

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

January 10, 2012 at 1:30 P.M.

1. **11-47007-C-13 MARY BAZIL MOTION FOR RELIEF FROM**
JEB-1 Pro Se AUTOMATIC STAY
12-10-11 [21]

**DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2011. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay. No appearance required.

Deutsche Bank National Trust seeks relief from the automatic stay with respect to the real property commonly known as 8965 Risley Court, Granite Bay, California. While the moving party has provided an uncertified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership and a copy of the write of possession, there is no declaration to authenticate these documents and, as uncertified records, the documents are not self-authenticating. See Fed. R. Evid. 902(4).

The court has not been presented with the requisite evidence in support of the various contentions made by Movant. A motion is to be supported by evidence establishing the factual grounds upon which the motion is based. Local Bankruptcy Rule 9014-1(d)(6). Movant has not offered any admissible evidence that Debtor and the Estate have no equity in the property, which is Movant's burden. 11 U.S.C. § 362(g)(1).

Based upon the evidence submitted to the court, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is denied without prejudice.

2. **11-40637-C-13 KEITH HODGSON MOTION FOR RELIEF FROM**
BRI-1 Michael T. McEnroe AUTOMATIC STAY
11-28-11 [75]
AURORA LOAN SERVICES LLC VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on November 28, 2011. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Aurora Loan Services LLC seeks relief from the automatic stay with respect to the real property commonly known as 125 Allen Street, Jackson, California. The moving party has provided the Declaration of Evangiline Tillman, an Aurora Bank Bankruptcy Specialist, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Tillman Declaration states that the Debtor failed to make three (3) postpetition payments, with a total of \$4,963.93 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is

determined to be \$201,180.97, as stated in the Tillman Declaration, while the value of the property is determined to be \$175,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Aurora Loan Services, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Aurora Loan Services, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 125 Allen Street, Jackson, California.

No other or additional relief is granted.

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION VS.**

CASE DISMISSED 11-15-11

Local Rule 9014-1(f) (2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 14, 2011. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. In the event there is opposition, the court will reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay and to annul the stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Federal National Mortgage Association seeks annulment and termination of the automatic stay with respect to the real property commonly known as 3290 Country Club Drive, Cameron Park, California pursuant to 11 U.S.C. § 362(d) (1).

The moving party has provided the Declaration of DelMarie C. Broco (Movant's attorney of record) to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a prepetition Trustee's Sale on February 4, 2011. Debtor is a tenant at sufferance, and movant commenced an unlawful detainer action in El Dorado County Superior Court on August 1, 2011. A trial was held on October 28, 2011 – one day after the commencement of this bankruptcy case – and Movant received a Writ of Execution on November 2, 2011. Movant asserts it had no knowledge of the bankruptcy case. Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Fn.1. However, the Trustee's Deed Upon Sale is not a certified copy, and the court questions the basis for counsel testifying under penalty of perjury that counsel has personal knowledge of the Trustee's Deed. Nonetheless, Movant also provides a copy of the unlawful detainer judgment and Writ of Execution, which is properly authenticated by the Broco Declaration. Therefore, the court finds that there is evidence that Movant owns the subject property.

Fn. 1. The court notes that counsel filed the exhibits buried behind the declaration and without the required index. The practice in this court requires:

[e]xhibits to a pleading or paper shall be filed as [a single] exhibit document, separate from the document to which they relate. All documents included in an exhibit document should be related to the same document. **DO NOT** include exhibits related to different documents in the same exhibit document.

Revised Guidelines for the Preparation of Documents, ¶(6) (a) (emphasis in original). Further, the court requires, "[a]n index that lists each exhibit individually . . . [to] be included as the first page of the exhibit document." *Revised Guidelines for the Preparation of Documents*, ¶(6) (b).

Counsel should review the Local Bankruptcy Rules and the *Revised Guidelines for the Preparation of Documents* to ensure their compliance with the court's formatting requirements. Compliance with the *Revised Guidelines for the Preparation of Documents* is not only required by the Local Bankruptcy Rules, see Local Bankr. R. 9014-1(c) (1), but it assists the court in reviewing the motions and pleadings in its near-paperless environment. When parties neglect the court's formatting requirements, it causes waste the court's resources and creates additional burdens on the other parties.

