



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
November 04, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 22-12017-MKN
)	Chapter 13
MARITZA MERCEDES REYNOSO,)	
)	Date: October 26, 2022
Debtor.)	Time: 2:30 p.m.
)	

ORDER ON MOTION TO DISMISS OR CONVERT TO CHAPTER 7 UNDER 11 U.S.C. § 1307, OR IN THE ALTERNATIVE, TO TERMINATE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1), AND WAIVER OF THE 14-DAY STAY UNDER FRBP 4001(a)(3) [REAL PROPERTY 2801 THUNDERCLOUD WAY, PAHRUMP, NEVADA 89060 (APN 029-541-18)]¹

On October 26, 2022, the court heard the Motion to Dismiss or Convert to Chapter 7 Under 11 U.S.C. § 1307, or in the Alternative, to Terminate Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1), and Waiver of the 14-Day Stay Under FRBP 4001(a)(3) [Real Property 2801 Thundercloud Way, Pahrump, Nevada 89060 (APN 029-541-18)] (“Dismissal Motion”), brought by secured creditor Tom H. Tan (“Creditor Tan). The appearances of the parties and their counsel were noted on the record. After arguments were presented, the matter was taken under submission.

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of court. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

BACKGROUND²

On June 10, 2022, a voluntary Chapter 13 petition was filed by Maritza Mercedes Reynoso (“Debtor”). (ECF No. 1). The petition indicates that the Debtor resides at 3281 N. Barney Street, Pahrump, Nevada 89060 (“Residence”). Attached to the petition are the Debtor’s schedules of assets and liabilities (“Schedules”) and statement of financial affairs (“SOFA”). A Notice of Chapter 13 Bankruptcy Case was filed scheduling a meeting of creditors (“341 Meeting”) for July 19, 2019, and also set a deadline of August 19, 2022, for creditors to file proofs of claim. (ECF No. 6). The case was assigned for administration to Chapter 13 panel trustee, Kathleen A. Leavitt (“Trustee”).

On her property Schedule “A/B,” Debtor listed her interest in three parcels of real property including the Residence, as well as property located at “2801 Thunder Cloud Way, Pahrump, Nevada 89060” (“Thundercloud Property”)³ and at 610 Morgan Way, Pahrump, Nevada 89060 (“Morgan Way Property”).⁴ Debtor listed the value of the Thundercloud Property at \$157,600. Debtor listed the Morgan Way Property in her Schedule “C” as being subject to a “land contract” and having a value of \$20,000. Also, in her Schedule “C,” Debtor claimed a Nevada homestead in the amount of \$12,337.00 in the Residence. On her secured creditor

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned bankruptcy case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case and public records.”).

³ While the Debtor lists the property as being located at 2801 Thunder Cloud Way, Pahrump, Nevada, 89060, the loan and title documents admitted in this matter refer to the street address as “2801 N. Thundercloud Way.” See note 11, infra.

⁴ Debtor describes her interest in both the Residence and the Thundercloud Property as “Joint Tenants with Rights of Survivorship.” Presumably, the other joint tenant is the Debtor’s spouse who did not file for bankruptcy protection and who therefore is not protected by the automatic stay. He might be protected by the co-debtor stay under Section 1301 with respect to a consumer debt, but the Debtor attests in her Schedules that the obligation is only her debt rather than a community debt. Because the Thundercloud Property apparently was acquired as a rental property, however, the Note may reflect a non-consumer debt for which Section 1301 does not apply. Thus, because the Note is due, it is unclear whether the obligation owing can or would be pursued separately against the Debtor’s spouse outside of bankruptcy.

1 Scheduled “D,” Debtor listed First Savings Bank, Custodian FBO Tom H. Tan IRA #9904828,
2 i.e., Creditor Tan, as having a claim in the amount of \$64,000.00 secured by a deed of trust
3 against the Thundercloud Property.⁵ Debtor also listed Mary Wilson, Trustee, as having separate
4 claims secured by deeds of trust against the Morgan Way Property⁶ and the Residence.⁷ On her
5 unsecured creditor Schedule “E/F,” Debtor listed eight creditors having claims totaling
6 \$21,462.00, the majority of which is described as a student loan debt in the amount of
7 \$18,462.00.⁸ On her Schedule “G,” Debtor lists no executory contracts or unexpired leases.

