

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

Tuesday, November 15, 2022

Hearing Room 201

10:00 AM

9: -

Chapter

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Docket 0

Tentative Ruling:

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- NONE LISTED -

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9:20-11294 Ana C Caudillo

Chapter 13

#1.00 HearingRE: [44] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 322 South H Street, Lompoc, CA 93436-7208 with Proof of Service and Exhibits. (Butler, Chad)

Docket 44

Tentative Ruling:

November 15, 2022

No appearances required.

The Bank of New York Mellon FKA The Bank of New York as Trustee for the Benefit of the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2007-2CB, Mortgage Pass-Through Certificates, Series 2007-2CB ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to that real property located at 322 South H Street, Lompoc, CA 93436 (the "Property") of Ana C. Caudillo, ("Caudillo") on the grounds that Caudillo has failed to make post-confirmation mortgage payments as they became due as required under Caudillo's *3rd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 44, *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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting Caudillo, and (2) requests waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). See *id.* at p. 5. Movant further requests that if relief is not granted, adequate protection shall be ordered. *Id.*

The Motion was filed on October 20, 2022 and served upon Caudillo at the proper address via U.S. Mail first class, postage prepaid on the same date. See Motion, *Proof of Service of Document*, p. 13.

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

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opposition to the Motion. The Court takes all parties' default regarding the Motion that were served with the Motion.

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 *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, Caudillo is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 28, p. 6, Class 2. Movant asserts Caudillo defaulted on payments, resulting in a total post-confirmation delinquency of \$4,299.55 (as of the date of the Motion), consisting of various fees and charges, including three (3) unpaid post-confirmation payments of \$1,410.70. *See* Motion, p 9. It appears that the last monthly payment of \$1,500.00 was received by Movant on September 30, 2022. *See* Exhibit 4 attached to Motion, p. 37.

Cause exists under 11 U.S.C. § 362(d)(1) for Caudillo's failure to make post-confirmation payments for the months of June, August and October 2022. Another payment of \$1,410.70 became due November 1, 2022.

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.* The Court finds no analysis as to why the 4001(a)(3) stay should be waived. The Court will not waive Fed. R. Bankr. P. 4001(a)(3).

Party Information

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Debtor(s):

Ana C Caudillo

Represented By
Michael B Clayton

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:21-10519 Keith Everett Hill and Amanda Jo Hill

Chapter 7

#2.00 HearingRE: [62] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Jeep Grand Cherokee, VIN: 1C4RJFBG4EC469261 . (Ith, Sheryl)

Docket 62

Tentative Ruling:

November 15, 2022

Appearances not required.

The Court will deny the motion as moot. Movant to lodge an order within 7 days.

Americredit Financial Services, Inc. dba GM Financial ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2), in relation to a 2014 Jeep Grand Cherokee (the "Vehicle") of Keith Everett and Amanda Jo Hill (the "Hills") on the grounds that (1) Movant's interest in the Vehicle is not protected by an adequate equity cushion, (2) the fair market value of the vehicle is declining and payments are not being made sufficient to protect the Movant's interest and (3) the Hills have no equity in the Vehicle, and the Vehicle is not necessary for an effective reorganization. *See* Docket No. 62, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Personal Property* (the "Motion").

The Motion was filed on October 19, 2022 and served upon the Hills via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 22, p.13, *Proof of Service*. 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 Hills have not timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Hills.

Legal Standard

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Section 362(h)(1) of the Bankruptcy Code provides:

In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or part a claim, [] and such property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to timely file any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter to an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

Pursuant to 11 U.S.C. § 521(a)(2)(A), "[i]f an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property..."

Pursuant to 11 U.S.C. § 521(a)(2)(B), based on the debtor's actions in conformance with, and in relation to 11 U.S.C. § 521(a)(2)(a), "within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for case, within such 30-day period fixes, perform his intention with respect to

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such property..."

Pursuant to 11 U.S.C. § 524(c), "[a]n agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived [only if certain conditions are met, including such agreement being made before the granting of a discharge]."

Analysis

On May 17, 2021, the Hills filed that voluntary petition under Chapter 7 of the Bankruptcy Code initiating Case Number 9:21-10519-RC. *See* Docket No. 1. On June 15, 2021, the Hills filed that *Statement of Intention for Individuals Filing Under Chapter 7* which represents that the Hills intended to retain the Vehicle by entering into a reaffirmation agreement. *See* Docket No. 14, p. 60. The Hills complied with the requirements of 11 U.S.C. §§ 362(h)(1)(A) and 521(a)(2)(A) to the extent the Hills intended to retain the Vehicle and enter into a reaffirmation agreement.

The meeting of creditors pursuant to 11 U.S.C. § 341(a) was first scheduled for July 6, 2021. *See* Docket No. 5. In this case, a reaffirmation agreement was not filed with the Court within thirty (30) days after the meeting of creditors was first scheduled, and the Court has no evidence that Movant refused to enter into a reaffirmation agreement regarding the Vehicle, and so the requirements of 11 U.S.C. § 521(a)(2)(B) to reaffirm the obligations securing the Vehicle were not met. Pursuant to 11 U.S.C. § 362(h)(1), the stay has terminated regarding the Vehicle, and the Vehicle is no longer property of the estate of the Hills. Ergo, the Motion is moot.

