

**Dated: August 27, 2024**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re:

**Marcus D. Dorsey,**  
Debtor.

Case No.: 23-24657  
Chapter 13

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**MEMORANDUM OPINION AND ORDER GRANTING  
MOTION FOR RELIEF FROM AUTOMATIC STAY AND  
CO-DEBTOR PURSUANT TO 11 U.S.C. §§ 362(d)(1) AND 1301(c)**

This case came before the Court on Progress Residential Borrower 12, LLC's ("Creditor") *Motion to Terminate Automatic Stays, Including Any Co-Debtor Stay, as to Progress Residential Borrower 12, LLC* ("Motion for Relief from Automatic Stay") and Marcus D. Dorsey's ("Mr. Dorsey's" or "Debtor's") *Response to Progress Residential Borrower 12, LLC's Motion to Terminate Automatic Stay* ("Response").<sup>1</sup> A hearing was conducted on April 16, 2024, and concluded on April 30, 2024. Upon review of the record, filed documents, evidence presented, and consideration of the arguments from the parties, the Court grants the Motion for Relief from Automatic Stay for the reasons outlined below.

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<sup>1</sup> ECF Nos. 48 and 54.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Background – The Chapter 13 Case and Debtor**

On September 19, 2023 (“Petition Date”), Debtor filed a voluntary petition commencing a case under chapter 13 of the Bankruptcy Code.<sup>2</sup> Debtor’s Schedules show that Debtor is married, and has three minor children (two sons, ages six and eight, and one daughter, age ten).<sup>3</sup> Schedule I shows that Debtor is employed at Home Depot U.S.A., and makes a combined monthly income of \$4,490.00.<sup>4</sup> Debtor’s Schedule J shows that Debtor has \$4,315.00 in monthly expenses leaving \$175.00 in monthly net income.<sup>5</sup> The Schedules also show that Debtor’s wife (the non-filing spouse) was employed as of the Petition Date.<sup>6</sup> Debtor has one leased vehicle, a 2014 Nissan Pathfinder, listed on Schedule A/B.<sup>7</sup> Debtor owns no real property.<sup>8</sup> Debtor lists no creditors with secured claims on Schedule D.<sup>9</sup> Schedule E/F shows that Debtor has no priority unsecured claims but has about \$12,000.00 of non-priority unsecured claims. On January 8, 2024, Debtor filed an Amended Chapter 13 Plan.<sup>10</sup> On January 26, 2024, Debtor’s chapter 13

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<sup>2</sup> ECF No. 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> ECF No. 24.

plan was confirmed.<sup>11</sup> On February 13, 2024, an Amended Order Confirming Chapter 13 Plan and an Administrative Order Allowing Claims was entered.<sup>12</sup>

On February 23, 2024, Creditor filed its Motion for Relief from Automatic Stay.<sup>13</sup> Creditor argued that it was entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).<sup>14</sup> On April 16, 2024, the Court conducted a virtual preliminary hearing on Creditor's Motion for Relief from Automatic Stay. The Court also ordered Mr. Dorsey to file his Response.<sup>15</sup> Realizing that the Motion for Relief from Automatic Stay is contested, the Court continued the hearing to April 30, 2024, at 1:30 p.m., to allow sufficient time for both parties to present evidence and make their legal arguments. At the April 30th hearing, there was no testimonial evidence and Creditor submitted the lease agreement and payment ledger into evidence without objection. Debtor presented no evidence. Both parties argued their respective positions.

### **B. The Residential Lease**

The controversy in this contested matter stems from Mr. Dorsey's violation of a residential lease ("the Lease"). Mr. Dorsey's Amended Chapter 13 Plan shows that the Lease was assumed, and the arrearage is listed at \$7,023.45 to be paid at \$118.00 per month at 0.00% rate of interest.

The Lease is a total of 45-pages, consisting of 19-pages of the actual underlying lease and 26 additional pages of addendums, disclosures, and excerpts of the State of Tennessee Law on

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<sup>11</sup> ECF Nos. 34 and 35.