8 On her monthly income Schedule “I,” Debtor identifies herself as “self-employed” and
9 lists \$600.00 from “rental property and operating a business,” while listing \$7,798.00 from the
10 wages of her non-filing spouse.⁹ After deductions, Debtor projects that there will be net income
11 of \$5,501.73 each month. On her monthly expense Schedule “J,” Debtor does not list any
12 dependents for herself or her non-debtor spouse. Debtor attests that the projected monthly
13 expenses for the couple are \$4,369.00. Based on the income estimate in Schedule I, Debtor
14 projects that there will be \$1,132.73 in excess income each month to devote to Chapter 13 plan
15 payments. In her SOFA, Debtor attests that she had annual gross income of \$34,049.00 from
16

17 ⁵ Although the Note is in the names of both the Debtor and her non-debtor spouse, the
18 debt is scheduled as an obligation of the Debtor-only rather than as a community debt.

19 ⁶ The debt appears to be scheduled as a community debt.

20 ⁷ The debt is scheduled as an obligation of the Debtor-only rather than as a community
21 debt.

22 ⁸ The debt is for a “school loan” and allegedly was incurred by “Debtor 2 only.” Because
23 there are no joint debtors in this Chapter 13 proceeding, it appears that the Debtor may be
24 referring to her non-debtor spouse as “Debtor 2.” The school loan is not designated as a
25 community debt. It is not clear whether the student loan debt would be eligible for the
26 forgiveness program recently adopted by the U.S. Department of Education, and announced on
27 August 24, 2022. Implementation of the program is subject to litigation. The application forms
for the program are available at [https://studentaid.gov/manage-loans/forgiveness-
cancellation/debt-relief-info](https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info). The program was commenced well after this Chapter 13
proceeding was commenced.

28 ⁹ On Schedule I, Debtor describes her employment as “Self” for 1 month and her non-
debtor spouse as “Miner” for a period of 7 years with the same employer.

1 January 1, 2022 to the petition date, a total of \$59,713.00 in 2021, and a total of \$67,095.00 in
2 2020. See SOFA at Part 2, Question 4.¹⁰ She also indicates that none of the gross income for
3 any of these periods was from “operating a business” but that all of the income was from “wages,
4 commissions, bonuses, tips.”

5 On June 13, 2022, Debtor filed a proposed Chapter 13 plan (“Plan #1”). (ECF No. 10).
6 On the same date, she then filed another Chapter 13 Plan #1a. (ECF No. 11). Still later the same
7 date, Debtor filed another Chapter 13 Plan #1a which was noticed for hearing on August 25,
8 2022. (ECF Nos. 12 and 13). In whatever version, the Chapter 13 plan provided for the Debtor
9 to make payments to the Trustee of \$1,100.00 each month for eighteen (18) months commencing
10 July 10, 2022 and \$2,300.00 each month for forty-two (42) months commencing January 10,
11 2024. The total amount of all plan payments was stated as \$116,400.00.

12 On June 30, 2022, a proof of claim (“POC”) in the amount of \$102,857.80, secured by
13 the Residence, was filed on behalf of Creditor Tan. Four documents are attached as exhibits to
14 the POC. Exhibit “A” is a copy of a “Promissory Note Secured by First Deed of Trust and
15 Assignment of Rents” (“Note”) dated March 27, 2019, in the amount of \$64,000. The borrowers
16 under the Note are “Servando Carrillo-Rodriguez and Maritza M. Reynoso, Husband and Wife
17 as Joint Tenants.” The Note provides for monthly interest-only payments of \$613.33 to be made
18 commencing May 1, 2019, with a balloon payment for the balance due upon maturity. It also
19 provides for late charges, default interest, and for recovery of attorney’s fees and collection
20 costs. The Note matures on October 1, 2020. The Note is made in favor of its investors,
21 consisting solely of Creditor Tan. Exhibit “B” is a copy of a “First Deed of Trust and
22 Assignment of Rents” recorded on March 29, 2019 (“DOT”), securing the Note. In addition to
23 the interest in the real property parcel, Section 7 of the DOT provides for the rents collected on
24 the Thundercloud Property to be assigned to Creditor Tan in the event of a default on the
25 payment of the Note. Section 8 provides for attorney’s fees and collection costs to be recovered
26 by the lender. The DOT is signed by Servando Carrillo-Rodriguez and Maritza M. Reynoso,

27
28 ¹⁰ Question 4 asks a debtor whether “you have any income from employment or from
operating a business...?” The language does not, on its face, distinguish between a separate or
community property interest in income from employment.