Party Information

Debtor(s):

Keith Everett Hill

Represented By
Reed H Olmstead

Joint Debtor(s):

Amanda Jo Hill

Represented By
Reed H Olmstead

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Trustee(s):

Jerry Namba (TR)

Represented By
Anna Landa
Meghann A Triplett
Samuel Mushegh Boyamian

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9:21-10927 Salvador Lara

Chapter 13

#3.00 HearingRE: [63] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2224 Anthony Drive Ventura, CA 93003 . (Wan, Fanny)

Docket 63

Tentative Ruling:

November 15, 2022

No appearances required. 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 for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-7, ("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 2224 Anthony Drive, Ventura, CA 93003 (the "Property") of Salvador Lara ("Lara") on the grounds that Lara has failed to make post-confirmation mortgage payments as they became due as required under Lara's *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 62, *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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting Lara, and (2) requests waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). See *id.* at p. 5. Movant further requests that if relief is not granted, adequate protection be ordered. *Id.*

The Motion was filed on October 24, 2022 and served upon Lara at the proper address via U.S. Mail first class, postage prepaid on the same date. See Motion, *Proof of Service of Document*, pp. 12.

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and

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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 takes all parties' default regarding the Motion that were served with the Motion.

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 *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Under the terms of the Plan, Lara is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 40, p. 5, Class 2. Movant asserts Lara defaulted on Plan payments, resulting in a total postpetition delinquency of \$5,348.27 (as of the date of the Motion), consisting of various fees and charges, including three (3) unpaid post-confirmation payments of \$1466.09, with a payment of \$1529.32 becoming due October 1, 2022. *See* Motion, p 9. According to the Motion the last monthly payment of \$2932.18 on was received by Movant on June 15, 2022. Prior to that, additional payments made by Lara were received on April 26, 2022 in the amount of \$2,932.18 and February 2, 2022, in the amount of \$7,330.45 *See id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to Lara's failure to make postpetition mortgage payments pursuant to 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

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application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Salvador Lara

Represented By
Bryan Diaz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10711 Beverly Gisela Rose

Chapter 7

#4.00 HearingRE: [45] Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate .

Docket 45

Tentative Ruling:

November 15, 2022

Appearances required. Debtor's counsel is required to appear In Person.

On August 31, 2022, Beverly Gisela Rose's ("Rose") filed a petition for relief under Chapter 7 of the Bankruptcy Code, (the "Prior Case"). See Case No. 9:22-bk-10672-RC. On September 6, 2022, the Court entered that *Order and Notice of Dismissal of Case for Failure to File Initial Petition Documents Within 72 Hours*. See *Id.*, Docket No. 11. On September 12, 2022, Rose commenced a subsequent chapter 7 case, (the "Second Case"). See Case no. 9:22-bk-10711-RC.

On September 19, 2022, Rose filed that *Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* (the "Motion"). See the Second Case, Docket No. 45.

Legal Standard

Pursuant to 11 U.S.C. § 362(c)(3)(A), where a Chapter 7 case is filed by a debtor, and where that debtor also had a Chapter 7 case dismissed within the year prior, "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case."

"The majority interpretation [of 11 U.S.C. § 362(c)(3)(A)] finds the phrase 'with respect to the debtor' to be both critical and unambiguous, and concludes that on the 30th day after the petition date, the automatic stay terminates only with respect to the debtor and the debtor's property, but not as to property of the estate." *In re Reswick*, 446 B.R. 362, 365-366 (9th Cir. BAP 2011); see also *In re Thu Thi Dao*, 616 B.R. 103, 106 (Bankr. E.D. Cal. 2020); *In re Rinard*, 451 B.R. 12, 17 (C.D. Cal. 2011); *In re Madson*, 2022 WL 1272583 (E.D. Cal. April 27, 2022). "The plain text of § 362(c)

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(3)(A) is crystal clear that the automatic stay is terminated with respect to the [d]ebtor. There is no mention of the [e]state in the text." *In re Rinard*, 451 B.R. at 19–20.

Pursuant to 11 U.S.C. § 362(c)(3)(B), the debtor or any other interested party may seek to extend the automatic stay that otherwise would expire thirty days after the second petition is filed. The movant must demonstrate that the case was filed "in good faith as to the creditors to be stayed." *In re Sill*, 2018 WL 2728836, at *2 (9th Cir. BAP June 6, 2018) (citing *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 368–69 (9th Cir. BAP 2011)).

"[F]or purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) (i) as to all creditors if--(I) more than 1 previous case under [Chapter 7] in which the individual was a debtor was pending within the preceding 1-year period; (II) a previous case under [Chapter 7] in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney)." *See* 11 U.S.C. § 362(c)(3) (B).

Analysis

The Motion seeks this Court's approval of a continuation of the automatic stay as to all creditors with respect to Rose and the bankruptcy estate, apparently related to a 2022 Toyota Rav 4 and a 2019 Wild CCH 27' Travel Trailer, (the "Property"). *Id.* at p. 4. Rose incorrectly asserts that there is equity in the Toyota Rav 4 above the liens in the amount of \$849.00. In actuality, there is no equity based on the amounts listed in the Motion. Rose states that there is also no equity in the Travel Trailer. *See Id.*

The Motion argues that the presumption of a bad faith filing under 11 U.S.C. § 362(c)(3)(C)(i) is overcome in this case as to all creditors because Rose's failure to file or amend the petition or other documents as required by the court or Title 11 of the United States Code, or to pay the proper filing fees, and the resulting dismissal of the Prior Case was excusable because such failure was caused by the negligence of Rose's attorney. *Id.* at p. 5. Attached to the Motion is that *Declaration of R. Morgan*

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Holland, counsel for Rose in both the Prior Case and the Second Case, who testifies that a staff member relied upon the Best Case program to pay the filing fee and that staff member thought the other documents were to have been automatically filed by the program. *See Id.*, p. 14.