<sup>12</sup> ECF Nos. 43 and 44.

<sup>13</sup> ECF No. 48.

<sup>14</sup> *Id.*

<sup>15</sup> ECF No. 54.

residential leases.<sup>16</sup> The first 19-pages of the Lease contains boilerplate provisions and language on the number of occupants living in the premises, description of the property, the lease term, the termination of the lease, vacancy, monthly rent payments, payment methods, late charges and fees, security deposits, the proper use of the premises, the obligations of the landlord and the tenant(s), and force majeure provisions.<sup>17</sup> Paragraph 1 lists Mr. Dorsey as the only party to the Lease and Paragraph 1.2 provides that the premises is occupied by four occupants.<sup>18</sup> Paragraphs 2.1 and 2.2 provide that Creditor rented to Mr. Dorsey the residential property located on 8818 Lybrook Cove East, Cordova, Tennessee 38016 (“Premises”), and that the “Lease and the Premises will be managed by Progress Residential Property Manager, LLC[.]”<sup>19</sup> Paragraph 3.1 provides that the “Lease Term begins on 07/06/2023 (“Start Date”) and ends on 07/07/2024 (“End Date”).”<sup>20</sup> Paragraph 4.1 provides that residents would pay \$2,280.00 in rent for the Lease term.<sup>21</sup> Paragraph 4 of the Lease provides the resident with two methods of payment: An “electronic ACH payment, debit or credit card, or ‘Text to Pay,’ through Landlord’s online portal” or by “check, money order or cashier’s check payable to Landlord by mail to Landlord at P.O. Box 4300, Scottsdale, AZ 85261.”<sup>22</sup> Paragraph 5 provides that “Any payment due under this Lease that is not paid timely and in full shall be subject to fees and charges, which shall be

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<sup>16</sup> Creditor’s Ex. 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 4.

<sup>22</sup> Creditor’s Ex. 1, at 4.

deemed additional rent.”<sup>23</sup> The Lease provides for a ten percent late fee (which equals to \$228.00 of the monthly rent).<sup>24</sup> Paragraph 5 of the Lease states that late rent payments are subject to a late charge of \$125.00 and that Creditor is entitled to charge an additional \$40.00 for “insufficient funds.”<sup>25</sup>

The remaining 26-pages of the Lease consists of the following attachments: Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards, Utility and Services Addendum (“Utilities Addendum”), Pet Addendum, Renters Insurance Program Addendum, Guarantor’s Addendum, Repair Services Cost Sheet Addendum (“Repair Services Addendum”), Mold and Moisture Addendum, Concession Addendum,<sup>26</sup> State Specific Addendum that outlines Tennessee Law on residential leases (“Tennessee Law Addendum”), Smart Home System Service Agreement (“Smart Home Agreement”), and Filter Addendum.<sup>27</sup> The additional 26-pages of attachments each charge fees that are to be paid in addition to the rent.

The Utilities Addendum states that residents must make monthly payments of “\$9.99 if all utilities are maintained by the Landlord, or if this Lease is an extension or renewal from a previous Progress Residential lease dated on or before September 20, 2017,” “\$7.95 for all other Residents maintaining accounts for electricity and any utilities that are bundled with electricity,”

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Creditor’s Ex. 1, at 4.

<sup>26</sup> *Id.* at 32. The Concession Addendum provides that “Resident acknowledges the receipt of a concession in the amount of \$ - 73.54” and that this concession amount will be “applied as credit to the charges on the Resident’s account.”

