

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

January 14, 2016 at 10:00 a.m.

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1. [12-93049](#)-E-11 MARK/ANGELA GARCIA CONTINUED MOTION FOR RELIEF
AP-1 Mark J. Hannon FROM AUTOMATIC STAY
10-30-15 [[684](#)]

DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR
RESIDENTIAL ACCREDIT LOANS,
INC. VS.

CONTINUED: 12/3/15

Final Ruling: No appearance at the January 14, 2016 hearing is required.

The court having previously continued the Motion for Relief from the Automatic Stay to 10:00 a.m. on April 28, 2016 (Dckt. 730), **the Motion for Relief from the Automatic Stay is removed from the calendar.**

2. [15-91053](#)-E-7 STACY VERA MOTION FOR RELIEF FROM
APN-1 Pro Se AUTOMATIC STAY
11-30-15 [[15](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 30, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

January 14, 2016 at 10:00 a.m.

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 non-responding parties 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.

Stacy Rose Vera ("Debtor") commenced this bankruptcy case on November 3, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Ford Fusion, VIN ending in 8172 (the "Vehicle"). The moving party has provided the Declaration of Sharena Bynum to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bynum Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$388.59 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments in default, with a pre-petition arrearage of \$1,949.83.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$17,667.05, as stated in the Bynum Declaration.

Movant has also provided a copy of the [Kelly Blue Book/NADA] Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The value of the Vehicle is determined to be \$8,725.00.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made 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 and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic

stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence 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. FN.1.

FN.1. The fourteen day stay of enforcement provided for by the Supreme Court in Federal Rule of Bankruptcy Procedure 4003(c) may be waived for cause shown. In the Motion, the only reference to the 14-day stay is a one line reference in the prayer asking that it be waived. The Motion does not state what grounds, if any, Movant states (subject to Fed. R. Bankr. P. 9011) upon which Movant relies.

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 Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2009 Ford Fusion, VIN ending in 8172 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

3. [15-90358](#)-E-11 LAWRENCE/JUDITH SOUZA
RDW-1 David M. Meegan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-5-15 [[169](#)]

PROVIDENT CREDIT UNION VS.
CONTINUED: 12/3/15

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).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is continued to 10:00 a.m. on May 12, 2016, and the court orders adequate protection payment and marketing activity for Debtor in Possession.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 97 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,574.38 in post-petition payments past due.

OPPOSITION

Opposition has been filed by Lawrence James Souza and Judith Louise Souza ("Debtors") on November 19, 2015. Dckt. 187.

The Debtor first notes that the Debtor has entered into a contract to sell the Property to Halferty Development Corporation for \$250,000.00. The sale escrow had been opened and the Debtor will seek court approval of the sale when it becomes clearer that Halferty will close on the adjacent property known as 87 W. Canal Drive.

The Debtor notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the Debtor argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The Debtor argues that, using the sale price of \$250,000.00, there is substantial equity of \$170,000.00 after deducting the \$79,641.28 first priority secured claim of the Movant. The Debtor additionally argues that even using the Movant's lower valuation of \$165,000.00, there is still sufficient equity to adequately protect the Movant.

Additionally, the Debtor argues that the property taxes and payments for insurance on the Property are current. Lastly, the Debtor argues that they have obtained a new tenant for the Property. While the Debtor admits that the tenant is only being charged a nominal rent of \$1.00 per month, the tenant has agreed to pay the property taxes, insurance, and utilities for the Property moving forward. The Debtor asserts that the occupancy by the tenant deters vandalism on the Property.

As to the 11 U.S.C. § 362(d)(2) ground, the Debtor argues that the relief is not proper because the Property is necessary for the Debtor's reorganization. The Debtor is a Chapter 11 debtor and attempting to liquidate the Debtor's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The Debtor argues that allowing the Debtor to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The Debtor also notes that the Movant improperly states that there is a second deed of trust on the Property. The Debtor states that the Movant and the Internal Revenue Service via a tax lien have an interest in the Property.