1 Husband and Wife as Joint Tenants.¹¹ Exhibit “C” is a copy of a “Notice of Breach and Election
2 to Sell Under Deed of Trust” (“Default Notice”) recorded on February 23, 2022, stating that the
3 Note became due on October 1, 2021, and is in default. Exhibit “D” is a copy of an
4 “Assignment of First Deed of Trust and Assignment of Rents” recorded January 24, 2022 (“DOT
5 Assignment”), in favor of First Savings Bank as custodian for Creditor Tan, to pursue the Note
6 and DOT.

7 On July 20, 2022, the 341 Meeting was continued to August 16, 2022. (ECF No. 19).

8 On August 17, 2022, the 341 Meeting was continued again to September 13, 2022. (ECF
9 No. 22).

10 On August 18, 2022, the Trustee filed opposition to confirmation of Plan #3 with
11 recommendation for dismissal. (ECF No. 23).

12 On August 19, 2022, Creditor Tan filed “Opposition and Joinder to Debtor’s Chapter 13
13 Plan #1.” (ECF No. 24).

14 On August 25, 2022, the Plan #1 was continued to September 8, 2022. (ECF No. 26).

15 On September 13, 2022, the 341 Meeting was further continued to October 25, 2022.
16 (ECF No. 27).

17 On September 15, 2022, the Trustee filed opposition to confirmation of Plan #3 with
18 recommendation for dismissal (“Trustee Plan Objection”). (ECF No. 28).

19 On September 19, 2022, Creditor Tan filed the instant Dismissal Motion along with the
20 supporting declarations of Tom H. Tan (“Tan Declaration”) and Ogonna M. Brown, Esq.
21 (“Brown Declaration”), and noticed the matter to be heard on October 20, 2022. (ECF Nos. 29-
22 32). Creditor Tan seeks dismissal of the Chapter 13 or conversion to Chapter 7, or, alternatively,
23 for relief from the automatic stay. Copies of eleven documents are attached to the Tan
24 Declaration marked as Exhibits 1 through 11. Exhibits “1” and “2” are copies of the Note and
25 DOT. Exhibit “3” is illegible. Exhibit “4” is a transaction history from Evergreen Note
26 Servicing (“Evergreen”) reflecting the payments made under the Note from April 12, 2019 to
27

28 ¹¹ The street address for the property is shown as “2901 N. Thundercloud Way, Pahrump,
NV 89060” in both the Note and the DOT.

1 February 28, 2022. Exhibit “5” is a letter dated January 11, 2022, from Evergreen addressing a
2 shortage in the payment of insurance required by the Note. Exhibit “6” is a copy of the DOT
3 Assignment. Exhibit “7” is a letter dated February 15, 2022, from Evergreen addressing an
4 additional shortage in the payment of insurance required by the Note. Exhibit “8” is a copy of
5 the Default Notice. Exhibit “9” is a copy of a “Substitution of Trustee” recorded February 23,
6 2022, substituting Nevada Trust Deed Services to replace the original trustee under the DOT.
7 Exhibit “10” is a copy of a check payable to Evergreen, dated February 23, 2022, in the amount
8 of \$394.00. Exhibit “11” is a copy of a Notice of Trustee’s Sale recorded May 25, 2022, for a
9 foreclosure sale under the DOT to be conducted on June 16, 2022.¹²

10 On September 19, 2022, Creditor Tan also filed an “Opposition and Joinder to Trustee’s
11 Objection to Debtor’s Plan #3” (ECF No. 33). Creditor Tan joined in the Trustee Plan
12 Objection and also suggests that the Plan#3 is not proposed in good faith under Section
13 1325(a)(3).