Based on the majority interpretation of 11 U.S.C. § 362(c)(3)(A), which this Court adopts, because the Prior Case was dismissed within the year prior to the Second Case and no motion was filed to continue the automatic stay within the first 30 days after the Second Petition Date, the stay terminated on October 12, 2022 as to Rose and Rose's property, but not as to property of the bankruptcy estate, which includes the Property. Ergo, the Motion is denied to the extent it seeks to do what the law already provides for, which is for the continuation of the automatic stay as to the property of the estate.

As to any stay as to Rose and property of Rose, the Court will hear argument at the hearing. The Second Case is off to a coarse start. The Court's Clerk's Office has provided Rose with no less than thirteen (13) filing error notifications. The instant Motion was incorrectly filed on a number of fronts, including the failure to properly draft the Notice of the Motion on at least two (2) occasions. In fact, the Motion itself is confusing as to whether it seeks a stay as to certain personal property, Rose, or some other relief. What is more, the stay has already terminated as to Rose, and so it appears that what Rose is seeking, to the extent the Motion seeks a stay as to Rose and the property of Rose, is a *nunc pro tunc* order extending the stay, but prior to its expiration, with regards to Rose and Rose's property (again, if the Motion in-fact seeks relief regarding Rose and Rose's property rather than simply the estate).

Party Information

Debtor(s):

Beverly Gisela Rose

Represented By
Roy M Holland

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:22-10734 Peter Thomas DiPasquale

Chapter 7

#5.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 11755 Barranca Rd, Camarillo, CA 93012 . (Shilliday, Holly)

Docket 14

Tentative Ruling:

November 15, 2022

Appearances not required. The Motion is denied as moot. Movant to lodge a conforming order within 7 days.

On November 9, 2022 the Court's Clerk entered that *Order and Notice of Dismissal for Failure to File Schedules, Statements and/or Plan*. See Docket No. 20. The dismissal of a case results in the complete termination of the automatic stay. See 11 U.S.C. § 362(c)(2)(B) ("the stay of any other act under subsection (a) of this section continues until the earlier of the time the case is dismissed"); see also *In re Weston*, 110 B.R. 452, 456-457 (E.D. Cal. 1989); aff'd 967 F2d 596 (9th Cir. 1992). As the instant case was dismissed, the automatic stay terminated, and the Motion is therefore moot.

The Motion is denied as moot. Movant to lodge a conforming order within 7 days.

Party Information

Debtor(s):

Peter Thomas DiPasquale Pro Se

Trustee(s):

Jeremy W. Faith (TR) Pro Se

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9:21-10199 Tyrone Martin Keyes

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#5.10 CONT'D Hearing
RE: [62] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1557 Flynn Road # 11 Camarillo, California 93012 . (Torres-Brito, Diana)

FR. 11-8-22

Docket 62

*** VACATED *** REASON: Order granting Motion for Relief was entered on 11/9/2022.

Tentative Ruling:

November 8, 2022

No appearances required.

The Court will grant the Motion in part, and deny it in part for the reasons discussed *infra*. Movant shall lodge a conforming order within 7 days.

Flagstar Bank, FSB, ("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 1557 Flynn Road #11, Camarillo, California 93012 (the "Property") of Tyrone Martin Keyes ("Keyes") on the grounds that Keyes has failed to make postpetition mortgage payments as they became due, including post-confirmation payments required under Keyes's *2nd Amended Chapter 13 Plan* (the "Plan"). See Docket No. 62, *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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting Keyes, and (2) requests waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). See *id.* at p. 5.

The Motion was filed on October 18, 2022 and served upon Keyes at the proper address via U.S. Mail first class, postage prepaid on the same date. See Motion, *Proof of Service of Document*, pp. 12-13. However, the proof of service erroneously

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CONT... Tyrone Martin Keyes

Chapter 13

indicates the Motion was served by electronic filing on "9/23/22," a date prior to the filing of this Motion. *Id.* at p. 12. That error appears harmless given the proper service via U.S. Mail.

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 takes all parties' default regarding the Motion that were served with the Motion.

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 *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 435 (9th Cir. BAP 1985)).

Under the terms of the Plan, Keyes is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 29, p. 6, Class 3A. Movant asserts Keyes defaulted on Plan payments, resulting in a total postpetition delinquency of \$9,139.39 (as of the date of the Motion), consisting of various fees and charges, including one (1) unpaid postpetition preconfirmation payments, and two (2) unpaid post-confirmation payments. *See* Motion, p 9. It appears that the last monthly payment of \$2,861.00 was received by Movant on August 5, 2022. *See* Exhibit 4 attached to Motion, p. 40. Prior to that, additional payments made by Keyes were received on July 7, 2022 and June 7, 2022, in the amount of \$2,850.03. *See id.*

In light of Keyes's failure to make postpetition mortgage payments pursuant to the Plan, the Court will lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1). The Court will not waive the 14-day stay provided by Fed. R. Bankr. P. 4001(a)(3).