DECEMBER 3, 2015 HEARING

At the hearing, the court addressed with the parties the substance of the pending sale of the property, which the court initially believed to be a significant factor in denying the Motion. If the Debtors in Possession ("ΔIP") are promptly moving in a commercially reasonable value to obtain the value of the property to provide for this and other claims, such conduct would be in the highest of ΔIP conduct in a Chapter 11 case.

However, at the hearing, Movant argued that the "sale" of the adjacent

87 Canal Drive property is not expected to close promptly. ΔIP confirmed that due to the contractual conditions, it is projected that the closing would not be before March 2016.

For the property that is the subject of the present Motion, the ΔIP has not yet filed a motion for order authorizing the sale, but it is to the same person who has entered into a contract and an order approving such sale for the adjacent property at 87 W. Canal Drive has been entered by the court. This prompted the court to review that motion to sell and the contract thereon.

Motion to Sell 87 W. Canal Drive Property

On August 6, 2015, ΔIP filed the Motion for Authority to Sell the real property commonly known as 87 W. Canal Drive, Turlock California. Motion, Dckt. 96. The grounds stated with particularity upon which that relief is requested in that Motion include the following:

- A. The terms of the sale are summarized by ΔIP to be that "the Buyer is to pay the sum of \$250,000.00 cash for title to the Real Property, 'as is.'"
- B. A copy of the Sale Agreement is provided as Exhibit A in support of the Motion.
- C. Consent of other creditors holding liens will be obtained, or the court may order the sale free and clear of liens pursuant to 11 U.S.C. § 363(f) due to there being a bona fide dispute.

Id. In his declaration, ΔIP Souza testifies that he and his Co-ΔIP have entered into a contract to sell the property to Halferty Development Company, LLC for \$250,000. Declaration, Dckt. 98.

In the points and authorities the terms of the sale are stated to include a conditions that "The sale escrow is to close within thirty days after the end of a period for Buyer to obtain development approvals...." Points and Authorities, p. 6:1-2.; Dckt. 101. Such "period" of time is not otherwise stated. No opposition was raised in connection to the motion as to the "period" of time reference for Buyer to obtain development approvals.

In the court's posted tentative ruling and the final ruling as set forth in the Civil Minutes, the court notes that one of the conditions of closing included a period in which Buyer was to obtain development approvals. No additional information was provided the court, or objection raised, to the condition of obtaining development approvals.

The court has now gone back to review in detail the Purchase and Sale Agreement which the ΔIP has sought and obtained approval to enter into from the court. Exhibit A, Dckt. 99. While the purchase price is stated to be \$250,000.00, the good faith deposit from Buyer for purchasing this quarter of a million dollar property is:

- A. \$1,000.00 to be deposited within five days of the opening of escrow (which Buyer is to open within five days of the Agreement being fully executed).
- B. The \$1,000.00 is fully refundable at any time before the

expiration of the site inspection period if the sale does not close for any reason.

- C. If Buyer wants to continue with the Development Approvals Period (an additional 120 days), at the expiration of the Site Investigation Period, Buyer is to deposit an additional \$5,000.00 into escrow.

Id., ¶ 2.A.

The Site Investigation Period is stated to be for ninety days following the Opening of Escrow. *Id.*, ¶ 4.B. This is to allow the Buyer to have physical access to the property for inspection. This investigation is also defined to include Buyer obtaining final approval by a major tenant for development of a store on the property. Buyer may obtain refund of the Deposit by providing notice within five days after the expiration of the Site Investigation Period that Buyer has determined the property to not be suitable.

The Agreement further provides that Buyer will have an additional one hundred twenty days from the end of the Site Investigation Period to obtain zoning, building, or development approvals. *Id.*, ¶ 4.C. The agreement does not appear to provide for a refund of the deposit once the Site Inspection Period has expired (with notice given within five days thereafter). It is not clear if obtaining such zoning or permits is a condition of closing or merely that Buyer can delay closing for one hundred and twenty days while seeking those permits. However, the default provisions appear to state that in the event of a default by the Buyer, Seller's damages are limited to the deposit. *Id.*, ¶ 7.