<sup>27</sup> *Id.* at 44. The Filter Addendum states that the “Resident shall change the filters on the HVAC system at least once every three months.” The Filter Addendum further states that it is “only applicable if there is a fee identified” and that “if you see zero Dollars (\$0) or ‘N/A’ below, this Addendum does not apply.”

and a \$50.00 fee for “failure to establish accounts in the Resident’s name as detailed in this Addendum.”<sup>28</sup>

The Pet Addendum states that “Resident shall pay Landlord a non-refundable Pet Fee, in the amount of \$300.00 per pet” and that “Resident shall pay an additional Rent in the amount of \$35.00 per month, per pet.”<sup>29</sup> The Renters Insurance Program Addendum states that a Resident who fails to maintain Renters Insurance would be “charged an additional \$14.95 a month as additional Rent and will be exempt from the Renters Insurance Program.”<sup>30</sup> The Smart Home Agreement provides that the “use of Hardware and System provided by Landlord pursuant to this Agreement is \$17.00 per month (the “System Package”).”<sup>31</sup>

The Repair Services Addendum states that any repairs or services provided by the Landlord for “damage due to the misuse, negligence, action or inaction of Resident, Occupant, their guests or invitees will be charged to Resident.”<sup>32</sup> The Repair Services Addendum proceeds to list 30 different types of repairs that residents are responsible for, including, but not limited to, \$75.00 in lock-out fees, \$35.00 for “1st re-inspection” and \$50.00 “each thereafter,” \$75.00 each to “[r]eplace, re-string, or re-hang window blinds,” \$85.00 minimum for a “[c]logged toilet,” \$20.00 per square foot for a “[b]roken single pane window,” \$150.00 minimum for “[l]andscaping clean up service,” a \$50.00 per cubic yard “[t]ruck fee” for “[d]ebris or trash clean-up (including abandoned possessions, broken furniture, etc.),” \$0.25 per square foot of the

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<sup>28</sup> *Id.* at 21-22.

<sup>29</sup> *Id.* at 23.

<sup>30</sup> *Id.* at 25.

<sup>31</sup> *Id.* at 41.

<sup>32</sup> *Id.* at 28-29.

home for “[f]ull [h]ome [c]lean,” \$0.15/square foot or \$120.00 minimum for “[c]arpet [c]leaning,” \$145.00 per room for “[p]ainting (due to holes in wall or other damage),” \$50.00 per incident plus applicable HOA Non-Compliance Fee for “[g]arbage [v]iolation (trash on porch or premises),” \$95.00 minimum per treatment for “Resident caused Pest Control service,” and \$75.00 per hour for “[l]abor [c]osts for all [s]ervices, [r]epairs, and [r]eplacements.”<sup>33</sup>

Additionally, the Repair Services Addendum states that a “20% administrative fee will be added to all charges. Charges may be subject to state and local taxes. Charges subject to change without notice should costs increase.”<sup>34</sup>

Finally, the Tennessee Law Addendum also includes additional fees. The Tennessee Law Addendum is divided into the Tennessee law for counties with “a population less than 75,000 according to the 2010 Federal Census” (“Tennessee Law Addendum No. 1”) and Tennessee law for counties with “populations of 75,000+ according to the 2010 Federal Census” (“Tennessee Law Addendum No. 2”), and a City of Nashville Addendum.<sup>35</sup> Specifically, Paragraph 2 of the Tennessee Law Addendum No. 1 and Paragraph 11 of Tennessee Law Addendum No. 2 states, “Notwithstanding Section 5.2 of the Lease, Landlord shall not charge an insufficient funds fee in excess of thirty dollars (\$30.00), unless otherwise permitted under Tenn. Code Ann. § 47-29-102.”<sup>36</sup> The Lease does not contain a separate choice-of-law provision. However, given that the Lease provides 8-pages of Tennessee Law on residential leases, this Court assumes that Tennessee Law governs.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 33-40. Creditor has branches in 15 U.S. states, one of which is in Tennessee. In Tennessee, Creditor has office locations in both Memphis and Nashville. Creditor’s headquarters are in Scottsdale, Arizona. Progress Residential, Office Locations (2024), <https://rentprogress.com/locations>.