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Hearing Room 201

10:00 AM

CONT... Tyrone Martin Keyes

Chapter 13

Party Information

Debtor(s):

Tyrone Martin Keyes

Represented By
David Joel Follin

Movant(s):

Flagstar Bank, FSB

Represented By
Diana Torres-Brito

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, November 15, 2022

Hearing Room 201

10:00 AM

9:22-10357 Billie Lee Sgroi-Proffitt

Chapter 7

#5.20 CONT'D Hearing
RE: [44] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: not applicable. (Sheik, Shahrokh)

FR. 11-8-22

Docket 44

Tentative Ruling:

November 8, 2022

Appearances not required.

The Court will grant the Motion as outlined *infra*. Movant is to submit a conforming order within 7 days.

On October 7, 2022, Nicholas Butta ("Movant") filed that *Motion for Relief From the Automatic Stay Under 11 U.S.C. § 326 (Action in Non-Bankruptcy Form)* (the "Motion"). See Docket No. 44. The *Proof of Service Document* attached to the Second Motion, which attaches supporting documentation and exhibits, indicates that Billie Lee Sgroi-Proffitt ("Proffitt") was served "Via Overnight mail with Fedex" at 143 Feliz Dr., Oak View, CA 93022, and underneath, provides a "Tracking number: **770136905418**." See Motion, *Proof of Service*, p. 9.

Thereafter, on October 7, 2022, Butta filed that *Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Amended Notice"). See Docket No. 47. The *Proof of Service Document* attached to the Amended Notice indicates that Proffitt was served "Via Overnight mail with Fedex" at 143 Feliz Dr., Oak View, 93022, and underneath, provides a different tracking number: "Tracking number: **770150576825**." *Id.* at *Proof of Service*, p. 9. The point of the Amended Notice appears to be to correct the hearing date for the Motion from November 1, 2022, as disclosed in the Motion, to November 8, 2022, as provided in the Amended Notice.

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CONT... **Billie Lee Sgroi-Proffitt**

Chapter 7

Butta seeks relief on the grounds that "cause" exists pursuant to 11 U.S.C. § 362(d)(1) for the following reasons: (1) a state court case as between, among others, Butta and Proffitt (the "State Court Case") has been pending for four (4) years; (2) the claims that underly the State Court Case are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum, (3) the underlying claims in the State Court Case arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum and (4) the bankruptcy case was filed in bad faith specifically to delay or interfere with the prosecution of the State Court Case due to the timing of the filing.

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 Proffitt, nor any other party served with the Motion and Amended Notice has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including Proffitt.

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 Court grants the Motion to the extent it seeks to lift the stay pursuant to 11 U.S.C. § 362(d)(1) to liquidate Butta's claims against Proffitt in the State Court Case, for cause, as outlined in the Motion, but does not lift the stay to allow collection efforts on any judgment obtained against Proffitt in the State Court Case.

Party Information

Debtor(s):

Billie Lee Sgroi-Proffitt

Pro Se

Movant(s):

Nicholas Butta

Represented By

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CONT... Billie Lee Sgroi-Proffitt

Chapter 7

Shahrokh Sheik

Trustee(s):

Sandra McBeth (TR)

Pro Se

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Tuesday, November 15, 2022

Hearing Room 201

2:00 PM

9:22-10331 Batyah Capital LLC

Chapter 11

#6.00 HearingRE: [65] Application for Compensation Final Fees and/or Expenses for Caroline Renee Djang (TR), Trustee, Period: 5/17/2022 to 10/17/2022, Fee: \$5,444.00, Expenses: \$0.00. (Djang, Caroline)

Docket 65

Tentative Ruling:

November 15, 2022

No appearances required.

Caroline R. Djang, Subchapter V trustee – approve fees of \$5,444.00, on a final basis.

Subchapter V trustee must submit the order within seven (7) days.

Party Information

Debtor(s):

Batyah Capital LLC

Represented By
Eric Gassman

Trustee(s):

Caroline Renee Djang (TR)

Represented By
Caroline Djang

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2:00 PM

9:22-10455 Duane Arthur Bowers

Chapter 7

#7.00 HearingRE: [25] Motion to Dismiss Debtor Pursuant to 707(a) and/or 707(b)(3)
(Attachments: # 1 Exhibit) (Fittipaldi, Brian)

Docket 25

Tentative Ruling:

November 15, 2022

No appearances required. The Court will grant the Motion for the reasons stated *infra*. The Office of the United States Trustee is to lodge a conforming order within 7 days.

Background

On June 21, 2022, Duane Arthur Bowers ("Mr. Bowers"), the debtor, filed a voluntary Chapter 7 petition under Title 11 of the United States Code (this "Case").

Prior to filing this Case, Mr. Bowers filed five (5) bankruptcy petitions in this District as follows: (1) Case No. 9:17-bk-10324-PC filed on February 27, 2017, and wherein Mr. Bowers obtained a discharge pursuant to 11 U.S.C. § 727 on July 3, 2017 (the "2017 Case") (*See* Docket No. 13); (2) Case No. 9:18-bk-11673-DS filed on October 11, 2018, dismissed on January 18, 2019 after confirmation of Chapter 13 plan was denied at the confirmation hearing (the "2019 Case"); (3) Case No. 9:20-bk-10332-DS filed on March 2, 2020, dismissed on June 18, 2020 after confirmation of Chapter 13 plan was denied at the confirmation hearing (the "2020 Case"); (4) Case No. 9:21-bk-10811-DS filed on August 3, 2021, dismissed on October 29, 2021 for Mr. Bowers' failure to appear at the 341(a) hearing (the "2021 Case"); and (5) Case No. 9:21-bk-11232-RC filed on December 22, 2021, dismissed on April 21, 2022 after confirmation of Chapter 13 plan was denied at the confirmation hearing, for, and including Mr. Bowers' failure to appear at the confirmation hearing, and failing to file mortgage declarations (the "2022 Case" and collectively with the 2017 Case, the 2019 Case, the 2020 Case, and the 2021 Case, the "Prior Cases").