The clock for this transaction appears to be running as follows:

Escrow Open No Later Than	July 29, 2015
\$1,000 Deposited No Later Than	August 3, 2015
Site Inspection Period (90 Days) Expires No Later Than	October 27, 2015
Development Approvals Period (120 Days) Expires No Later Than	February 24, 2016
Escrow Closes (30 Days after Development Approvals Period Expires) No Later Than	March 30, 2016

While in retrospect the dates may well appear to be effectively a extended option period for which at most \$6,000 was paid, these are the sale terms which were approved by the court. No parties in interest objected.

As addressed at the hearing, in light of such period, the court may well consider whether some other form of adequate protection might be provided. Even though Movant has the senior lien and based on value may be adequately protected in a gross sense, the bankruptcy case has been pending since April 10, 2015. Because of the sale structure by the ΔIP it will be almost a year with no payments (other than paying the property taxes) made for the secured

claims while ΔIP and Buyer speculate on whether a sale will actually occur. If adequate protection payments were made to some creditor from the rents being generated by the ΔIP's use of the collateral, it would work to reduce the obligations which already over encumber the property.

The court continued the hearing, with the consent of Movant to afford the ΔIP and Movant to consider alternatives, ΔIP to file additional pleadings, and the court to be provided additional information about the authorized sale and the representation that there is now a contract to sell the adjacent property.

SUPPLEMENTAL DECLARATION OF DEBTOR

The ΔIP filed a supplemental declaration on December 29, 2015. Dckt. 224. The ΔIP states that they are the owner of the Property. The ΔIP states that on December 11, 2015, the ΔIP signed documents tendered through a title company that confirmed the termination of the sale with Halferty for sale of the Property. The ΔIP state that they have retained a second broker to market and sell properties of the estate.

MOVANT'S RESPONSE

The Movant filed a response on January 7, 2016. Dckt. 233. The Movant states that the ΔIP has admitted that the sale of the Property has fallen through. The Movant argues that the ΔIP have not made a payment on the Property since the filing of the case.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least \$165,000.00, as stated by Movant.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). While the Movant does provide evidence that the Debtor is delinquent in post-petition payments, the existence of equity in the Property in correlation with the goal of the Debtor in the Chapter 11 counterbalances the Debtor's delinquency.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, the Movant cannot meet the burden of lack of equity. However, assuming, *argendo*, that there was no equity, the Debtor has sufficiently rebutted, showing that the Property and

the anticipated sale of the Property is in the best interest of the estate, Debtor, creditors, and other parties in interest.

While the Movant does accurately point out that the sale of the Property has fallen through, the ΔIP has filed a declaration that states under the penalty of perjury that they are actively seeking to sell the properties. While there is no pending sale, the equity cushion and the effort of the ΔIP to sell the properties, relief from the automatic stay would not be benefit to the estate, creditors, nor Movant.

On Schedule A Debtor listed this property as having a value of \$250,000 and being subject to liens totaling \$572,755. Dckt. 1. Movant holds the senior deed of trust against this property. However, on Amended Schedule D Debtor lists the following creditors as having liens against the Property: (1) Movant and (2) Internal Revenue Service tax lien for a claim in the amount of \$254,837. Dckt. 72. (The Curtis Trust is listed as having a second deed of trust against the adjoining property, 87 Canal Drive.)

The latest financial information concerning this property has been presented in connection with the latest motion to use cash collateral. DCN:MHK-1. The current rent received for this Property is \$900 a month. The monies are held in a segregated account. The monthly costs and amortized expenses (including taxes, insurance, and maintenance set aside) are stated to be \$248. See Civil Minutes for January 14, 2016 hearing on the Motion to Use Cash Collateral, DCN:MHK-1. That leaves approximately \$650 a month which is building up in the cash collateral account, subject to Movant and the Internal Revenue Service's lien.