<sup>36</sup> *Id.*

### **C. The Residential Ledger**

The Residential Ledger (“the Ledger”) provides a detailed report on the monthly charges that were due since the beginning of Mr. Dorsey’s lease on June 25, 2023.<sup>37</sup> Post-petition, on October 2023, Creditor was owed \$2,280.00 in rent, \$542.54 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$2,300.00 in total.<sup>38</sup> On November 2023, Creditor was owed \$2,280.00 in rent, \$471.25 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$2,297.95 in total.<sup>39</sup> On December 2023, Creditor was owed \$2,280.00 in rent, \$576.88 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$1,740.95 in total.<sup>40</sup> On January 2024, Creditor was owed \$2,280.00 in rent, \$239.32 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$1,020.00 in total.<sup>41</sup> On February 2024, Creditor was owed \$2,280.00 in rent, \$387.28 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$1,395.95 in total.<sup>42</sup> On March 2024, Creditor was owed \$2,280.00 in rent, \$643.00 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$2,297.95 in total.<sup>43</sup> On April 2024, Creditor was owed \$2,280.00 in rent, \$426.79 in utilities fees, and \$228.00 in late fees, but Mr. Dorsey only paid \$2,236.00 in total.<sup>44</sup>

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<sup>37</sup> Creditor’s Ex. 2.

<sup>38</sup> Creditor’s Ex.1, at 4-5 and Creditor’s Ex. No. 2. Late fees consist of 10 percent of the monthly rent.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2-3.

<sup>43</sup> *Id.* The Ledger shows that that on March 26, 2024, Mr. Dorsey made two additional payments of \$500.00 and \$1,000.00, totaling \$1,500.00. At the preliminary hearing on April 16, 2024, Mr. Dorsey argued that he was able to make this additional payment towards his monthly charges, because his wife found employment during that time. Hearing on Motion for Relief from Automatic Stay on Apr. 16, 2024 (“Hearing on Apr. 16, 2024”), at 10:48 a.m.

<sup>44</sup> Creditor’s Ex. 2, at 3.



**D. Motion for Relief from Automatic Stay and Response**

Creditor seeks entry of an order granting relief from the automatic stay because Mr. Dorsey failed to pay the full amount of rent due for January 2024 and February 2024, with a post-petition arrearage of \$5,687.47.<sup>45</sup> At the hearing held on April 16, 2024, Creditor argued that Mr. Dorsey failed to pay the full monthly base rent (“rent”) of \$2,280.00, utilities, late fees, and other additional fees since the lease commenced on June 25, 2023.<sup>46</sup> Mr. Dorsey is assessed late fees of \$228.00 per month when rent is paid late or not paid in full.<sup>47</sup> Since Mr. Dorsey failed to put utilities in his name with Memphis, Light, Gas, and Water (“MLGW”) for his utilities, he was assessed an additional \$180.00 to \$200.00 monthly in fees.<sup>48</sup> As a result, Creditor contends that Mr. Dorsey owes post-petition arrears of about \$6,039.11 as of April 16, 2024.<sup>49</sup> In response, Mr. Dorsey (through counsel) explained that he failed to pay his monthly charges in full because his wife “lost her job” in December 2023, and obtained employment as of January 2024.<sup>50</sup> After his wife found employment, Mr. Dorsey paid “an additional amount of \$1,500.00” in April 2024.<sup>51</sup> Mr. Dorsey further argued that “the main problem” was that he was “not allowed to pay online.”<sup>52</sup> Mr. Dorsey could only send money orders via mail to Creditor’s

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Hearing on Apr. 16, 2024, at 10:47 a.m.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10:48 a.m.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 10:49 a.m.

headquarters in Scottsdale, Arizona.<sup>53</sup> Creditor explained that the reason why it did not allow Mr. Dorsey to pay online was because Mr. Dorsey was on a “certified funds only” basis due to his “pattern” of making “insufficient monthly payments.”<sup>54</sup> Mr. Dorsey acknowledged this fact at the hearing.<sup>55</sup> Mr. Dorsey also disputed amounts assessed for utilities, contending that the utility costs “came from [the home Mr. Dorsey rented two years prior from Creditor].”<sup>56</sup> Mr. Dorsey argued that the current premises “was not ready at the time because of the storm” and that “the other home that they were in with [Creditor] was having the same problems.”<sup>57</sup> Creditor disputed Mr. Dorsey’s claim, contending that Mr. Dorsey signed the lease back in June 2023 and that he was “aware of the terms of this lease agreement.”<sup>58</sup> At the hearing, Mr. Dorsey (through counsel) informed the Court that seven months (\$2,280.00 per month) of post-petition rent were made, a total of \$15,960.00 total.<sup>59</sup> Mr. Dorsey argued that he paid \$14,549.80 of the \$15,960.00, which was “roughly a shortage of \$1,410.00.”<sup>60</sup>

The chapter 13 Trustee reported that Mr. Dorsey was current on his chapter 13 plan payments, and that this was Mr. Dorsey’s first bankruptcy case.<sup>61</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 10:54 a.m.

