



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
December 08, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 19-15264-MKN  
STACY ANNETTE CARTER, ) Chapter 13  
Debtor. ) Date: December 7, 2022  
Time: 1:30 p.m.

**ORDER ON MOTION FOR RELIEF FROM AUTOMATIC STAY<sup>1</sup>**

On December 7, 2022, the court heard the Motion for Relief From the Automatic Stay (“RAS Motion”) brought by Ajax Mortgage Loan Trust 2021-G, Mortgage-Backed Securities, Series 2021-G (“Ajax”), by U.S. Bank National Association, as Indenture Trustee. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On August 15, 2019, a voluntary Chapter 13 petition was filed by Stacy Annette Carter (“Debtor”). (ECF No. 1).

On September 27, 2019, Debtor filed her schedules of assets and liabilities (“Schedules”) and statement of financial affairs. (ECF No. 22). On her property Schedule “A/B,” she lists a variety of parcels of real property, including a single-family investment property located at 828 W. 19<sup>th</sup> Avenue, Gary, Indiana 46407-0000 (“19<sup>th</sup> Avenue Property”). Debtor lists the property as having a value of \$19,000. On her secured creditor Schedule “D,” she lists a claim in the

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

1 amount of \$32,000 in favor of Mr. Cooper, secured by the 19<sup>th</sup> Avenue Property. On her income  
2 Schedule “I,” the Debtor states her occupation as “Real Estate Investor.”

3 On September 25, 2020, Debtor filed an amended Schedule “A/B” that valued the 19<sup>th</sup>  
4 Avenue Property at \$15,000. (ECF No. 113).

5 On October 29, 2020, Debtor filed another amended Schedule “D” that continued to list  
6 Mr. Cooper as having a claim in the amount of \$32,000 secured by the 19<sup>th</sup> Avenue Property.  
7 (ECF No. 148).

8 On February 4, 2021, Mr. Cooper filed a notice of the Debtor’s request for a mortgage  
9 forbearance for the 19<sup>th</sup> Avenue Property. (ECF No. 176).

10 On May 13, 2021, Mr. Cooper filed a notice of Debtor’s request for an extension of the  
11 prior mortgage forbearance for the 19<sup>th</sup> Avenue Property. (ECF No. 184).

12 On July 16, 2021, Mr. Cooper filed a notice of Debtor’s request for another extension of  
13 the prior mortgage forbearance for the 19<sup>th</sup> Avenue Property. (ECF No. 191).

14 On September 8, 2021, a Transfer of Claim was filed, transferring Mr. Cooper’s claim  
15 secured by the 19<sup>th</sup> Avenue Property to Ajax. (ECF No. 196).

16 On May 17, 2022, Debtor filed a proposed Chapter 13 Plan #7 (“Plan #7”) and noticed it  
17 to be heard on June 23, 2022. (ECF Nos. 239 and 240).

18 On October 21, 2022, Ajax filed an objection to confirmation of Plan #7. (ECF No. 252).

19 On October 31, 2022, Ajax filed the instant RAS Motion<sup>2</sup> with respect to the 19<sup>th</sup> Avenue  
20 Property and noticed it to be heard on December 7, 2022. (ECF Nos. 254 and 255).

## 21 **DISCUSSION**

22 No written opposition to the RAS Motion was filed. The RAS Motion is brought for  
23 “cause” under Section 362(d)(1). At the hearing, counsel for the Chapter 13 debtor appeared and  
24 represented that the Debtor had entered into a prior forbearance agreement in the matter  
25 requiring the payment of \$8,000 but defaulted when she paid only \$4,000. Counsel also  
26 suggested that unidentified third parties had interfered with the Debtor’s collection of rents on  
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28 <sup>2</sup> Attached as Exhibit 1 to the RAS Motion is a copy of the Declaration of Andrew Surber  
 (“Surber Declaration”) dated October 27, 2022.

1 her investment properties and would be the subject of future motions for sanctions. Counsel  
2 further represented that the Debtor had recently submitted a loss mitigation or forbearance  
3 request to Ajax that might take up to 30 days to process. Based on this information only recently  
4 received from the client, counsel requested a continuance of the hearing.