This bankruptcy case was filed on April 10, 2015. The court recognizes that this case has been prosecuted in conjunction with the very complex related case, Souza Propane, Inc. (14-91633). Though a Chapter 11 Trustee was appointed in that case and Debtor relieved of having to perform the duties as the principals for the Debtor in Possession in that case, the complexity has required their continuing contention.

The Souza Propane, Inc. case has been administered, assets sold, and moving toward a conversion to Chapter 7 for the orderly liquidation of the proceeds. This allows ΔIP in this case to be focused on the prosecution of this case.

While for a Chapter 11 case this proceeding is fairly young, the court is concerned with the "sale" that ΔIP floated earlier in this case. In reality, it was a no-cost option to tie up the property (and fend off Movant). At this juncture, the court is reminded of words of wisdom provided by the character Yoda in the Star Wars movies - "Do or Do Not, There is No Try." *The Empire Strikes Back*, Star Wars Episode V.

This case has been pending approximately eight months and ΔIP should be holding approximately \$5,200.00 in rent proceeds in excess of all the expenses and set-aside monies for expenses. This is money subject to Movant's lien and the lien of the Internal Revenue Service.

ΔIP asserts that they are actively moving to sell this Property. The court believes that the collateral (property and rent monies) provides protection to Movant, so long as ΔIP is actively marketing the property in a

commercially reasonable manner. There, the court determines:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.
- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not only Movant, but also the junior lien holder.
- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.
- F. On or before May 5, 2016, Movant shall file and serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

The court shall issue an 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 Provident Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.
- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not

only Movant, but also the junior lien holder.

- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.
- F. On or before May 5, 2016, Movant shall file and serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

4. [15-90358](#)-E-11 LAWRENCE/JUDITH SOUZA
RDW-2 David M. Meegan

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-5-15 [[176](#)]

PROVIDENT CREDIT UNION VS.
CONTINUED: 12/3/15

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).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is continued to 10:00 a.m. on May 12, 2016, and the court orders adequate protection payment and marketing activity for Debtor in Possession.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 87 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,229.26 in post-petition payments past due.

OPPOSITION

Opposition has been filed by Lawrence James Souza and Judith Louise Souza ("Debtors") on November 19, 2015. Dckt. 187.

The Debtor first notes that the Debtor has entered into a contract to sell the Property to Halferty Development Corporation for \$250,000.00. The sale escrow is open and the Debtor has gotten court approval of the sale. Dckt. 156.

The Debtor notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the Debtor argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The Debtor argues that, using the sale price of \$250,000.00, there is substantial equity of \$170,000.00 after deducting the \$72,045.55 first priority secured claim of the Movant. The Debtor additionally argues that even using the Movant's lower valuation of \$145,000.00, there is still sufficient equity to adequately protect the Movant. Additionally, the Debtor argues that the property taxes and payments for insurance on the Property are current.

As to the 11 U.S.C. § 362(d)(2) ground, the Debtor argues that the relief is not proper because the Property is necessary for the Debtor's reorganization. The Debtor is a Chapter 11 debtor and attempting to liquidate the Debtor's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The Debtor argues that allowing the Debtor to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The Debtor also notes that while the Movant is correct in saying that there are multiple liens on the Property, the Debtor argues that because the Internal Revenue Service tax lien and the Curtis Family Trust lien are secured by additional property in excess of the Property. The Debtor does state that there is a lack of equity when you total the three liens against the value of the Property. However, the Debtor argues that because the multiple properties securing the lien, it would be improper to impute the entire amount on the single Property.

DECEMBER 3, 2015 HEARING

At the hearing, the court addressed with the parties the substance of the pending sale of the property, which the court initially believed to be a significant factor in denying the Motion. If the Debtors in Possession ("ΔIP") are promptly moving in a commercially reasonable value to obtain the value of the property to provide for this and other claims, such conduct would be in the highest of ΔIP conduct in a Chapter 11 case.