14 On September 20, 2022, Creditor Tan filed “Exhibit 3” to the Tan Declaration in support
15 of his Dismissal Motion. (ECF No. 35). That document replaces the illegible version of Exhibit
16 “3” that was originally was submitted and is a copy of an “Extension to Note” dated November
17 12, 2020, whereby the parties had agreed to extend the maturity date of the Note from October 1,
18 2020, to October 1, 2021.

19 On September 21, 2022, Creditor Tan filed a notice of change of hearing moving the
20 hearing on the Dismissal Motion from October 20, 2022, at 9:30 a.m. to October 19, 2022, at
21 2:30 p.m. (ECF No. 36).

22 On October 4, 2022, Debtor filed opposition to the Dismissal Motion (“Opposition”)
23 along with the declarations of Maritza Mercedes Reynoso (“Debtor Declaration”) and Laura L.
24 Fritz, Esq. (“Fritz Declaration”), in addition to a document entitled “Exhibits 1, 2 and 3.” (ECF
25 Nos. 38-41). Exhibit “1” is a copy of a two-page document, the first page of which may be a tax

26
27 ¹² After the Debtor filed her Chapter 13 petition on June 10, 2022, the foreclose sale was
28 postponed. The parties agree that the sale is currently scheduled to take place on November 17,
2022. Apparently, a hearing on confirmation of the Debtor’s proposed Chapter 13 plan also is
scheduled, by coincidence, for November 17, 2022.

1 payment history from Nye County, and the second page of which may be a copy of a servicing
2 demand for payment from Evergreen. Exhibit “2” is a copy of a one-page document that may be
3 a mobile home payment/billing history for insurance on unidentified property. Exhibit “3” is a
4 copy of a one-page document printed on October 4, 2022, apparently showing the Debtor’s
5 payment of \$2,200.00 to the Trustee through September 8, 2022.¹³

6 On October 4, 2022, Debtor filed an amended Chapter 13 Plan #2 (“Plan #2”). (ECF No.
7 42).

8 On October 6, 2022, a stipulated order was entered continuing the October 19, 2022,
9 Dismissal Motion hearing to October 26, 2022. (ECF No. 45).

10 On October 19, 2022, Creditor Tan filed a reply to the Debtor’s Opposition to the
11 Dismissal Motion along with a supplemental declaration of Creditor Tan. (ECF Nos. 49 and 50).

12 On October 26, 2022, the 341 Meeting was continued to December 6, 2022. (ECF No.
13 51).

14 DISCUSSION

15 There is no dispute that the Debtor voluntarily filed a petition commencing the instant
16 Chapter 13 proceeding on June 10, 2022. Under Section 362(a), filing the Chapter 13 petition
17 triggered the automatic stay. There is no dispute that the Debtor has the right under Section
18 1307(a) to dismiss this voluntary Chapter 13 proceeding at any time. See TICO Construction
19 Co. v. Powell (In re Powell), 2022 WL 12394079, at *3 (B.A.P. 9th Cir. Oct. 21, 2022).

20 There is no dispute that the Debtor’s voluntary Chapter 13 proceeding was assigned for
21 administration to the Trustee under Section 1302. There is no dispute that a trustee’s
22 administration of a Chapter 13 proceeding includes the appearance at hearings in connection
23 with plan confirmation, see 11 U.S.C. §1302(b)(2)(B), ensuring that the debtor commences
24 timely plan payments, see 11 U.S.C. §1302(b)(5), and seeking dismissal or conversion of a
25 Chapter 13 case for cause if it is in the best interest of creditors and the estate. See 11 U.S.C.
26 §1307(c). Section 1307(c) permits any party in interest, including an assigned trustee, to request
27

28 ¹³ Section 1326(a)(1) generally requires a Chapter 13 debtor to start making proposed plan payments no later than 30 days after commencement of the case.

1 dismissal or conversion of a Chapter 13 case on a showing of “cause.” Examples of cause
 2 include “unreasonable delay by the debtor that is prejudicial to creditors.” 11 U.S.C.
 3 §1307(c)(1).¹⁴

4 There is no dispute that the Debtor filed an initial plan on June 13, 2022 (ECF No. 10),
 5 another plan on June 13, 2022 (ECF No. 11), another plan on June 13, 2022 (ECF No. 12), and
 6 another plan on October 4, 2022 (ECF No. 42). It is not entirely clear whether there were
 7 multiple filings of the same plan on June 13, 2022. It is clear that none of these plans have been
 8 confirmed. Thus, there is no dispute that the Debtor has been under the protection of the
 9 automatic stay for more than four months without confirming a Chapter 13 plan.

10 There is no dispute that the DOT includes an assignment of rents clause (“Rent
 11 Assignment”) that is effective in the event of default. There is no dispute that the Note secured
 12 by the DOT came due on October 1, 2021. There is no dispute that the Debtor defaulted on her
 13 payments before the Note came due, and that foreclosure proceedings were commenced before
 14 the Chapter 13 petition was filed on June 10, 2022. There is no dispute that the Debtor has never
 15 paid the amount due on the Note after the commencement of the case. There is no dispute that
 16 the Rent Assignment creates in favor of Creditor Tan an interest in any rents collected by the
 17 Debtor and therefore constitutes “cash collateral” within the meaning of Section 363(a). There is
 18 no dispute that the Debtor has received rents in varying amounts after the commencement of the
 19 Chapter 13 proceeding, but the exact disposition of those rents is unknown.

20 In this case, Debtor identifies herself as self-employed. She has operated a business
 21 named “Kaballino D Mare” since May 2022 that is described as a “sales boutique.” See SOFA
 22 at Part 11; see also Fritz Declaration at ¶ 3. Debtor also uses the Thundercloud Property as a
 23 _____

24 ¹⁴ Section 1307(c) lists eleven separate, but non-exclusive examples of “cause” for
 25 conversion or dismissal of a Chapter 13 proceeding. On their face, none of the other examples of
 26 cause described in Section 1307(c) appear to be relevant in this Chapter 13 case. An
 27 unenumerated example of cause is where the moving party establishes that the Chapter 13
 28 proceeding was filed without good faith. See generally *Marrama v. Citizens Bank of*
Massachusetts, 549 U.S. 365, 379 (2007). In this instance, Creditor Tan asserts a variety of
 circumstances suggesting a lack of good faith in commencing this case, including the Debtor’s
 failure to remit post-petition rents on the Thundercloud Property and a lack of feasibility of the
 proposed Chapter 13 plan. See Dismissal Motion at 9:20 to 10:17.

1 rental since she resides in and claims the Residence as her homestead. At the hearing, Debtor
2 represented that she currently collects approximately \$850.00 per month from two individuals
3 who rent the Thundercloud Property. A Chapter 13 debtor has the rights and powers of a
4 bankruptcy trustee under Sections 363(b), 363(d), and 363(e). See 11 U.S.C. §1303. A Chapter
5 13 debtor who is self-employed and incurs trade credit from such employment is engaged in
6 business. See 11 U.S.C. §1304(a). A Chapter 13 debtor who is engaged in business may operate
7 the business subject to the limitations under Section 363(c), unless the court orders otherwise.
8 See 11 U.S.C. §1304(b). Under Section 363(c), cash collateral in which a secured creditor has
9 an interest cannot be used without consent of the creditor or an express order of the court. See
10 11 U.S.C. § 363(c)(2). Consent has not been obtained from Creditor Tan nor has an order
11 authorizing use of the rents been obtained from the court.

12 At the hearing in this matter, Debtor represented that retention of rents from the
13 Thundercloud Property is essential to her prospects of confirming a Chapter 13 plan because she
14 needs the rents to pay other claims in the case. Unfortunately, Debtor offered no evidence that
15 Creditor Tan will ever consent to the use of the rents if Section 363(c) applies, nor any
16 explanation on how adequate protection could be provided to Creditor Tan as required by
17 Section 363(e) even if Section 363(c) does not apply. Debtor apparently testified at her 341
18 Meeting that her self-employment income from her sales boutique cleared \$700 in June and
19 \$1,000 in July. See Brown Declaration at ¶ 16. Her proposed Plan #2 requires her to pay to the
20 Trustee \$1,100 for the first seven months, \$2,000 for the next five months, and then \$2,650 for
21 the last forty-eight months. See Plan # 2 at § 2.5. The total amount of all plan payments is stated
22 as \$144,900.00. Id. at § 2.7.¹⁵ From these payments to the Trustee, she seeks to pay Creditor
23 Tan in full in monthly installments. Id. at §9.2. The amounts of the payments during months 1
24 through 4 are unspecified, as such payments are made only from funds left over after Chapter 13
25 trustee fees and the fees of Debtor's counsel are paid. The amount for months 5, 6, and 7 is
26 specified at \$900. The amounts of the payments during months 8 through 60 are unspecified and

