *Chapter 13 Plan* (the "Plan"). *See* Docket No. 34.

Pursuant to 11 U.S.C. § 1307(c)(4), "on request of a party in interest [] and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including [] failure to commence making timely payments under section 1326 of this title." Section 349(a) of the Bankruptcy Code provides that "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title."

"The phrase '[u]nless the court, for cause orders otherwise' in Section 349(a) authorizes the bankruptcy court to dismiss the case with prejudice." *In re Leavitt*, 171 F.3d 1219, 1223 (9th Cir. 1999). "A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues." *Id.* at 1223-1224. "'Cause' for dismissal under § 349 has not been specifically defined by the Bankruptcy Code." *Id.* at 1224. However, courts have held that "cause" under 11 U.S.C. § 349(a) includes bad faith. *See In re Duran*, 630 B.R. 797, 809-810 (9th Cir.

1:00 PM

CONT... Rosa Araceli Contreras **Chapter 13**

BAP 2021). The governing standard in analyzing 11 U.S.C. § 349(a) is the totality of the circumstances, taking into account: (1) whether the Debtors misrepresented facts in their petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed their Chapter 13 petition or plan in an inequitable manner; (2) the Debtors' history of bankruptcy filings and dismissals; (3) whether the Debtors filed their Chapter 13 case with the sole intent of defeating state court litigation; and (4) whether egregious behavior is present. *See id.* at 806.

Here, the Debtor has not provided evidence that payments to Movant have indeed been made as required by the Plan. Ergo, cause exists to dismiss or convert the instant case. According to the Debtor's bankruptcy schedules, there exists $1,841,000 in real property assets, and $1,841,000 in secured claims against those assets. *See* Docket No. 15, p. 1, *Summary of Your Assets and Liabilities and Certain Statistical Information*. The Court finds no good reason to convert the case. The Debtor has no creditors outside of their secured creditors, and $6,300 in assets other than real property, all of which the Debtor claims as exempt. *See id.* at pp. 1-14. It is in the best interest of creditors of the Debtor and the Debtor's bankruptcy estate that the instant case be dismissed rather than converted to Chapter 7. The Court will grant the Motion insofar as it requests dismissal of the instant case.

The question is whether the case should be dismissed with prejudice. This is at least the Debtor's seventh bankruptcy case. *See* Case Nos. 11-10056, 18-12045, 14-12091, 15-11682, 16-11062, and 17-10357. All but the Debtor's first bankruptcy case were Chapter 13 cases that were dismissed. This case will be the sixth Chapter 13 case of the Debtor that will be dismissed. On December 12, 2024, the Chapter 13 Trustee filed *Trustee's Objection to Confirmation of Plan* (the "Objection"). *See* Docket No. 30. Through the Objection, the Chapter 13 Trustee opposed confirmation of the Plan for a litany of reasons, including what the Chapter 13 Trustee described as "12 prior cases filed on real property," the Debtor failed to disclose all their prior bankruptcy cases, and "the trustee has received no plan payments in connection with the case." *See id.* The Debtor informed the Court that they were employing counsel in an attempt to navigate the instant case to confirmation, and ultimately a discharge. Employment of counsel has not been accomplished.

By all accounts, the Debtor and their spouse are utilizing the bankruptcy system to no legitimate end other than to delay their secured creditors from obtaining those rights

1:00 PM

CONT... Rosa Araceli Contreras **Chapter 13**

allowed them under state law. The Debtor made the representation that payments had been made to Movant for post-petition amounts that have come due, and no such proof has been provided. The Court finds cause to dismiss the instant case with a 1-year bar to the Debtor refiling a bankruptcy case.

Movant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Rosa Araceli Contreras	Pro Se

Movant(s):

TRUMAN CAPITAL HOLDING,	Represented By Diane Weifenbach

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se