<sup>55</sup> *Id.* at 10:49 a.m.

<sup>56</sup> *Id.* at 10:50 a.m.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 10:54 a.m.

<sup>59</sup> *Id.* at 10:48 a.m.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 11:00 a.m.

On April 25, 2024, Mr. Dorsey filed his Response, in which he argued that he made post-petition rent payments to Creditor beginning in October 2023.<sup>62</sup> Mr. Dorsey contended that Creditor did not allow him to pay rent online, so he had to mail in money orders of his monthly charges to Scottsdale, Arizona by the fifth day of each month or else incur a late fee of \$290.00.<sup>63</sup> Mr. Dorsey claimed that this late fee could have been avoided if he was allowed to pay online.<sup>64</sup> Mr. Dorsey also argued that he was under the assumption that his monthly rent of \$2,280.00 included the utilities fees, and that he made post-petition payments of \$14,549.80 from October 2023 through April 2024.<sup>65</sup> Mr. Dorsey's wife lost her job at the beginning of December 2023, but was able to secure a new job in the middle of January 2024.<sup>66</sup> Mr. Dorsey lives at the residence with his wife and three children.<sup>67</sup>

On April 30, 2024, Creditor presented to the Court two exhibits: The Lease and the Ledger, which were entered into evidence without objection.<sup>68</sup> Mr. Dorsey did not present any evidence to support the arguments made in his Response to the Motion for Relief from Automatic Stay or those made at the April 30th hearing.

Upon review of the Lease and the Ledger, the Court finds that Mr. Dorsey's post-petition arrearage totals \$6,039.11. Under the terms of the Lease, Mr. Dorsey's post-petition obligations totaled \$20,165.35 (the base rent, late fees, and utilities assessment), and the Ledger shows that

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*; ECF No. 1.

<sup>68</sup> Creditor's Ex. 1 and Creditor's Ex. 2.

Mr. Dorsey paid Creditor a total of approximately \$14,788.80.<sup>69</sup> Mr. Dorsey was charged an additional \$280.00 per month because he paid rent after the fifth day.<sup>70</sup> Paragraph 12 of the Lease states that “the resident agrees to pay for all charges and deposits for all utilities and services used and consumed at the premises during the lease term.”<sup>71</sup> The Lease’s Utilities Addendum states that it is Creditor’s “company-wide policy throughout the nation” that residents are responsible for maintaining utility accounts in their own name.<sup>72</sup> Mr. Dorsey did not open his own account with MLGW, and was assessed a \$50.00 per month in a utility default fee “for the administrative cost of [Creditor] maintaining [the MLGW account].”<sup>73</sup>

Mr. Dorsey presented no evidence countering what the Ledger shows, but simply argued that “if you take out all the fees and all the utilities, my client would be \$1,410.00 behind” in post-petition balance.<sup>74</sup> Mr. Dorsey concedes that he “should be held accountable for” the base rent of \$2,280.00 per month, but he was “under the impression” that the utilities assessment was included in his rent based on his understanding of the 45-page lease.<sup>75</sup> Although Mr. Dorsey acknowledged that he was accruing late fees of \$228.00 in addition to the charges that he was not