Pursuant to § 362(d) (1), the court shall grant relief from the stay, such as by terminating or annulling the stay, for cause. Retroactive annulment of the automatic stay is within the discretion of the court. *Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.)*, 129 F.3d 1052, 1054 (9th Cir. 1997). The court, in making a case-by-case review, must balance the equities to determine if annulment is justified. *Id.* at 1055. Though not dispositive, most courts consider two factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* The Bankruptcy Appellate Panel for the Ninth Circuit suggests consideration of ten additional factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of the circumstances test);
5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;

9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;

11. Whether annulment of the stay will cause irreparable injury to the debtor;

12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003). The factors are not a scorecard, but merely a framework for the analysis in which any one factor may outweigh the others as to be dispositive in a particular case. *Id.*

Here, Debtor filed a "skeletal" petition on October 27, 2011. (Dkt. 1). Movant had no knowledge of the bankruptcy case when it proceeded with the unlawful detainer trial and received a Writ of Execution. This case was dismissed on November 15, 2011, for failure to timely file the required documents. (Dkt. 16).

In addition, the court has found a subsequently filed case filed by Debtor. On November 30, 2011, Debtor commenced Case No. 11-47873-E-13, by filing yet another "skeletal" petition. The court granted the Debtor an extension up until December 18, 2011, to file the required documents. (Case No. 11-47873, Dkt. 20). Debtor did not file the required documents and that case was dismissed on December 19, 2011.

The court finds, from the totality of the circumstances, that retroactive annulment of the automatic stay as to the real property commonly known as 3290 Country Club Drive, Cameron Park, California, is appropriate.

The court shall issue a minute order annulling the automatic stay from the date of this order through and including the date of the petition filing. Consequently, because Debtor's case was dismissed on November 15, 2011, the stay also terminated as of the time of dismissal. 11 U.S.C. § 362(c)(2)(B).

The moving party has alleged adequate facts and present sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are annulled from the date of this order through and including the date of the petition filing.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

3. **11-48557-C-13 DHANNY GUANZON MOTION FOR RELIEF FROM
SEZ-1 Pro Se AUTOMATIC STAY
12-13-11 [7]**

**DARG, LLC VS.
CASE DISMISSED 12/20/11**

Local Rule 9014-1(f)(1) Motion - Trustee's Nonopposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 13, 2011. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest, except for the Chapter 13 Trustee who has filed nonopposition, are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is denied as moot. No appearance required.

Darg, LLC, seeks annulment and termination of the automatic stay with respect to the real property commonly known as 410 Auburn Drive, Vallejo, California pursuant to 11 U.S.C. § 362(d)(2). Section 362(d)(2) permits relief from the stay with respect to an act against property, such as by terminating or annulling the stay, if the debtor does not have equity in such property and such property is not necessary to an effective reorganization.

Movant contends that Debtor has no equity in the property as Debtor did not own the property upon filing of the bankruptcy petition. The moving

party has provided the Declaration of Jason Bandarra (Senior Property Manager for Waypoint Real Estate Group, Manager for Darg, LLC) to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a prepetition Trustee's Sale on November 3, 2011. Debtor is a tenant at sufferance, and movant commenced an unlawful detainer action in Solano County Superior Court on November 23, 2011. On December 6, 2011, the state court entered an unlawful detainer judgment awarding Movant possession of the property, and Movant received a Writ of Execution. On December 8, 2011, the Solano County Sheriff's Office served Debtor with a sheriff's notice to vacate.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

However, the court notes that Debtor filed the petition on December 9, 2011, and Movant's actions occurred prior to the commencement of the bankruptcy case. Therefore, Movant's actions were not subject to the automatic stay provisions. 11 U.S.C. § 362(a). Accordingly, the court finds that annulment of the stay is unnecessary. Moreover, Debtor's case was dismissed on December 20, 2011, and the stay terminated as of the time of dismissal. 11 U.S.C. § 362(c)(2)(B). The motion for relief from the automatic stay is, therefore, denied as moot.