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CONT...

Duane Arthur Bowers

Chapter 7

In this Case, on June 22, 2022, in light of the order of discharge entered in the 2017 Case, this Court's Clerk entered on the docket that *Notice of Non-Entitlement to Discharge Pursuant to 11 U.S.C. Section 727(a)(8) or (9)* (the "Notice of Non-Entitlement to Discharge"), which provided, in pertinent part:

It appears that a discharge was granted to the above-named Debtor(s) under 11 U.S.C. Section 727 or 11 U.S.C. Section 1141 in a case commenced within 8 years before the filing of the above pending case, or under 11 U.S.C. Section 1328 in a case commenced within 6 years before the filing of the above pending case.

- (1) Pursuant to 11 U.S.C. §§ 727(a)(8) or (9), a discharge will not be granted in this Case.
- (2) Therefore, under 11 U.S.C. § 350, "[t]his case may be closed 10 days from the date of mailing this notice unless a written objection and request for a hearing is filed with the Court. If no such request is made, this case may be closed pursuant to 11 U.S.C. Section 350 without further notice."

See Docket No. 6, p. 1.

No such request was timely filed by any party or party-in-interest in response to the Notice of Non-Entitlement to Discharge.

Initial Meeting of Creditors

On June 21, 2022, this Court's Clerk's Office entered that *Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline*, scheduling the initial 11 U.S.C. § 341(a) meeting of creditors on August 1, 2022. *See* Docket No. 5, p. 2, ¶ 7. On August 1, 2022, the Chapter 7 trustee, Ms. Sandra McBeth (the "Trustee") filed that *Notice of Continued Meeting of Creditors and Appearance of Debtor [11 USC 341(A)]*, continuing the 341(a) meeting to August 22, 2022 for Mr. Bowers' failure to appear, and Mr. Bowers' failure to provide the Trustee with necessary documentation. *See* Docket No. 12. Thereafter, the Trustee filed notices of continuance in relation to the 341(a) meeting on at least four (4) separate occasions for Mr. Bowers' failure to

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CONT... Duane Arthur Bowers

Chapter 7

appear. See Docket Nos. 16, 18, 27 and 30. Each notice was properly served upon Mr. Bowers at the address listed in his bankruptcy petition.

The Motion

On September 30, 2022, the Office of the United States Trustee (the "OUST"), filed that *Motion to Dismiss Case Pursuant to 11 U.S.C. §§ 707(a) Or 707(b)(3) with An One-Year Bar to Refiling Pursuant to 11 U.S.C. §§ 109(g) and 105(a)* (the "Motion"), and properly served it upon Mr. Bowers via U.S. Mail, first class postage prepaid. See Docket No. 25.

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 takes all parties' default regarding the Motion that were served with the Motion.

Analysis

Section § 707(a)(1)

Through the Motion, the OUST contends that "cause" exists to dismiss this Case on the grounds that (1) Mr. Bowers has prejudiced creditors by filing the petition without the possibility of obtaining a discharge, (2) Mr. Bowers has repeatedly failed to appear at 341(a) meetings, (3) Mr. Bowers has filed three (3) Chapter 13 cases since obtaining a discharge in the 2017 Case, each of which has been dismissed, and also filed a Chapter 7 case which was dismissed. *Id.* at p. 4, lines 3-10. The OUST asserts that these facts demonstrate Mr. Bowers "is attempting to evade his creditors by filing multiple bankruptcies that he does not prosecute." *Id.* at p. 4, lines 12-13.

Section 707(a)(1) of the Bankruptcy Code provides that "[t]he court may dismiss a case under this chapter [] only for cause, including—unreasonable delay by the debtor that is prejudicial to creditors." In 11 U.S.C. § 707(a)(1), Congress intended to "prevent the debtor from filing a petition to take advantage of the protection of the bankruptcy court and subsequently failing to appear or file necessary schedules, or otherwise failing to take any necessary steps for the property administration of the

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Chapter 7

estate.'" See *In re Aiello*, 428 B.R. 296, 300 (Bankr. E.D.N.Y. 2010)(citing *Collier on Bankruptcy*, 707.03 (Resnick & Sommer eds., 16th ed.). Bankruptcy courts have substantial discretion in the determination of cause under 11 U.S.C. § 707(a)(1). See *In re Bell*, 617 B.R. 364 (Bankr. D. Colo. 2020).

Here, the Trustee has been unable to conduct a meeting of creditors given Mr. Bowers' failure to appear for the 341(a) meeting of creditors, despite the Trustee's five (5) attempts to do so, and spanning more than three (3) months. The Court finds that Mr. Bowers' failure to advance this case by, at a minimum, attending the 341(a) meeting of creditors constitutes undue delay that is prejudicial to their creditors.

The Court finds cause to dismiss this Case pursuant to 11 U.S.C. § 707(a)(1).

Section 707(b)(3)

Next, the OUST contends that the facts discussed *supra* support a finding that Mr. Bowers is "utilizing the bankruptcy system to invoke the automatic stay without any intent to pursue this bankruptcy case in good faith" under 11 U.S.C. § 707(b)(3). See Docket No. 25, p. 5, lines 5-7. In support, the OUST cites the fact that Mr. Bowers cannot obtain a discharge in this Case, the failure to appear for a 341(a) meeting in this Case, and those of the Prior Cases that were dismissed (four total).