However, at the hearing, Movant argued that the "sale" of the property is not expected to close promptly. ΔIP confirmed that due to the contractual conditions, it is projected that the closing would not be before March 2016. This prompted the court to review that motion to sell and the contract thereon.

Motion to Sell 87 W. Canal Drive Property

On August 6, 2015, ΔIP filed the Motion for Authority to Sell the real property commonly known as 87 W. Canal Drive, Turlock California. Motion, Dckt. 96. The grounds stated with particularity upon which that relief is requested in that Motion include the following:

- A. The terms of the sale are summarized by ΔIP to be that "the Buyer is to pay the sum of \$250,000.00 cash for title to the Real Property, 'as is.'"
- B. A copy of the Sale Agreement is provided as Exhibit A in support of the Motion.
- C. Consent of other creditors holding liens will be obtained, or the court may order the sale free and clear of liens pursuant to 11 U.S.C. § 363(f) due to there being a bona fide dispute.

Id. In his declaration, Debtor in Possession Lawrence Souza testifies that he and his Co-Debtor in Possession have entered into a contract to sell the property to Halferty Development Company, LLC for \$250,000. Declaration, Dckt. 98.

In the points and authorities the terms of the sale are stated to include a conditions that "The sale escrow is to close within thirty days after the end of a period for Buyer to obtain development approvals...." Points and Authorities, p. 6:1-2.; Dckt. 101. Such "period" of time is not otherwise stated. No opposition was raised in connection to the motion as to the "period" of time reference for Buyer to obtain development approvals.

In the court's posted tentative ruling and the final ruling as set forth in the Civil Minutes, the court notes that one of the conditions of closing included a period in which Buyer was to obtain development approvals. No additional information was provided the court, or objection raised, to the condition of obtaining development approvals.

The court has now gone back to review in detail the Purchase and Sale Agreement which the ΔIP has sought and obtained approval to enter into from the court. Exhibit A, Dckt. 99. While the purchase price is stated to be \$250,000.00, the good faith deposit from Buyer for purchasing this quarter of a million dollar property is:

- A. \$1,000.00 to be deposited within five days of the opening of escrow (which Buyer is to open within five days of the Agreement being fully executed).
- B. The \$1,000.00 is fully refundable at any time before the expiration of the site inspection period if the sale does not close for any reason.
- C. If Buyer wants to continue with the Development Approvals Period (an additional 120 days), at the expiration of the Site Investigation Period, Buyer is to deposit an additional \$5,000.00 into escrow.

Id., ¶ 2.A.

The Site Investigation Period is stated to be for ninety days following the Opening of Escrow. *Id.*, ¶ 4.B. This is to allow the Buyer to have physical access to the property for inspection. This investigation is also defined to include Buyer obtaining final approval by a major tenant for development of a store on the property. Buyer may obtain refund of the Deposit by providing notice within five days after the expiration of the Site Investigation Period that Buyer has determined the property to not be suitable.

The Agreement further provides that Buyer will have an additional one hundred twenty days from the end of the Site Investigation Period to obtain zoning, building, or development approvals. *Id.*, ¶ 4.C. The agreement does not appear to provide for a refund of the deposit once the Site Inspection Period has expired (with notice given within five days thereafter). It is not clear if obtaining such zoning or permits is a condition of closing or merely that Buyer can delay closing for one hundred and twenty days while seeking those permits. However, the default provisions appear to state that in the event of a default by the Buyer, Seller's damages are limited to the deposit. *Id.*, ¶ 7.

The clock for this transaction appears to be running as follows:

Escrow Open No Later Than	July 29, 2015
\$1,000 Deposited No Later Than	August 3, 2015
Site Inspection Period (90 Days) Expires No Later Than	October 27, 2015
Development Approvals Period (120 Days) Expires No Later Than	February 24, 2016
Escrow Closes (30 Days after Development Approvals Period Expires) No Later Than	March 30, 2016

While in retrospect the dates may well appear to be effectively a extended option period for which at most \$6,000 was paid, these are the sale terms which were approved by the court. No parties in interest objected.

