

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

Honorable Christopher B. Latham

Monday, April 15, 2024

Department 1, Room 218

10:00 AM #1 23-00621-CL7 Smart Medical Devices, Inc.

MATTERS 1 -2

Matter: FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR JEAN MARIE GODDARD, ACCOUNTANT FOR TRUSTEE

Tentative Ruling:

The court has considered Jean Marie Goddard/NGS LLP's ("NGS LLP") first and final application for compensation and reimbursement of expenses (ECF No. 78) and its own docket. Having received no objection, and good cause appearing, the court **grants** the application and **awards** \$3,175 in fees and \$126 in costs. The court excuses appearances at the April 15, 2024 hearing, and NGS LLP may submit an order consistent with this tentative ruling.

Attorneys: Christian McLaughlin for Smart Medical Devices, Inc.
Gary B. Rudolph for Data Drills, Inc.
for Gerald H. Davis
for Sullivan Hill Rez & Engel APLC
JEAN MARIE GODDARD
Gerald H. Davis

10:00 AM #2 23-00621-CL7 Smart Medical Devices, Inc.

Matter: FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FOR SULLIVAN HILL REZ & ENGEL APLC, ATTORNEY FOR TRUSTEE

Tentative Ruling:

TENTATIVE RULING ISSUED BY COURT. Please see **ECF No. 98** for the **Tentative Ruling** as to the above matter.

Attorneys: Christian McLaughlin for Smart Medical Devices, Inc.
Gary B. Rudolph for Data Drills, Inc.
for Gerald H. Davis
for Sullivan Hill Rez & Engel APLC
Gerald H. Davis

10:00 AM #3 23-90055-CL DIG Trucking Corporation et al v. Cuevas
23-01429-CL13 Luis Manuel Cuevas and Hilda Campillo De Cuevas

Matter: PRE-TRIAL STATUS CONFERENCE (fr. 4/8/24)

Attorneys: Christopher C. Saldana for DIG Trucking Corporation
for Aldegundo Landa
Jason E. Turner for Luis Manuel Cuevas

10:00 AM #4 23-90080-CL Gladstone v. Christopher
23-02152-CL7 Michael Eugene Christopher

Matter: PRE-TRIAL STATUS CONFERENCE (fr. 2/12/24)

Attorneys: Andrew Levin for Leslie T. Gladstone
Ahren A. Tiller for Marilyn J. Christopher

10:00 AM #5 24-90003-CL Gurule v. United States Department of Education
24-00029-CL7 Velinda L. Gurule

Matter: PRE-TRIAL STATUS CONFERENCE

Attorneys: Velinda L. Gurule
Glen F. Dorgan for United States Department of Education

Comment: Matter off calendar. Order on Joint Motion to Continue Pretrial Status Conference entered on 4/11/24 (re ECF No. 7).

10:00 AM #6 24-90002-CL Kinghorn, as Successor Trustee of the Kinghorn Fam, et al. v. Kinder, et al.
23-03064-CL7 James Michael Kidner and Anna Maria Iadavaia

Matter: PRE-TRIAL STATUS CONFERENCE

Attorneys: Rose Huelskamp Serrano for Julie Kinghorn, as Successor
Trustee of the Kinghorn Family Trust

for The Strathmore Group, Inc.

Scott L. Metzger

for Julie Kinghorn, as Successor Trustee of the Kinghorn Family Trust
for The Strathmore Group, Inc.

James Michael Kinder
Anna Maria Iadevaia

10:30 AM #7 23-03771-CL7 Gloria Arana

MATTERS 7 - 8

Matter: MOTION TO AVOID JUDICIAL LIEN OF CAPITAL ONE BANK (USA), N.A. FILED BY DEBTOR

Tentative Ruling:

The court has considered Debtor's motion to avoid Capital One Bank (USA), N.A.'s judicial lien (ECF No. 11) and its own docket. The \$3,522.37 lien impairs Debtor's exemption by \$2,167.18. So the lien can be avoided up to that amount, leaving a balance of \$1,355.19. Accordingly, having received no opposition, and good cause appearing, the court **grants** the motion **in part** and excuses appearances at the April 15, 2024 hearing. Debtors may submit an order consistent with this tentative ruling.