Pursuant to 11 U.S.C. § 707(b)(1), "[a]fter notice and a hearing, the court, on ... a motion by the United States trustee ... may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts ... if it finds that the granting of relief would be an abuse of the provisions of this chapter...". In light of 11 U.S.C. § 707(b)(1), "the court shall consider—(A) whether the debtor filed the petition in bad faith...." 11 U.S.C. § 707(b)(3); see also *In re Ng*, 477 B.R. 118, 125 (B.A.P. 9th Cir. 2012) (Sections 707(b)(1) and (b)(3) "operate in tandem to allow a bankruptcy court to dismiss a [C]hapter 7 case for abuse of the bankruptcy process based on the totality of the circumstances").

The Ninth Circuit Court of Appeals has not established a standard for determining a finding of "bad faith" in Chapter 7 cases under 11 U.S.C. § 707(b)(3)(A). See *In re Miller*, 2016 WL 5957270 *7 (9th Cir. BAP Oct. 13, 2016), *aff'd*, 708 F. App'x 395 (9th Cir. 2017). Courts, however, have borrowed factors from the Ninth Circuit's six-

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factor pre-BABCPA test from *In re Price*, as well as from Chapter 11 and Chapter 13 bad faith cases. *See In re Mitchell*, 357 B.R. 142 (Bankr. C.D. Cal. 2006) (citing *In re Price*, 353 F.3d 1135, 1139-40 (9th Cir. 2003) (using a six-factor test to determine "substantial abuse" under pre-BAPCPA § 707(b)).

The nonexclusive list of nine factors courts consider in determining whether to dismiss a Chapter 7 case for bad faith under 11 U.S.C. § 707(b)(3)(A), include, among others: (1) the history of bankruptcy petition filings and dismissals, (2) whether the debtor has invoked the automatic stay for improper purposes, and (3) whether egregious behavior is present. *See In re Miller*, 2016 WL 5957270, at *7. The OUST has the burden of establishing bad faith. *See In re Baker*, 400 B.R. 594, 597 (N.D. Oh. 2009)

Here, the petition filed by Mr. Bowers in this Case lists debts that are primarily consumers debts, which falls into the ambit of 11 U.S.C. § 707(b)(3). In addition to the facts discussed *supra* under 11 U.S.C. § 707(a)(1), the OUST asserts that the filing of this Case, the disposition of the Prior Cases, and the lack of any ability to obtain a discharge in this Case, support a finding that Mr. Bowers is utilizing the bankruptcy system to invoke the automatic stay without any intent to pursue this Case in good faith. The Court also notes that Mr. Bowers has listed only one principal asset, a parcel of real property, and has few creditors listed on his schedules.

Without more, the history of bankruptcy petition filings and dismissals do not constitute "bad faith," as many circumstances exist where successive petitions are filed and dismissed for valid reasons. Here, however, Mr. Bowers has filed several petitions in close proximity, and since the 2017 Case, all of the petitions have been dismissed. Mr. Bowers has habitually failed to appear for meetings of creditors and confirmation hearings in the Past Cases and this Case. Mr. Bowers has also not made opposed the Motion. Lastly, as the OUST points out, given Mr. Bowers' discharge in the 2017 Case, he is not eligible for a discharge for a further three (3) years. The Court finds no valid reasons for the multiple cases filed by Mr. Bowers, and especially this Case.

The Court finds dismissal of this Case appropriate pursuant to 11 U.S.C. § 707(b)(3).

The Court's Local Rule 1017-2(b)

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CONT... Duane Arthur Bowers

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In addition, this Court's Local Bankruptcy Rule 1017-2(b) provides that the failure of the Chapter 7 debtor "to appear at the initial meeting of creditors any continuance thereof is cause for dismissal of the case," which may be dismissed without a hearing upon the trustee's motion for dismissal and a declaration that the debtor has failed to appear at two meetings of creditors. *See also In re Nordblad*, 2013 WL 3049227 *2 (Bankr. C.D. Cal. June 17, 2013) ("Debtor's failure to appear at a meeting of creditors . . . constitutes proper grounds for dismissal" under Local Rule 1017-2(b) and 11 U.S.C. § 707(a)(1)).

Here, the OUST's declaration attached to the Motion supports a finding that Mr. Bowers failed to appear at the initial scheduled 341(a) meeting of creditors, which has been continued on at least two (2) other occasions due to Mr. Bowers' failure to appear. *See Declaration of Brian D. Fittipaldi* attached to Motion, ¶ 4, lines 12-14. No response has been filed by Mr. Bowers explaining his absences from the 341(a) meeting of creditors in violation of this Court's Local Rule 1017-2(b).

Mr. Bowers' failure to appear at the 341(a) meetings was unreasonable and constitute cause for dismissal under 11 U.S.C. § 707(a)(1) and this Court's Local Rule 1017-2(b). The Court will dismiss the instant case pursuant to this Court's Local Rule 1017-2(b).

Bad Faith

Lastly, the U.S. Trustee requests that the Court issue and order prohibiting Mr. Bowers from filing a petition under any chapter for a period of one year absent permission from this Court under 11 U.S.C. §§ 105(g) and 105(a). *See Motion*, pages 4-6.

