



In re:

**Robert Goodrich,
Debtor.**

**Chapter 13
Case # 17-10500**

*Appearances: Rebecca Rice, Esq.
Cohen & Rice
Rutland, Vermont
For the Debtor*

*Heather Z. Cooper, Esq.
Facey Goss & McPhee, P.C.
Rutland, Vermont
For Jennifer Soutar*

*Jan M. Sensenich, Esq.
Office of the Chapter 13 Trustee
Norwich, Vermont
As the Standing Trustee*

ORDER
GRANTING CREDITOR SOUTAR PARTIAL RELIEF FROM ORDER¹

On September 24, 2018, this Court entered a memorandum of decision and order overruling Creditor Soutar's objection and granting the debtor's motion to continue the automatic stay, with conditions (doc. ## 44, 45, the "Decision"). On October 5, 2018, Creditor Soutar² filed a motion for relief from order (doc. # 48, the "Motion for Relief") seeking (i) relief based on the "newly discovered evidence" that the Debtor did not have insurance on the Property at the time the Court issued the Decision, (ii) a determination that this failure to maintain insurance demonstrates the Debtor's plan does not have a reasonable probability of success, and (iii) reconsideration and denial of the extension of the automatic stay. The Debtor opposed the Motion for Relief, asserting (a) the Debtor had insurance from USAA that expired on September 17, 2018 and insurance through Geico that went into effect on September 14, 2018, and thus no gap in insurance, and (b) the Debtor's only error with respect to insurance was his failure to promptly notify Creditor Soutar of the new insurance coverage (doc. # 55).

¹ This Order modifies the terms of the conditional relief granted to the Creditor (doc. # 45), to delete the Debtor's opportunity to cure, in response to the Creditor's motion for relief from order (doc. # 48).

² All capitalized terms in this order are defined terms and have the same meaning herein as in the Decision (doc. # 44).

On October 24, 2018, Creditor Soutar filed a reply, challenging the Debtor's arguments and reiterating her position that the Debtor had failed to meet his obligations to protect her collateral (doc. # 56, the "Reply"). Additionally, Creditor Soutar asks (for the first time) for alternative relief in the Reply: a modification of the Decision to grant her conditional relief from stay immediately upon the Debtor's default, without an opportunity for the Debtor to cure.

THE COURT FINDS Creditor Soutar has not shown the Debtor defaulted in his obligation to maintain insurance coverage, or any other basis for overturning this Court's findings of fact or conclusions of law in the Decision, and thus is not entitled to the relief she seeks in the Motion for Relief.

However, THE COURT FINDS cause to grant the alternative relief Creditor Soutar seeks in the Reply, pursuant to Bankruptcy Rule 9024. The Court had intended to give Creditor Soutar conditional relief upon any default by the Debtor, without an opportunity for the Debtor to cure, for the reasons set forth on pages 17-18 of the Decision. It was the Court's error that the Decision's order stated otherwise. The Reply has brought this error to the Court's attention and prompts the Court to correct it at this time.

Accordingly, IT IS HEREBY ORDERED that the stay is extended as to Creditor Soutar, subject to conditional relief from stay in favor of Creditor Soutar on the following terms and conditions:

- I. Jennifer Soutar may immediately file a proposed order granting her conditional relief from the automatic stay in this case, consistent with this order, which the Court will promptly grant (the "Creditor's Conditional Order").
- II. The relief granted under the Creditor's Conditional Order shall become absolute if:
 - a) the Debtor defaults by:
 - i. failing to make a plan payment when due,
 - ii. failing to make any direct payment to Creditor Soutar when due,
 - iii. failing to consistently maintain the required insurance on the Property securing Creditor Soutar's interest, or
 - iv. failing to remain current on any post-petition tax obligations for that property; and
 - b) Creditor Soutar files an affidavit specifying the date and details of the Debtor's default, and serves it on both the Debtor and his attorney; and
 - c) the Debtor fails to rebut the factual underpinnings of the affidavit within seven (7) days.
- III. If these events occur, then Creditor Soutar may file a proposed order for absolute relief from stay, without any further notice to the Debtor or his attorney.

IT IS FURTHER ORDERED that all other terms of the Decision's order (doc. # 45) remain in full force and effect.

October 25, 2018
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge