

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re:

AUSTIN THAXTON WALKER,

Debtor.

Case No. 25-40660-BRW

Chapter 7

SUMMARY ORDER ON CREDITOR’S MOTION TO CONFIRM AUTOMATIC STAY

On March 9, 2026, secured creditor Freedom Mortgage Corporation (the “Movant”) filed its *Motion of Freedom Mortgage Corporation for Order to Confirm No Automatic Stay is in Effect Pursuant to 11 U.S.C. § 362(c)(2)(C)* (the “Motion”). Doc. No. 38. No objection to the Motion has been filed, and the Movant has submitted a proposed order to the Court.

The Court declines to enter the proposed order as suggested by the Movant. However, while the Motion appears to provide sufficient information for the Court to find cause to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1), the Motion was not filed or noticed as a stay relief motion.

FACTUAL BACKGROUND

The Motion seeks an order confirming the automatic stay has terminated pursuant to 11 U.S.C. § 362(c)(2)(C) with respect to specific real property in which the Movant has a secured interest. Specifically, the Movant suggests that because the Debtor Austin Thaxton Walker (the “Debtor”) obtained a discharge in this chapter 7 case, the automatic stay has terminated as to the real property he owns.

Importantly, filed along with the Motion, the Movant attaches a *Declaration in Support of Motion to Confirm Absence of Stay* (Doc. No. 38-1) (the “Declaration”), which is signed by an employee of the Movant with knowledge of the facts declared in the Declaration. In relevant

part, the Declaration states that the Debtor has missed six payments required by the loan documents as of February 2026. *Declaration* at ¶ 9.

The Debtor's bankruptcy case remains open, and there has been no action by the chapter 7 trustee or other parties in interest to abandon the bankruptcy estate's interest in the real property owned by the Debtor.

LAW AND ANALYSIS

Section 362(c)(2)(C) provides: "Except as provided in subsections (d), (e), (f), and (h) of this section— . . . (2) the stay of any other act under subsection (a) of this section continues until the earliest of— . . . (C) if the case is a case under chapter 7 of this title concerning an individual . . . the time the discharge is granted or denied." 11 U.S.C. § 362(c)(2)(C). This section provides that the "automatic stay of acts against [the] debtor *in personam* expires when the debtor is granted a discharge." *In re Manuel*, 2007 WL 2254695, at *1 (Bankr. E.D. Cal Aug. 2, 2007) (citing 11 U.S.C. § 362(c)(2)(C)).

Upon entry of the discharge, the automatic stay of 11 U.S.C. § 362(a) terminates as to the debtor's personal liability.¹ Upon discharge, however, the automatic stay does not so terminate as to property of the estate. For that timeframe, 11 U.S.C. § 362(c)(1) provides: "Except as provided in subsections (d), (e), (f), and (h) of this section—(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate" 11 U.S.C. § 362(c)(1).

Section 541(a) specifies the property included in the bankruptcy estate, which includes "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1). Moreover,

¹ Generally speaking, the automatic stay is replaced by the discharge injunction of 11 U.S.C. § 524(a) upon a debtor's discharge being granted in the case, which prevents a creditor from pursuing the debtor personally for any discharged debt.

“[t]he estate does not relinquish property until it is administered in the bankruptcy proceeding, the bankruptcy case is closed, or the estate abandons the property under 11 U.S.C. § 554.” *In re Mwangi*, 473 B.R. 802, 809 (D. Nev. 2012) (citing *In re Gebhart*, 621 F.3d 1206, 1212 (9th Cir. 2010); *In re McLain*, 516 F.3d 301, 315 (5th Cir. 2008) (quotation omitted)).

Applying these principles, the Motion is not well founded upon 11 U.S.C. § 362(c)(2)(C). While the Debtor has received a discharge in this case, and the automatic stay is now terminated as to the Debtor’s *in personam* liability, the result is different for property of the estate under 11 U.S.C. § 362(c)(1). Here, it does not appear, and the Movant has not alleged, that the real property has been administered in the bankruptcy proceeding nor has it been abandoned by the chapter 7 trustee. Further, the bankruptcy case remains open. As such, the real property is still property of the estate, subject to the automatic stay under 11 U.S.C. § 362(a), pursuant to 11 U.S.C. § 362(c)(1), regardless of whether the Debtor obtained his discharge. Based on this analysis, the Court may neither conclude nor confirm that the automatic stay has terminated as to the real property at issue, as Movant requests.

The Court notes that the Movant has seemingly provided the Court with sufficient grounds to conclude that cause is present to terminate the automatic stay with respect to the real property under 11 U.S.C. § 362(d)(1). According to the Declaration, the Debtor has failed to make at least six payments on the debt secured by the Movant’s deed of trust as to the real property. Failure to make postpetition payments, by itself, is grounds to find “cause” to terminate the automatic stay under 11 U.S.C. § 362(d)(1). *Ellis v. Parr (In re Ellis)*, 60 B.R. 432, 435 (9th Cir. BAP 1985). These assertions made under penalty of perjury have not been rebutted by the Debtor or any other parties in interest. However, the Motion was not styled as one seeking relief from the automatic stay and therefore Debtor did not receive notice that stay

relief might be granted. In addition, Movant has not paid the requisite filing fee for a stay relief motion. Accordingly,

IT IS HEREBY ORDERED that the Motion, Doc. No. 38, is DENIED as filed. Movant is free to file and serve a separate stay relief motion.



DATED: April 10, 2026

A handwritten signature in black ink, appearing to read "Brent R. Wilson". The signature is written in a cursive style and is positioned above a horizontal line.

Brent R. Wilson
U.S. Bankruptcy Judge