Attorneys: Francisco J. Garcia for Gloria Arana

10:30 AM #8 23-03771-CL7 Gloria Arana

Matter: MOTION TO AVOID JUDICIAL LIEN OF PARK PLACE FILED BY DEBTOR

Tentative Ruling:

The court has considered Debtor's motion to avoid Park Place's judicial lien (ECF No. 12) and its own docket. Having received no opposition, and good cause appearing, the court **grants** the motion and excuses appearances at the April 15, 2024 hearing. Debtors may submit an order consistent with this tentative ruling.

Attorneys: Francisco J. Garcia for Gloria Arana

10:30 AM #9 24-00236-CL11 Sonny Roosevelt, LLC

Matter: MOTION FOR RELIEF FROM STAY, RS # KTC-1 FILED BY TGP OPPORTUNITY FUND I, LLC

Tentative Ruling:

The court has considered Creditor TGP Opportunity Fund I, LLC's stay relief motion (ECF Nos. 37 & 38), Debtor's opposition (ECF No. 44), Creditor's reply (ECF No. 47), and its own docket. For the following reasons, it will **grant** Creditor's motion.

Background

Debtor purchased the subject property with a \$3 million loan from Creditor (ECF No. 38). It made four monthly payments of \$25,625 before stopping paying entirely. *Id.* So Creditor proceeded with foreclosure under the Deed of Trust. *Id.* That was scheduled for January 29, 2024 but was stayed when Debtor filed for Chapter 11 relief on January 26, 2024 (ECF No. 1). Now Creditor moves for stay relief (ECF Nos. 37 & 38). Debtor opposes (ECF No. 44).

Legal Standards, Analysis, & Discussion

Creditor carries the initial burden for establishing cause for stay relief. *In re Wang*, 2010 WL 6259970, at *4 (9th Cir. B.A.P. 2010); *In re Plumberex Specialty Products, Inc.*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). It has met this burden by asserting Debtor has missed two post-petition payments and that there is a rapidly decreasing equity cushion (ECF Nos. 37 & 38). See *In re Avila*, 311 B. R. 81, 83–84 (Bankr. N.D. Cal. 2004) (Cause exists to lift the stay under 11 U.S.C. § 362(d)(1) when the debtor's post-petition “failure to make monthly payments corresponds with the absence of an equity cushion”); see also *In re Delaney-Morin*, 304 B.R. 365, 370 n.3 (B.A.P. 9th Cir. 2003); *In re Jones*, 189 B.R. 13, 15 (Bankr. E.D. Okla. 1995). So Creditor has established the prima facie case for cause under § 362(d)(1). The burden thus shifts to Debtor to demonstrate that stay relief is unwarranted. See *id.*

Debtor does not deny missing payments, although it admits it made partial payments (ECF No. 44). *Id.* Debtor further points to the recent stipulation and order that allows Creditor to collect the rents directly. *Id.* But Creditor is owed, at the least, \$25,625 monthly (ECF No. 38). And the stipulation allows Creditor to retain the \$20,000 in monthly rent *after* covering anywhere from \$2,600 to \$3,000 in property expenses (ECF No. 44). So Creditor is being paid roughly \$17,000, which is far below the required monthly sum. And it has not agreed to accept partial payment instead of the full amount. Further, Creditor has not even been able to collect the full rent for February and March – Debtor collected \$8,630 and admits it already used some of these funds. *Id.*

Debtor has offered Creditor an additional \$90,000 spread out over three payments in exchange for extending the loan maturity date to December 31, 2024, where Debtor will then either sell or pay Creditor in full (ECF No. 44). And it indicates that “Debtor suspects that if relief from stay is denied at this time, that a reasonable agreement may indeed be available.” But Creditor has continued to refuse Debtor’s restructuring attempts (ECF Nos. 44 & 47).