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<sup>69</sup> Creditor’s Ex. 2. Creditor’s post-petition arrearage numbers are different on both its Motion for Relief from Automatic Stay and the evidence it presented at the April 30th hearing. Creditor stated that Mr. Dorsey had a post-petition arrearage of \$5,687.47. *See* ECF No. 48. Creditor filed its Motion for Relief from Automatic Stay on February 23, 2024, so the post-arrearage amount only covered the amounts owed up to February 2024. *Id.* At the April 30th hearing, Creditor stated that Debtor was in post-petition arrearage of \$6,039.11. Hearing on Motion for Relief from Automatic Stay on Apr. 30, 2024 (“Hearing on Apr. 30, 2024”), at 12:57 p.m. The Court finds that Creditor provided a higher post-petition arrearage amount at the April 30th hearing, because Creditor’s numbers included amounts that Mr. Dorsey both owed and paid Debtor for March 2024 and April 2024.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*; Creditor’s Ex. 1, at 12.

<sup>72</sup> Hearing on Apr. 30, 2024, at 12:52 p.m.; Creditor’s Ex. 1, at 21-22.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1:07 p.m.

<sup>75</sup> *Id.* at 1:05 p.m.

paying, he reiterated that between December 2023 and January 2024, Mr. Dorsey’s wife “lost her job” and was supporting a family of five.<sup>76</sup> However, Mr. Dorsey’s wife found another job “towards the end of January [2024],” which enabled Mr. Dorsey to pay \$2,236.00 in April 2024.<sup>77</sup>

## **II. LEGAL DISCUSSION**<sup>78</sup>

### **A. Relief From the Automatic Stay**

Subsection 362(d)(1) provides, in relevant part, that:

(d) On 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—  
(1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]<sup>79</sup>

As stated in subsection 362(g): “In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and (2) the party opposing such relief has the burden of proof on all other issues.”<sup>80</sup> There is no equity in Mr. Dorsey’s leasehold interest in this residential lease.<sup>81</sup>

The central issue is whether “cause” exists to grant relief from stay to Creditor. The Code does not define the term “cause” but bankruptcy courts, including those in the Sixth Circuit, have

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<sup>76</sup> *Id.* at 1:14 p.m.

<sup>77</sup> *Id.*

<sup>78</sup> The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). The following shall constitute the court’s findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

<sup>79</sup> 11 U.S.C. § 362(d)(1) (2024).

<sup>80</sup> 11 U.S.C. § 362(g) (2024).

<sup>81</sup> ECF No. 48, at 2.

concluded and reasoned that “cause” should be determined on a case-by-case basis.<sup>82</sup> Subsection 362(d)(1) further provides that “cause” also includes lack of “adequate protections.”<sup>83</sup> A landlord is not adequately protected if the tenant fails to pay post-petition rent.<sup>84</sup> A debtor’s post-petition failure to comply with the terms of a lease agreement, including failure to pay rent and other assessments, constitutes “cause” to grant a landlord relief from the automatic stay.<sup>85</sup>

Here, Mr. Dorsey failed to comply with the terms of the Lease. Specifically, the rent, late fees, and utility assessments were in default post-petition.<sup>86</sup> Post-petition, Mr. Dorsey defaulted a total of about \$668.59 on October 2023; about \$584.40 on November 2023; about \$1,311.98 on

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<sup>82</sup> See *In re Jeffers*, 572 B.R. 681, 684 (Bankr. N.D. Ohio 2017) (explaining that “[c]ause may exist in a wide variety of circumstances.”); *In re Combs*, 435 B.R. 467, 471 (Bankr. E.D. Mich. 2010) (concluding that “in determining whether cause exists, the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Code.”); *In re Shultz*, 325 B.R. 197, 201 (Bankr. N.D. Ohio 2005) (concluding that “cause” requires that the creditor make “minimal threshold” showing that providing stay relief would “perceptibly further those ends sought by the Code.”).

<sup>83</sup> 11 U.S.C. § 362(d)(1) (2024).

<sup>84</sup> See *In re Plumeri*, 434 B.R. 315, 323 (S.D.N.Y. 2010) (agreeing with the bankruptcy court that the landlord lacked adequate protection, where the debtor kept her landlord “at bay for too long without paying rent.”); See also *In re Poissant*, 405 B.R. 267, 271-72 (Bankr. N.D. Ohio 2009) (citing *United Savs. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 370 (1988)) (explaining that “[c]ause” under section 362(d)(1) includes “adequate protection” and that adequate protection may be provided “only after there is a judicial determination that a secured creditor’s interest is not adequately protected.”).