As addressed at the hearing, in light of such period, the court may well consider whether some other form of adequate protection might be provided. Even though Movant has the senior lien and based on value may be adequately protected in a gross sense, the bankruptcy case has been pending since April 10, 2015. Because of the sale structure by the ΔIP it will be almost a year with no payments (other than paying the property taxes) made for the secured claims while ΔIP and Buyer speculate on whether a sale will actually occur. If adequate protection payments were made to some creditor from the rents being generated by the ΔIP's use of the collateral, it would work to reduce the obligations which already over encumber the property.

The court continued the hearing, with the consent of Movant to afford the ΔIP and Movant to consider alternatives, ΔIP to file additional pleadings, and the court to be provided additional information about the authorized sale.

SUPPLEMENTAL DECLARATION OF DEBTOR

The Debtor-in-Possession filed a supplemental declaration on December 29, 2015. Dckt. 224. The Debtor-in-Possession states that they are the owner of the Property. The Debtor-in-Possession states that on December 11, 2015, the Debtor-in-Possession signed documents tendered through a title company that confirmed the termination of the sale with Halferty for sale of the Property. The Debtor-in-Possession state that they have retained a second broker to market and sell properties of the estate.

MOVANT'S RESPONSE

The Movant filed a response on January 7, 2016. Dckt. 233. The Movant states that the Debtor-in-Possession has admitted that the sale of the Property has fallen through. The Movant argues that the Debtor-in-Possession have not made a payment on the Property since the filing of the case.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least \$165,000.00, as stated by Movant.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). While the Movant does provide evidence that the Debtor is delinquent in post-petition payments, the existence of equity in the Property in correlation with the goal of the Debtor in the Chapter 11 counterbalances the Debtor's delinquency.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, the Movant cannot meet the burden of lack of equity. However, assuming, *argendo*, that there was no equity, the Debtor has sufficiently rebutted, showing that the Property and the anticipated sale of the Property is in the best interest of the estate, Debtor, creditors, and other parties in interest.

While the Movant does accurately point out that the sale of the Property has fallen through, the Debtor-in-Possession have filed a declaration that states under the penalty of perjury that they are actively seeking to sell the properties. While there is no pending sale, the equity cushion and the effort of the Debtor-in-Possession to sell the properties, relief from the automatic stay would not be benefit to the estate, creditors, nor Movant.

On Schedule A Debtor listed this property as having a value of \$195,000 and being subject to liens totaling \$680,014. Dckt. 1. Movant holds the senior deed of trust against this property. However, on Amended Schedule D Debtor lists the following creditors as having liens against the Property: (1) Movant and (2) Curtis Trust for a claim of \$250,000 (cross collateralized) and (3) Internal Revenue Service tax lien for a claim in the amount of \$254,837. Dckt. 72.

The latest financial information concerning this property has been presented in connection with the latest motion to use cash collateral. DCN:MHK-1. The current rent received for this Property is \$875 a month. The monies are held in a segregated account. The monthly costs and amortized expenses (including taxes, insurance, and maintenance set aside) are stated to be \$324. See Civil Minutes for January 14, 2016 hearing on the Motion to Use Cash Collateral, DCN:MHK-1. That leaves approximately \$650 a month which is building up in the cash collateral account, subject to Movant and the Internal Revenue Service's lien.

This bankruptcy case was filed on April 10, 2015. The court recognizes that this case has been prosecuted in conjunction with the very complex related case, Souza Propane, Inc. (14-91633). Though a Chapter 11 Trustee was appointed in that case and Debtor relieved of having to perform the duties as the principals for the Debtor in Possession in that case, the complexity has required their continuing contention.