5 Ajax acknowledges that the Debtor had recently submitted a loss mitigation or  
6 forbearance request on her own, but did not suggest that it would be approved. Ajax was not  
7 aware of what amounts had been paid under a prior forbearance reached with Mr. Cooper, but  
8 Ajax does concede that after the claim was transferred from Mr. Cooper on September 8, 2021, it  
9 agreed to its own forbearance agreement with the Debtor that went into effect on September 1,  
10 2022. See Surber Declaration at ¶ 12. Under that agreement, Debtor was required to make an  
11 initial payment of \$3,737.63 and to commence monthly payments of \$432.66. Id. Because the  
12 Debtor did not make the initial payment, however, she defaulted on the latest forbearance  
13 agreement and Ajax denied a related request for a loan modification on September 26, 2022. Id.  
14 at ¶ 13.

15 Ordinarily cause for relief from stay under Section 362(d)(1) is demonstrated through  
16 evidence that the creditor's collateral, if any, is declining in value. See generally First Federal  
17 Bank of California v. Weinstein (In re Weinstein), 227 B.R. 284, 296-97 (B.A.P. 9th Cir. 1998).  
18 Where a debtor has never confirmed a proposed plan after a prolonged period of time, relief from  
19 stay may be equally or even more appropriate under Section 362(d)(2) as long as the creditor  
20 establishes that the debtor lacks equity in the subject property. In this instance, the Debtor has  
21 scheduled the subject property at a value of \$15,000 and concedes that she owes over double that  
22 amount to Ajax. Inasmuch as her lack of equity is uncontested, Debtor's failure to confirm any  
23 Chapter 13 plan whatsoever for 39 months would support a conclusion that this rental property is  
24 not necessary to an effective reorganization. See generally United Savings Assoc. of Texas v.  
25 Timbers of Inwood Forest Assoc., 484 U.S. 365, 376 (1988) (to show that property is essential to  
26 an effective reorganization, the debtor must demonstrate that there is "a reasonable possibility of  
27 a successful reorganization within a reasonable time."). But Ajax does not seek relief under  
28 Section 362(d)(2). The court therefore considers whether cause for relief from stay exists absent

1 proof from Ajax that the 19<sup>th</sup> Avenue Property has declined in value since the Chapter 13  
2 proceeding was commenced on August 15, 2019. In this instance, the court concludes that cause  
3 does exist.

4 Assuming that the Debtor did have a forbearance agreement with Mr. Cooper in which  
5 she was obligated to pay \$8,000, she concedes that she defaulted on that agreement by paying  
6 only \$4,000. Debtor does not dispute the amount owed to Ajax on the subject claim, nor whether  
7 Mr. Cooper applied the \$4,000 received before the claim was transferred to Ajax. Neither the  
8 Debtor nor Ajax knows the foreclosure process that would apply in the State of Indiana for a  
9 rental property nor whether protections similar to the Nevada Homeowner's Bill of Rights exist.  
10 Finally, the court considers the Debtor's own testimony under oath as to the value of the 19<sup>th</sup>  
11 Avenue Property: her initial schedules filed on September 27, 2019, valued the property at  
12 \$19,000, while her amended schedules filed on September 25, 2020, valued the property at  
13 \$15,000. Accepting the Debtor's own testimony at face value, the record establishes that the  
14 subject property declined by over twenty percent during the Chapter 13 proceeding.

15 The court has considered the representations of counsel at the hearing in this matter,  
16 together with the record in this case. Based on the foregoing, the court concludes that cause  
17 exists under Section 362(d)(1) to terminate the automatic stay with respect to the 19<sup>th</sup> Avenue  
18 Property.

19 **IT IS THEREFORE ORDERED** that the Motion for Relief From the Automatic Stay  
20 brought by Ajax Mortgage Loan Trust 2021-G, Mortgage-Backed Securities, Series 2021-G, by  
21 U.S. Bank National Association, as Indenture Trustee, Docket No. 254, be, and the same hereby  
22 is, **GRANTED**. No waiver of the 14-day stay under Bankruptcy Rule 4001(a)(3) is allowed.

23  
24 Copies sent via CM/ECF ELECTRONIC FILING

25 Copies sent via BNC to:  
26 STACY ANNETTE CARTER  
27 6001 BLOWING BELLOWS  
28 LAS VEGAS, NV 89130

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