<sup>85</sup> See generally *Lamarche v. Miles*, 416 B.R. 53, 54-63 (E.D.N.Y. 2009) (explaining that “in the context of a tenant’s obligations to make payments to a landlord where a Chapter 13 petition has been filed, ‘cause’ can arise when a tenant fails to make post-petition payments or to otherwise meet his rental obligations.”) (citation omitted). Courts have further elaborated that “cause” exists to grant relief from the automatic stay if a tenant failed to satisfy his residential lease agreement in violation of state law. See *In re Griggsby*, 404 B.R. 83, 93-94 (Bankr. S.D.N.Y. 2009) (holding that “cause” existed for relief from automatic stay in light of the debtor’s failure to show grounds upon which a state court would vacate warrant of eviction); *Matter of Schewe*, 94 B.R. 938, 945 (Bankr. W.D. Mich. 1989) (finding that a creditor may evict a debtor without prior bankruptcy court approval if the residential property is not protected by the automatic stay, regardless of whether the debtor entered into the lease pre-petition or post-petition); *In re Darwin*, 22 B.R. 259, 264-65 (Bankr. E.D.N.Y. 1982) (concluding that the landlord was entitled to have the automatic stay lifted where the debtor had no rights under both the residential lease and New York law at the time the debtor filed his bankruptcy petition, because the debtor had failed to make current post-petition rent payments for the months of February, March, and April).

<sup>86</sup> ECF No. 1.

December 2023; about \$1,645.37 on January 2024; about \$1,239.38 on February 2024;<sup>87</sup> no defaults on March 2024;<sup>88</sup> and about \$616.84 on April 2024.<sup>89</sup>

Paragraph 4 of the Lease states that the rent of \$2,280.00 “shall be due without notice, demand or deduction” and that the rent is “payable in advance on or before the first (1st) day of each calendar month,” and Mr. Dorsey defaulted on his monthly rent payments for October 2023, November 2023, December 2023, January 2024, February 2024, March 2024, April 2024, and May 2024, which also subjected him to monthly late fees of \$228.00 (ten percent of the monthly rent).<sup>90</sup> Mr. Dorsey’s post-petition rent payments were paid beyond the due dates and partial payments were made, as shown on the Ledger.<sup>91</sup> Creditor currently pays the cost of utilities because Mr. Dorsey failed to establish utilities in his name with MLGW.<sup>92</sup> Although the Utilities Addendum of the Lease states that “it is the responsibility of the Resident to maintain Utility accounts in the Resident’s name” and that the resident “must establish accounts in the Resident’s name for electricity and any utilities that are bundled with electricity by the electricity provider,” Mr. Dorsey did not open an MLGW account after the filing of his bankruptcy case.<sup>93</sup>

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<sup>87</sup> A portion of the Ledger for the month of February 2024 is not legible, so it is unclear whether Mr. Dorsey accrued late fees that month. Hence, the Court did not include the late fees in its calculation of the amount that Mr. Dorsey defaulted to Creditor for February 2024. *See* Creditor’s Ex. 2, at 2.

<sup>88</sup> At the hearing, Mr. Dorsey stated that he paid “an additional amount of \$1,500.00” in March 2024, because his wife found new employment “towards the end of January [2024].” Hearing on Apr. 16, 2024, at 10:48 a.m.

<sup>89</sup> Although the Ledger lists the amount of rent, utilities, and late fees owed to Creditor, and the amount Mr. Dorsey paid to Creditor for each month, the Ledger does not specify whether the amount that Mr. Dorsey paid was rent, utilities, or late fees. *See* Creditor’s Ex. 2. Hence, the Court did a comprehensive calculation that encompasses the rent, utilities, and late fees in calculating the amount Mr. Dorsey failed to pay Creditor each month.