The Souza Propane, Inc. case has been administered, assets sold, and moving toward a conversion to Chapter 7 for the orderly liquidation of the proceeds. This allows ΔIP in this case to be focused on the prosecution of this case.

While for a Chapter 11 case this proceeding is fairly young, the court is concerned with the "sale" that ΔIP floated earlier in this case. In reality, it was a no-cost option to tie up the property (and fend off Movant). At this juncture, the court is reminded of words of wisdom provided by the character Yoda in the Star Wars movies - "Do or Do Not, There is No Try." *The Empire Strikes Back*, Star Wars Episode V.

This case has been pending approximately eight months and ΔIP should be holding approximately \$5,200.00 in rent proceeds in excess of all the expenses and set-aside monies for expenses. This is money subject to Movant's lien and the lien of the Internal Revenue Service.

ΔIP asserts that they are actively moving to sell this Property. The court believes that the collateral (property and rent monies) provides protection to Movant, so long as ΔIP is actively marketing the property in a commercially reasonable manner. There, the court determines:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.

- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not only Movant, but also the junior lien holder.
- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.
- F. On or before May 5, 2016, Movant shall file and serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

The court shall issue an 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 Provident Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that:

- A. The hearing on the Motion for Relief is continued to 10:00 a.m. on May 12, 2016;
- B. On or before January 22, 2016, ΔIP shall pay \$3,500.00 in a lump sum adequate protection payment to Movant. The payment shall be sent to counsel for Movant, who will promptly forward it to Movant.
- C. The lump sum adequate protection payment shall be applied to Movant's monthly payment arrearage on its secured claim in this case. This adequate protection payment works to protect not only Movant, but also the junior lien holder.
- D. ΔIP shall proceed to list and market the Property for sale in a commercially reasonable manner to realize the fair market value for the Estate in light of all of the facts and circumstance.
- E. On or before April 28, 2016, ΔIP shall file Supplemental Pleadings advising the court and

parties in interest of the marketing efforts and the monies held in the cash collateral account relating to this property.

- F. On or before May 5, 2016, Movant shall file and serve Responses, if any, to the ΔIP's Supplemental Pleadings relating to the marketing of the Property.

5. [15-91058-E-7](#) ANTHONY BUTERA
HDP-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-17-15 [[41](#)]

DEBTOR DISMISSED:
12/17/2015
TRINITY FINANCIAL SERVICES,
LLC VS.

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).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 17, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Trinity Financial Services LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3616 Northern Dancer Drive, Modesto, California (the "Property"). Movant has provided the Declaration of Don A. Madden III to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Madden III Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,317.04 in post-petition payments past due. The Declaration also provides evidence that there are 62 pre-petition payments in default, with a pre-petition arrearage of \$103,754.51.

The instant case was dismissed on December 17, 2015 for failure to timely file documents. Dckt. 39.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on January 7, 2016. Dckt. 51. The Debtor asserts that the Movant has contacted the Debtor and has been uncooperative in negotiations. The Debtor asserts that he has learned that Main Street Asset Solutions are the holder of the second note. The Debtor requests that the Motion be denied.

DISCUSSION

11 U.S.C. § 362(c) (1) and (2) provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) 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;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c) (2), 522(i) (2), or 551 of this title; and

(C) any lien voided under section 506(d) of this

title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) ***revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.***

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of December 17, 2015, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The Debtor's opposition does not address the fact that the Property, as of the dismissal, was revested.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on December 17, 2015.

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 Trinity Financial Services LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 3616 Northern Dancer Drive, Modesto, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the December 17, 2015 dismissal of this bankruptcy case filed by Anthony Butera, the Debtor.

6. [14-91369-E-7](#) ALDO LEONARDI TOSO AND MOTION FOR RELIEF FROM
APN-1 MEREDITH LEONARDI AUTOMATIC STAY
Gary Ray Fraley 11-20-15 [[41](#)]
WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 20, 2015. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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 non-responding parties 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.