27 ¹⁵ The \$144,900 amount is \$28,500 more than what was proposed in the Debtor's initial
28 Chapter 13 plan.

1 also are made only from funds left over after Chapter 13 trustee fees and the fees of Debtor's
2 counsel are paid. It appears that only the total amount of \$2,700 paid to the Trustee during
3 months 7, 8, and 9 will be remitted to Creditor Tan; the amount paid during months 1 through 4
4 and months 8 through 60, is uncertain at best.

5 As an alternative to using rental income from the Thundercloud Property to make plan
6 payments, Debtor apparently has explored selling the property for an amount sufficient to pay
7 Creditor Tan in full. Debtor listed the Thundercloud Property in 2021 for \$145,000, reduced the
8 listing price to \$125,000, and reduced it again to \$119,900 before removing the listing. See Tan
9 Declaration at ¶ 12 and Exhibit "B" thereto. After the Chapter 13 case was commenced, Debtor
10 apparently submitted to Creditor Tan a copy of a proposed purchase agreement in the amount of
11 \$135,000. Id. at ¶ 14.¹⁶ Creditor Tan is doubtful that the sale would ever be completed, but
12 would not object to being paid in full.¹⁷ Creditor Tan's POC is in the amount of \$102,857.80
13 and is deemed allowed in absence of an objection. See 11 U.S.C. §502(a). In her Schedule
14 "A/B," Debtor attested that the value of the Thundercloud Property is \$157,600.¹⁸ At the
15 hearing, Debtor acknowledged that the collateral is worth more than the amount of Creditor
16 Tan's claim. There is no dispute that Sections 6 and 8 of the Note includes provisions for the
17 accrual of default interest as well as the payment of attorney's fees. Because the value of the
18 Thundercloud Property exceeds the amount of Creditor Tan's claim, Section 506(b) allows him
19 to recover post-petition interest as well as reasonable attorney's fees and costs as provided under
20 the Note.

21
22
23 ¹⁶ Debtor attests that she received a purchase offer of \$140,000 "just before the
24 bankruptcy filing, but I did not want to sell it." Debtor Declaration at ¶ 9.

25 ¹⁷ Neither party submitted a copy of the alleged purchase offer to the court, nor of any
26 listing agreement for the Thundercloud Property. So the court has no idea if there are or were
any conditions that would impact the likelihood of a sale being concluded.

27 ¹⁸ An owner of property is competent to express an opinion as to the value of the subject
28 property. In this instance, however, there is nothing in the Schedules or in the Debtor
Declaration explaining the basis for the value asserted by the Debtor.

1 Although the Thundercloud Property appears to be worth more than the allowed amount
2 of Creditor Tan's claim, there is no evidence of its fair market value other than the \$157,600
3 amount in the Schedules. Creditor Tan has offered no evidence that his collateral has declined in
4 value after the case was commenced. Compare First Federal Bank of California v. Weinstein (In
5 re Weinstein), 227 B.R. 284, 296-97 (B.A.P. 9th Cir. 1998). His POC amount of \$102,857.80
6 has not been disputed. If these figures are correct, there may be an "equity cushion" in excess of
7 \$50,000 in the Thundercloud Property. Because the best evidence of value is the amount for
8 which property is sold, the Debtor's continuing efforts to sell the Thundercloud Property,
9 including the recent agreement for \$135,000, best indicates that its value is significantly less than
10 the Debtor represents on her Schedule "A/B." At this stage, however, the court has no
11 evidentiary basis to infer how much less the Thundercloud Property is worth than the amount
12 attested by the Debtor.