<sup>90</sup> *Id.*

<sup>91</sup> Hearing on Apr. 16, 2024, at 10:54 a.m.

<sup>92</sup> Hearing on Apr. 16, 2024, at 10:47 a.m.

<sup>93</sup> Creditor’s Ex. 1, at 21-22; Hearing on Apr. 30, 2024, at 12:52 p.m.

Because Mr. Dorsey is not registered with MLGW and Creditor paid the utility costs, an assessment of Mr. Dorsey's total post-petition utility costs amount to approximately \$2,837.35.<sup>94</sup>

Mr. Dorsey further argued that mailing his rent payment (as opposed to paying his rent electronically) is inconvenient and results in a delay in the payments to the landlord.<sup>95</sup> Because of Mr. Dorsey's defaults and partial payments of his rent, utilities assessments, and late fees, the landlord decided to accept payments in the form of a "certified funds only basis" which is not stated in the Lease. If evidence was presented showing that funds were available to be paid to Creditor, the Court could direct Creditor to select the funds through another method. However, with no showing that there were funds available to pay the landlord, this argument is without merit. Although the Court believes this 45-page residential lease agreement (and its myriad of addenda) is onerous, Creditor has demonstrated sufficient "cause" to be granted relief from the automatic stay. Debtor presented no contrary evidence or law.

### **B. Relief from the Co-Debtor Stay**

Creditor further seeks relief from the co-debtor stay.<sup>96</sup> Subsection 1301(c) reads:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that--(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor; (2) the plan filed by the debtor proposes not to pay such claim; or (3) such creditor's interest would be irreparably harmed by continuation of such stay.<sup>97</sup>

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<sup>94</sup> Hearing on Apr. 30, 2024, at 12:52 p.m.

<sup>95</sup> Hearing on Apr. 16, 2024, at 10:49 a.m.

<sup>96</sup> ECF No. 48, at 2.

<sup>97</sup> 11 U.S.C. § 1301(c) (2024).



Here, Mr. Dorsey's wife's is the non-filing spouse.<sup>98</sup> Page 1 of the Lease shows that Mr. Dorsey's wife is not a party to the Lease nor is she an obligor to the Lease.<sup>99</sup> However, to the extent that section 1301(a) protects her as a co-debtor, the Court finds and concludes that Creditor is entitled to relief from the co-debtor stay, because of the post-petition lease defaults.<sup>100</sup>

### **III. CONCLUSION AND ORDER**

For the reasons stated above, the Court finds and concludes that Creditor established sufficient "cause" to be entitled to relief from automatic stay pursuant to 11 U.S.C. § 362(d)(1) and relief from the co-debtor stay pursuant to 11 U.S.C. § 1301(c). Accordingly, it is

#### **ORDERED:**

1. Creditor's Motion for Relief from Automatic Stay and Co-Debtor Stay pursuant to 11 U.S.C. §§ 362(d)(1) and 1301(c) is **GRANTED**.

2. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated as to the leased property located at: 8818 Lybrook Cove East, Cordova, Tennessee 38016.

3. The automatic stay is terminated for the purpose of allowing Creditor to take any steps necessary to exercise any and all rights it may have in the leased property, to gain possession of said lease property, but Creditor shall not obtain *in personam* relief against Debtor.<sup>101</sup>

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<sup>98</sup> ECF No. 1.

<sup>99</sup> Creditor's Ex. 1, at 1.

<sup>100</sup> ECF No. 24. The Court believes that Creditor made an argument under section 1301(a) to ensure that it receives relief from the automatic stay from Mr. Dorsey's wife in case she is protected from the automatic stay, out of an abundance of caution.

<sup>101</sup> The Court simply grants Creditor relief from the automatic stay as to Debtor, and pursuant to 11 U.S.C. §§ 362(1)(2) and 1301(c). This decision and order do not impact any non-bankruptcy remedy that may be available to Debtor and the non-filing spouse.

**A Copy of this Memorandum Opinion and Order shall be served on:**

Debtor

Debtor's Attorney

Creditor

Creditor's Attorney

Chapter 13 Trustee