Aldo Dante Leonardi Toso and Meredith Joy Leonardi ("Debtor") commenced this bankruptcy case on October 6, 2014. Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Kia Soul, VIN ending in 8956 (the "Vehicle"). The moving party has provided the Declaration of Kiel Maples to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Maples Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$306.26 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$15,568.15, as stated in the Maples Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The Vehicle is determined to be \$10,175.00.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made 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 and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence 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. While the Movant does note that the Debtor has indicated that they wish to abandon the Vehicle, the Movant does not state with particularity as required by Fed. R. Bankr. P. 9013.

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 Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Kia Soul ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the

obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a) (3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

7. [15-91172-E-7](#) TAHNJAH POE
ADR-1

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
12-14-15 [[12](#)]**

**DEBTOR DISMISSED 12/21/15
2ND CHANCE MORTGAGES, INC.
VS.**

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 14, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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 non-responding parties 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.

2nd Chance Mortgages, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3808 Sundance Lake Court, Modesto, California (the "Property"). The moving party has provided the Declaration of Herlinda Marquez to introduce evidence as a basis for Movant's contention that Tahnjah Lynnette Poe ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the

Property at a pre-petition Trustee's Sale on September 22, 2015.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The instant case was dismissed on December 21, 2015 due to the Debtor failing to timely file documents. Dckt. 19.

DISCUSSION

11 U.S.C. § 362(c)(1) and (2) provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) 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;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) **revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.**

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of December 21, 2015, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Property on December 21, 2015.

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 2nd Chance Mortgages, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 3808 Sundance Lake Court, Modesto, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the December 21, 2015 dismissal of this bankruptcy case filed by Tahnjah Poe, the Debtor.

8. [15-91174-E-7](#) PETER SIEKIERSKI
SSA-1 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-18-15 [[14](#)]

CREDIT UNION 1 VS.

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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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 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. At the hearing -----.

The Motion for Relief From the Automatic Stay is granted.

Peter E. Siekierski ("Debtor") commenced this bankruptcy case on December 3, 2015. Credit Union 1 ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Suzuki SX, VIN ending in 0148 (the "Vehicle"). The moving party has provided the Declaration of Brody Patton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Patton Declaration provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$491.00.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$7,515.97, as stated in the Patton Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The value of the Vehicle is determined to be \$5,425.00

DEBTOR'S NON-OPPOSITION

Debtor has filed a non-opposition on January 7, 2016. Dckt. 21.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made 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 and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Credit Union 1, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

Additionally, even outside its secured claim in this case, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion, requested any specific amount of fees, or provided evidence in support of an award of reasonable fees. Though the court could schedule a further hearing, the costs and expenses of such otherwise unnecessary judicial proceeding would well exceed reasonable fees which could have been awarded in conjunction with this proceeding. Movant is not awarded any attorneys' fees.

Movant has pleaded adequate facts and presented sufficient evidence 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 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 Credit Union 1 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2010 Suzuki SX ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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.

IT IS FURTHER ORDERED that the Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion or for this Contested Matter.

No other or additional relief is granted.

9. [15-91080-E-7](#) LISA HUNSUCKER MOTION FOR RELIEF FROM
APN-1 Martha Lynn Passalacqua AUTOMATIC STAY
12-1-15 [[10](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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 non-responding parties 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.

Lisa Marie Hunsucker ("Debtor") commenced this bankruptcy case on November 6, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Volkswagen Jetta, VIN ending in 6485 (the "Vehicle"). The moving party has provided the Declaration of Sharena Bynum to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Bynum Declaration provides evidence that there are 3 pre-petition payments in default, with a pre-petition arrearage of \$673.35.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$19,769.79, as stated in the Bynum Declaration, while the value of the Vehicle is determined to be \$15,725.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The Vehicle is determined to be \$15,725.00

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made 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 and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization.

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence 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 Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Volkswagen Jetta ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

Procedure, is not waived.

No other or additional relief is granted.