13 The record before the court is both conflicting and uncommon. Unlike most Chapter 13
14 cases, the subject property is a rental parcel that the Debtor apparently wants to retain for
15 investment purposes, rather than as basic shelter for herself and her non-debtor spouse.
16 According to her Schedules, the couple has no dependents. In addition, Debtor apparently has an
17 interest in a third parcel, i.e., the Morgan Way Property, that has value as a land sale contract but
18 in which she has no current fee simple interest. The Morgan Way Property appears to be an
19 investment property that the Debtor is trying to acquire with the intention of selling thereafter
20 under a land sale contract. The current occupancy of the Morgan Way Property, if any, is not
21 disclosed.¹⁹ In essence, Debtor has a Residence to meet the housing needs of herself and her
22 non-debtor spouse but has two investment properties that she apparently just wants to keep. She
23 admittedly has been trying to sell the Thundercloud Property rather than use it as her residence.
24 Neither of the investment properties appear to be essential for the Debtor to address the claims of
25 her scheduled creditors.

27 ¹⁹ Whether the Thundercloud Property or the Morgan Way Property were occupied by
28 renters as of the petition date is unknown, but no unexpired leases of real property appear on
Schedule "G."

1 All of the Debtor's scheduled secured debt is based on liens against the three scheduled
2 parcels of real property, and none against any personal property. Almost all of the scheduled
3 unsecured debt is for a student loan obligation which would be excepted from a Chapter 13
4 discharge under Section 1328(a)(2). To discharge the student loan debt, Debtor would have to
5 commence a separate proceeding under Section 523(a)(8) to meet the unfortunately high bar of
6 undue hardship.²⁰ None of the scheduled unsecured debt appears to be subject to priority
7 treatment under Section 507(a).

8 Debtor apparently had only a brief self-employment history when she filed her Chapter
9 13 petition, while her non-debtor spouse apparently has had the same employer for seven years.
10 On the other hand, she attests in her SOFA that she had over \$34,000 in gross income this year
11 leading up to the commencement of the case, but none from operating a business. For the prior
12 two years, she also attested that her income was from wages, commissions, bonuses and tips
13 rather than from business operations. Debtor's monthly income Schedule "I" and the projection
14 of income going forward is based almost entirely on the employment income of her non-debtor
15 spouse, but her SOFA ascribes all of the prior annual income solely to "Debtor 1." While the
16 Debtor appeared at her 341 Meeting, it is not clear whether the source of the income in her SOFA
17 was from the combined wages, commissions, bonuses and tips of the married couple. Nothing in
18 the Debtor Declaration addresses that uncertainty.

19 Under these circumstances, a dismissal of the Chapter 13 proceeding under Section
20 1307(c) is unwarranted. The evidence is insufficient to conclude that the Debtor lacked good
21 faith in commencing the Chapter 13 proceeding or in proposing Plan #2. The evidence also is
22 insufficient to include that the proposed Plan #2, on its face, is infeasible. The Debtor will bear
23 the burden of proof on both issues to confirm any proposed Chapter 13 plan. See 11 U.S.C. §§
24
25
26

27 ²⁰ Because the student loan debt is listed as the obligation only as to "Debtor 2," see note
28 8, supra, it is not clear whether the Debtor could even commence an adversary proceeding under
Section 523(a)(8) to determine undue hardship.

1 1325(a)(3), 1325(a)(7), and 1325(a)(6). Under the same circumstances, however, the court will
2 grant relief from stay for cause under Section 362(d)(1) by conditioning the automatic stay.²¹

3 Debtor does not dispute that she has been collecting rent in some amount even after she
4 defaulted on the Note. The DOT includes an assignment of rents that applied after the Default
5 Notice was entered. Under the Rent Assignment, Creditor Tom had an enforceable interest in
6 the rents before the Chapter 13 petition was filed and he continues to have an interest in the
7 rents. The rents constitute cash collateral under Section 363(a). Debtor apparently collects
8 approximately \$850 each month from two separate tenants, even though written leases are not in
9 the record. After the case was commenced on June 10, 2022, the foreclosure sale on the
10 Thundercloud Property was stayed in compliance with Section 362(a), but the Debtor has never
11 complied with Section 363(c)(2)(A) by obtaining Creditor Tan's consent to use the rents, nor has
12 she complied with Section 363(c)(2)(B) by obtaining a court order on notice to Creditor Tan that
13 would authorize her to use the rents. As to the latter, any use of the rents ordered by the court
14 may be authorized only if the Debtor demonstrates that Creditor Tan's interest in the
15 Thundercloud Property is adequately protected.²²