The moving party has not alleged adequate facts to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion for relief from the automatic stay is denied as moot.

No other or additional relief is granted.

**29TH STREET SINGLE FAMILY
FUND V, L.P. VS.**

Local Rule 9014-1(f)(2) Motion - Opposition filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2011. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Debtors appeared at the hearing held on December 6, 2011, and asserted their opposition to the Motion. The Motion was set for final hearing on January 10, 2012. The Debtors were given up until December 21, 2011, to file and serve their opposition, if any. Movant was provided up until December 30, 2011 to file its reply, if any.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

BACKGROUND

29th Street Single Family Fund V, L.P., seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) with respect to the real property commonly known as 8061 Cornerstone Way, Citrus Heights, California. The moving party has provided the Declaration of Alan O'Brien, an officer of 29th Street Single Family Fund V, L.P., to introduce evidence which establishes that the Debtors are no longer the owners of the property, movant having purchased the property at a Trustee's Sale on September 20, 2011, at 1:47 p.m. Movant has provided a copy of the recorded Trustee's Deed Upon Sale to support its claim of ownership. (Exh. A, Dkt. 29). The Trustee's Deed Upon Sale is dated September 30, 2011, and was recorded on October 3, 2011 with the Sacramento County Recorder's office.

Debtors oppose the motion on the basis that Movant recorded a void Trustee's Deed Upon Sale. Debtors commenced this bankruptcy case by filing a voluntary petition on September 20, 2011, at 3:23 p.m. (Dkt. 1). This was one hour and forty-six minutes after the foreclosure sale took place. Debtors argue that the trustee's deed issuance was a violation of the automatic stay and that the Deed is therefore void. Based on the case cited by Debtors (discussed infra), it appears that Debtors' line of logic is that because the deed was issued after the petition was filed, then it was in violation of the automatic stay, there was never a transfer of property,

Movant never perfected any interest, and Movant is not entitled to relief from the automatic stay.

DISCUSSION

Section 362(d)(1) provides that a bankruptcy court shall grant relief from the stay "for cause, including lack of adequate protection of an interest in property of such party in interest." "Cause" has no clear definition and is determined on a case-by-case basis. *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

Cal. Civ. Code § 2924h governs bidding rules for a trustee's sale at a nonjudicial foreclosure. Section 2924h(c) states in pertinent part: "The trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar dates after the sale" (Emphasis added). Section 2924h(c) was amended to include the above provision to address concerns as to the validity of a prepetition foreclosure sale in situations where debtors rush to file for bankruptcy after the sale but before the trustee's deed was recorded. *In re Bebensee-Wong v. Fannie Mae (In re Bebensee-Wong)* 248 B.R. 820 (B.A.P. 9th Cir. 2000); *In re Sanders*, 198 B.R. 326 (Bankr. S.D. Cal. 1996). However, the legislative history of the statute does not make clear how the timing of the execution of the deed fits into this analysis.

Debtors rely on *In re Raul Gonzalez*, 456 B.R. 429 (Bankr. C.D. Cal. 2011). In *Gonzalez*, the bankruptcy court held that, regardless of whether the acceptance of the purchaser's bid at the foreclosure sale occurred prior to time the debtor filed his petition, relief from the stay based on unlawful detainer was not warranted because there was no pre-petition transfer of the property. The court pointed to § 1091 of the California Civil Code which provides that an estate in real property can be transferred only by deed or by operation of law. The *Gonzalez* court stated, however, that a nonjudicial foreclosure is not a transfer by operation of law and that a deed from the trustee is required to effectuate the transfer of the real property in a nonjudicial foreclosure. *Id.* at 434-35. The court reasoned that although California's statutes regulate nonjudicial foreclosures the mere regulation of a sale transaction does not turn the transaction into a transfer by the law's operation because "[a] transfer by operation of law occurs when property is transferred pursuant to the terms of a statute without any action required by any private party directly relating to the transfer." *Id.* at 434. In addition, the court stated that the "deemed final" provision of § 2924h does not alter the rule of section 1091 of the California Civil Code that ownership of, and title to, real estate passes by deed. *Id.* at 438. The *Gonzalez* court concluded that the deed, which was executed several days after the petition date, was void in view of the bankruptcy stay. *Id.* at 434-38.