Pursuant to 11 U.S.C. § 109(g), "no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case[.]" In addition, 11 U.S.C. § 105(a) states provides that the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

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Courts have held that the bankruptcy court has inherent power to prohibit a debtor from refiling a bankruptcy petition for a specified period of time. *See In re Casse*, 198 F.3d 327, 339 (2nd Cir. 1999) (serial filer of bad faith petitions may be barred from refiling for a period longer than 180 days); *see also In re Marshall*, 596 B.R. 366, 370-371 (8th Cir. BAP 2019) (one year bad on refiling for debtor who filed six (6) bankruptcy cases).

Mr. Bowers has filed five (5) bankruptcy petitions with this Court in the past four (4) years, none of which has resulted in a confirmed plan or a discharge, and all of which have been dismissed by this Court. In addition, Mr. Bowers has consistently failed to appear at meetings of creditors and plan confirmation hearings. The Court has no reason to believe that Mr. Bowers will discontinue his practice of filing of bankruptcy petitions, only to have them dismissed for the same reasons set forth herein. To that end, the Court finds it appropriate to prohibit Mr. Bowers from filing another case in this Court for 365 days from the date of entry of an order approving the Motion without leave of this Court to do so.

Party Information

Debtor(s):

Duane Arthur Bowers

Pro Se

Trustee(s):

Sandra McBeth (TR)

Pro Se

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2:00 PM

9:22-10591 La Verne Investors, LLC

Chapter 7

#8.00 CONT'D Hearing
RE: [21] Motion to Dismiss Debtor - Voluntary Motion to Dismiss Chapter 7 Case
Pursuant to 11 U.S.C. 707(a)

FR. 10-4-22, 10-26-22

Docket 21

Tentative Ruling:

October 26, 2022

Appearances required. Counsel may appear via Zoom.

October 4, 2022

In-person appearance required.

Party Information

Debtor(s):

La Verne Investors, LLC

Represented By
Roseann Frazee

Movant(s):

La Verne Investors, LLC

Represented By
Roseann Frazee

Trustee(s):

Sandra McBeth (TR)

Pro Se

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9:22-10622 Alcaraz Catering, Inc.

Chapter 11

#9.00 CONT'D Hearing
RE: [27] Motion to Use Cash Collateral (Henjum, Kenneth H)

FR. 10-4-22, 10-11-22

Docket 27

Tentative Ruling:

November 15, 2022

Appearances required.

The Court will take up the request for the continued use of cash collateral after the status conference given the Court's inclination to dismiss or convert the instant case to Chapter 7. *See* Calendar Item 10.

October 11, 2022

Appearances required.

Is the interim period still to run until December?

October 4, 2022

Appearances required.

Party Information

Debtor(s):

Alcaraz Catering, Inc.

Represented By
Kenneth H J Henjum

Movant(s):

Alcaraz Catering, Inc.

Represented By

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CONT... Alcaraz Catering, Inc.

Kenneth H J Henjum

Chapter 11

Trustee(s):

Susan K Seflin (TR)

Pro Se

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9:22-10622 Alcaraz Catering, Inc.

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#10.00 CONT'D Chapter 11 Status Conference (Subchapter V, Non-Individual Case)

FR. 10-12-22

Docket 1

Tentative Ruling:

November 15, 2022

Appearances required. The Court is inclined to dismiss or convert the case for the reasons provided below.

Pursuant to 11 U.S.C. § 1189(b), "[t]he debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable." Section 1112(b)(1) of the Bankruptcy Code provides in relevant part that "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 interest of creditors and the estate." Section 1112(b)(4)(F) of the Bankruptcy Code provides in relevant part that "the term 'cause' includes—unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter."

On August 12, 2022, Alcaraz Catering, Inc. (the "Debtor") filed that *Voluntary Petition for Non-Individuals Filing for Bankruptcy*, and elected to proceed under 11 U.S.C. § 1182 as a subchapter V debtor-in-possession. *See* Docket No. 1. As noted *supra*, pursuant to 11 U.S.C. § 1189(b), the Debtor was required to file a plan of reorganization on or before November 10, 2022. No such plan of reorganization was filed. There was also no motion filed requesting an extension of the deadline provided under 11 U.S.C. § 1189(b). The Debtor did file on November 9, 2022, *Debtor-in-Possession Request to Continue Status Conference Set for 11/15/2022* (the "Request to Continue"). *See* Docket No. 69. The Request to Continue, however, seeks a continuation of the status conference scheduled for November 15, 2022, and is not a motion to extend the time period set forth in 11 U.S.C. § 1189(b) for the Debtor

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CONT... Alcaraz Catering, Inc.

Chapter 11

to file a plan of reorganization.

By seeking to extend the status conference date, could the Debtor also be seeking to extend the deadline to file a plan of reorganization pursuant to 11 U.S.C. § 1189(b)?

First, the Request to Continue, if it were to be considered a motion, does not comply with this Court's Local Rules regarding motions. This Court's Local Rule 9013-1(c)(2) provides that "[e]very motion must be accompanied by written notice of motion specifying briefly the relief requested in the motion and, if applicable, the date, time, and place of hearing." "[T]he notice of motion must advise the opposing party that LBR 9013-1(f) requires a written response to be filed and served at least 14 days before the hearing." *Id.* This Court's Local Rule 9013-1(d)(2) provides in relevant part that "[t]he notice of motion and motion must be filed and served not later than 21 days before the hearing date designed in the notice []." While the Request to Continue begins by retitling itself as a "Motion to Request to Continue a Status Conference...", it fails to meet the requirements of this Court's Local Bankruptcy Rules 9013-1(c)(2) and (d)(2). What is more, the Request to Continue is linked on the Court's docket to a Motion to Use Cash Collateral. *See* Docket No. 69. By all accounts, the Request to Continue is just that, a request to continue the status conference scheduled for November 15, 2022.