16 Under the circumstances, the automatic stay as to the Thundercloud Property will
17 continue in effect on the condition that the Debtor provide an accounting of all rents received
18 after the recording of the Default Notice on February 23, 2022. In addition to providing that
19 accounting, Debtor shall remit to Creditor Tan all rents received after the June 10, 2022 filing of
20 the bankruptcy petition. That accounting, as well as the remittance of rents, shall be provided to
21 counsel for Creditor Tan, no later than the deadlines set forth in this order. Debtor's obligation
22

23 ²¹ Creditor Tan has not sought relief from stay under Section 362(d)(2), presumably
24 because the Debtor does not lack equity in the Thundercloud Property. Because that threshold
25 could not be established under Section 362(d)(2)(A), the burden never shifts to the Debtor to
26 demonstrate that the property is necessary to an effective reorganization. Nothing prevents a
27 court from considering the latter concern in connection with the existence of cause under Section
28 362(d)(1).

²² The evidence in the record is insufficient to determine whether Creditor Tan's interest
is adequately protected by any equity cushion that may exist, particularly when interest and
attorney's fees continue to accrue under Section 506(b).

1 to account and remit all rents received shall remain in effect for the duration of this Chapter 13
2 proceeding unless otherwise ordered. In the event the Debtor fails to timely comply with both
3 conditions, Creditor Tan may seek a further order on an ex parte basis terminating the automatic
4 stay.

5 **IT IS THEREFORE ORDERED** that the Motion to Dismiss or Convert to Chapter 7
6 Under 11 U.S.C. § 1307, or in the Alternative, to Terminate Automatic Stay Pursuant to 11
7 U.S.C. § 362(d)(1), and Waiver of the 14-Day Stay Under FRBP 4001(a)(3) [Real Property
8 2801 Thundercloud Way, Pahrump, Nevada 89060 (APN 029-541-18)], brought by secured
9 creditor Tom H. Tan, Docket No. 29, be, and the same hereby is, **DENIED IN PART** and
10 **GRANTED IN PART**.

11 **IT IS FURTHER ORDERED** that the motion is **DENIED** without prejudice as to
12 dismissal or conversion of the Chapter 13 proceeding under 11 U.S.C. § 1307.

13 **IT IS FURTHER ORDERED** that the motion is **GRANTED** as to the automatic stay
14 under 11 U.S.C. § 362(d)(1) as follows:

- 15 1. The automatic stay under 11 U.S.C. § 362(a) shall remain in effect as to the
16 property located at 2801 N. Thundercloud Way, Pahrump, Nevada 89060
17 (“Thundercloud Property”) unless otherwise ordered by the court.
- 18 2. Maritza Mercedes Reynoso (“Debtor”) shall provide an accounting of all rents
19 received from the Thundercloud Property from February 23, 2022, to date. The
20 accounting shall be provided to counsel for Tom H. Tan **no later than**
21 **November 30, 2022**.
- 22 3. Debtor shall remit to Tom H. Tan all rents received from the Thundercloud
23 Property from June 10, 2022, to date. The rents shall be provided to counsel for
24 Tom H. Tan **no later than November 30, 2022**.
- 25 4. Debtor’s obligation to account for and remit all rents received from the
26 Thundercloud Property **shall remain in effect unless otherwise ordered by the**
27 **court**. For rents received from the Thundercloud Property that are not accounted
28 for or remitted on or before November 30, 2022, Debtor shall account and remit

1 such rents to counsel for Tom H. Tan on a monthly basis no later than the final
2 business day of the month.

3 **IT IS FURTHER ORDERED** that in the event the Debtor fails to timely comply with
4 the conditions of this order, creditor Tom H. Tan may seek an ex parte order terminating the
5 automatic stay by appropriate motion establishing the failure to comply.

6
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:
9 MARITZA MERCEDES REYNOSO
10 3281 N. BARNEY ST.
11 PAHRUMP, NV 89060

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

###