This court respectfully disagrees. It is the court's view that "[a] foreclosure sale accomplishes a 'transfer' of property by operation of law." Miller and Starr California Real Estate 3rd. Ed. § 8:1. At the very least, it provides a presumption that the purchaser gained legal and equitable title to the property. Here, the sale occurred at 1:47 p.m. on September 20, 2011, at which point the Movant presumptively gained legal and equitable title to the subject property. *Hamilton v. Hernandez (In re Hamilton)*, 2005 Bankr. LEXIS 3427 *6 (B.A.P. 9th Cir. 2005). This preceded the bankruptcy filing by one hour and forty-six minutes.

Furthermore, "Section 2924h(c) unambiguously presents two distinct concepts. The first: a sale is final when the trustee accepts the last and highest bid. The second: if the deed is recorded within fifteen days, the date of recordation is retroactive to the date of the sale." *Davisson v. Engles, (In re Engles)*, 193 B.R. 23, 27 (Bankr. S.D. Cal. 1996). The plain language of Cal. Civ. Code § 2924h(c) provides that the sale is deemed final upon the acceptance of the last and highest bid. *Id.*; *In re Garner*, 208 B.R. 698, 700 (Bankr. N.D. Cal. 1997).

In *Garner* and *Engles*, the sales took place prepetition, but the deeds were not issued until after the petition filing. Both courts held that the debtors held only bare legal title to the property and reasoned that the plain language of § 2924h(c) provides that the sale is deemed final when the highest and last bid is accepted. *Garner*, 208 B.R. at 700; *Engles* 193 B.R. at 27.

The *Garner* court noted that an argument may be made that section 2924h(c) is only effective if the foreclosure sale deed has been issued before the bankruptcy petition is filed. This court agrees with the *Garner* court's conclusion that the foreclosure sale is final once the highest and last bid is accepted and the subsequent issuance of the deed does not violate the automatic stay but is best viewed as part of the perfection process. Therefore, so long as the sale was completed before September 20, 2011, at 3:23 p.m., when Debtor filed the Chapter 13 petition, the sale was complete and Debtor holds only legal title to the property.

Because the movant presumptively held title to the property and such title was perfected by the recordation of the trustee's deed, Debtor had no interest in the property as of the time she filed her chapter 13 petition. *Hamilton*, 2005 Bankr. LEXIS at *7; see also *Bebensee-Wong v. Fannie Mae (In re Bebensee-Wong)*, 248 B.R. 820 (B.A.P. 9th Cir. 2000) (reasoning that since appellee recorded the deed within 15 days of the sale, the trustee's sale became perfected at 8 a.m. on the day of the sale pursuant to § 2924h(c) and appellant had no interest in the property at the time of her petition).

CONCLUSION

The court shall issue a minute order terminating and vacating the automatic stay to allow 29th Street Single Family Fund V, L.P., and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8061 Cornerstone Way, Citrus Heights, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has not alleged adequate facts and present sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed

by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow 29th Street Single Family Fund V, L.P., and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8061 Cornerstone Way, Citrus Heights, California.

No other or additional relief is granted.

5. **11-49288-C-13 LYUDMILA KISHCHENKO** **MOTION FOR RELIEF FROM**
Pro Se **AUTOMATIC STAY**
12-23-11 [12]

LILIYA WALSH VS.

Local Rule 9014-1(f)(2) Motion.

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on December 23, 2011. By the court's calculation, 18 days' notice was provided. 14 days' notice is required. However, the Proof of Service indicates that the motion was sent to "Andrey Kishchenko."

Final Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

The Motion for Relief from the Automatic Stay is denied, without prejudice.

The Proof of Service indicates that service was made on "Andrey Kishchenko." There is no evidence that Andrey Kishchenko is the agent for service of process for the Debtor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion for relief from the automatic stay is denied, without prejudice.

No other or additional relief is granted.