The Court also cannot sync the two requests. The status conference is separate and distinct from the Debtor's duties to timely file a plan of reorganization. To begin with, a request to continue the status conference is simply a request to move the hearing date of the status conference. The Court cannot fathom how the request to continue a status conference could be analogized to a request to extend filing deadlines under 11 U.S.C. § 1189.

As to any request to extend the deadline for a subchapter V debtor to file a plan of reorganization, "[t]he plain meaning of the phrase 'attributable to circumstances for which the debtor should not justly be held accountable' evinces a higher standard than the 'for cause' standard set forth in both Federal Rules of Bankruptcy Procedure 9006(b) [] and Bankruptcy Code § 1121(d)(1)." *See In re Baker*, 625 B.R. 27, 33 (Bankr. S.D. Tex. 2020); *see also In re HBL SNF, LLC*, 635 B.R. 725, 729 (Bankr. S.D.N.Y. 2022)("The burden is stringent and a higher standard than the 'for cause' standard in Section 1121(d)(1) []."). "Thus, in determining whether to grant the

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Northern Division
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Courtroom 201 Calendar**

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2:00 PM

CONT... Alcaraz Catering, Inc.

Chapter 11

extension, this Court considers whether the need for an extension is attributable to circumstances for which Debtor is not fairly responsible or, to borrow from COLLIER, whether Debtor can ‘clearly demonstrate that the inability to file a plan of reorganization was due to circumstances beyond [his] control." *In re Baker*, 625 B.R. 27 at 35. The Debtor asserts in the Request to Continue that the filed claims of Prime Alliance Bank and the Small Business Administration were "much higher than anticipated by Debtor." *See* Docket No. 69, p. 2. The Small Business Administration filed Claim No. 1 on August 25, 2022, and Prime Alliance Bank filed Claim No. 6 on September 23, 2022. The Prime Alliance Bank claim was filed more than a month and a half prior to the deadline imposed under 11 U.S.C. § 1189(b), and the Small Business Administration claim was filed days after the petition was filed. This means the Debtor would have known of the claims weeks ago. This is not a situation where a claims bar date has not yet passed. What is more, the Debtor does not explain in the Request to Continue how the filing of these claims, many weeks ago, constitute "circumstances for which the debtor should not justly be held accountable" in missing the deadline provided under 11 U.S.C. § 1189(b).

Thusly, even if inclined, the Court cannot treat the Request to Continue as a motion to extend the dates provided under 11 U.S.C. § 1189(b), because the Request to Continue does not (1) actually request an extension of the 11 U.S.C. § 1189(b) deadline, (2) take the form of a motion as required under this Court’s Local Rules, and (3) fails to provide the analysis required by 11 U.S.C. § 1189(b), and so failing to meet the "stringent" burden placed on movants under 11 U.S.C. § 1189(b).

The issue, then, is whether this Court should convert or dismiss this case for the Debtor’s failure to meet the requirements of 11 U.S.C. § 1189(b). The Court will hear from the parties on this issue.

Party Information

Debtor(s):

Alcaraz Catering, Inc.

Represented By
Kenneth H J Henjum

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9:22-10631 Arunaker Reddy Mora

Chapter 13

#11.00 CONT'D Hearing
RE: [16] Motion to Avoid Lien Judicial with Synchrony Bank with proof of service
FR. 10-11-22

Docket 16

Tentative Ruling:

October 11, 2022

Appearance required.

The Court will deny the Motion without prejudice.

Arunaker Reddy Mora ("Mora") filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the U.S. Code on August 17, 2022. *See* Docket No. 1. Mora's *Schedule A/B* denotes that Mora has the only interest in a property located at 4894 Alta Street, Simi Valley, CA 93065 (the "Property"), but that there exists a mortgage on the Property "under [Mora's] wife's name only with Loan Depot []." *Id.* at *Schedule A/B*.

On August 24, 2022, Mora filed that *Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"). *See* Docket No. 16. The Motion seeks to avoid the judgment lien of Synchrony Bank on the Property pursuant to 11 U.S.C. § 522(f) as impairing Mora's homestead exemption. As to the valuation of the Property, Mora declares that "[b]ased upon the review of the value of [the Property] online, I estimate my home to be valued at \$1,060,000." *Id.* at *Declaration of Arunaker Reddy Mora*. Mora's declaration provides no evidence as to the valuation date or the online sites reviewed in estimating the value of the Property. While a debtor may provide lay opinion as to the value of their residence, to the extent sources are used by the debtor in estimating the value of their residence, disclosure of the sources and some foundation for those sources should be provided. That was not done here. What is more, it is unclear how a third party, seemingly non-owner of a parcel of real property is solely responsible for a mortgage against that property. If the Court understands the pleadings correctly,

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CONT... Arunaker Reddy Mora

Chapter 13

Mora owns the Property alone, but Mora's wife is solely obligated on a mortgage against the Property to a third party (i.e., Loan Depot).

Party Information

Debtor(s):

Arunaker Reddy Mora

Represented By
Nathan A Berneman

Movant(s):

Arunaker Reddy Mora

Represented By
Nathan A Berneman

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se