And if Debtor is able to somehow generate \$30,000 that it can pay “shortly if [Creditor] would agree to provide the Debtor some time to effectively reorganize” (ECF No. 44), query why Debtor has not cured at least its post-petition delinquency and does not use these new funds to remain current. Although there is a sufficient equity cushion now, it is rapidly decreasing as Debtor continues to withhold payments. And Debtor’s “persistent failure to make payments, standing alone, may constitute adequate cause for relief from the stay.” See *In re Aguilar*, BAP Nos. CC-14-1071-PaTaKu, CC 14-1073-PaTaKu, 2014 WL 6981285, at *4 (B.A.P. 9th Cir. Dec. 10, 2014) (“[A] debtor’s persistent failure to make payments, standing alone, may constitute adequate cause for relief from the stay [under § 362(d)(1)].”) (citing *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985)). Thus, there is cause for stay relief under § 362(d)(1).

As to Creditor’s request that this be considered a Single Asset Real Estate, Debtor has amended its schedules to reflect it is a SARE (see ECF No. 14). So Creditor’s request is **moot**.

Conclusion

For the above reasons, the court **grants** Creditor’s motion. If Debtor is willing to submit on this tentative ruling, it should call the Courtroom Deputy and opposing counsel. Creditor may then upload an order and the court will excuse appearances at the April 15, 2024 hearing.

Attorneys:	Gustavo E. Bravo	for Sonny Roosevelt, LLC
	Joshua L. Scheer	for Bay Point Capital, LLC
	K. Todd Curry	for TGP Opportunity Fund I, LLC
	Corina R Pandeli	for United States Trustee

Matter: MOTION FOR RECONSIDERATION OF FEE WAIVER APPLICATION FILED BY DEBTOR

Attorneys: Dulce Maria Coronel for Thelma Alice Lugo

Comment: The Court finds this matter suitable for disposition without oral argument per CivLR 7.1(d)(1) and LBR 9013-4. A written decision will issue by separate order. Appearances at the April 15, 2024 hearing are excused.

11:00 AM #11 23-00656-CL11 Laura's Original Boston Brownies, Inc.

Matter: DEBTOR'S OBJECTION TO CLAIM NO. 7 OF SAN DIEGO COUNTY TREASURER - TAX COLLECTOR (fr. 03/25/24)

Attorneys: Laura E. Dolan for County of San Diego Treasurer-
Tax Collector
Meredith King for Laura's Original Boston Brownies,
Inc.
Paul J Leeds for Laura's Original Boston Brownies,
Inc.
Jean Goddard Subchapter V Trustee
Corina R Pandeli for United States Trustee

11:00 AM #12 24-00637-CL11 The Mustang Shop Of San Diego, Inc.

Matter: HEARING ON EMERGENCY EX PARTE MOTION OF SCOTT CRUMRINE FOR (I) RELIEF FROM THE AUTOMATIC STAY AND (II) ISSUANCE OF A BREAK-IN ORDER

Tentative Ruling:

The court will **hear** the matter. It has considered Creditor Scott Crumrine's stay relief motion and request for judicial notice in support (ECF Nos. 12 & 13), Debtor's oppositions and objections (ECF Nos. 16, 17 & 30), Creditor's replies (ECF Nos. 23 & 32), and its own docket.

Creditor has made a colorable claim for stay relief: Debtor holds no lien on the subject property, and both the 2021 settlement agreement and 2024 state court judgment identify that the vehicle and parts belong to Creditor (ECF No. 13). So Debtor's interest is merely possessory. And since Debtor has no equity in the subject property, Creditor's interest is not adequately protected. *See* 11 U.S.C. § 362(d)(1).

But the property at issue needs to be specifically identified to avoid invading property of the estate. The parties should come prepared to discuss a plan to segregate Creditor's property and for creating an agreed list of that.

Attorneys: Andrew S. Bisom for The Mustang Shop Of San Diego, Inc.
Andrew Levin for Scott Crumrine
Jean Goddard Subchapter V Trustee
Corina R Pandeli for United States Trustee