UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 1, 2018, at 10:00 a.m.

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1. **17-90931-E-7** **RICHARD RUSSELL** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
MEL-1 **12-19-17 [11]**

CITIMORTGAGE, INC. VS.

Tentative Ruling: 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.

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

Sufficient 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 19, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

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

CitiMortgage, Inc. ("Movant") seeks relief from the automatic stay with respect to Richard Russell, Jr. ("Debtor") real property commonly known as 478-610 Lake Forest Drive, Susanville, California ("Property"). Movant has provided the Declaration of Toni Toll to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states with particularity (FED. R. BANKR. P. 9013) the following grounds for the requested relief:

> "(1) Payments due on the note secured by the deed of trust on the Property have not been made to the Movant (i.e., the subject loan is in default as of November 27, 2017, and the total outstanding payments due under the loan are in the sum of $30,845.36);
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> (2) The total debt owed under the subject loan is $187,955.49;
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> (3) Debtor's Bankruptcy Schedules reflect a valuation for the Property of $195,000.00;
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> (4) Movant has pending state court litigation in the Superior Court of Lassen County, Case No. 60854."

Motion, Dckt. 11. The Motion then directs the court to read the Notice of Hearing, read the Memorandum of Points and Authorities, read the Declaration, review the Exhibits, and read "all other pleadings and papers on file herein," and then wait until the hearing and consideration "upon such oral and documentary evidence as may be presented by the parties at the hearing" (notwithstanding that Local Bankruptcy Rule 9014-1 does not permit the springing of evidence on the court and other parties at the hearing). *Id.* at 2:6–11. The court declines the opportunity to provide such legal work to assemble from everything filed in this case the grounds for Movant in litigating against Debtor. Movant's Motion will live or die based on the grounds actually stated in the Motion.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be

representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

DISCUSSION

The Toni Toll Declaration states there are twenty-six missed pre-petition payments from October 1, 2015, to November 1, 2017, with a total of $30,845.36 in payments past due.

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 $187,955.49, as stated in the Toni Toll Declaration and Schedule D. The value of the Property is determined to be $195,000.00, as stated in Schedules A and D.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

11 U.S.C. § 361 does not define "adequate protection" but outlines three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value, (2) an additional or replacement lien on other property, or (3) other relief that provides the indubitable equivalent. *In re Curtis*, 9 B.R., 110, 111–12 (Bankr. E.D. Penn. 1981). A lack of adequate protection may include the lack of a sufficient equity cushion. *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984). A twenty percent equity cushion, for example, provides adequate protection for a secured creditor. *In re Mellor*, 734 F.2d 1396, 1401 (citing *In re McGowan*, 6 B.R. 241, 243 (Bankr. E.D. Penn. 1980)). Equity cushion cases of twenty percent or more generally are held adequate, while equity cushions of less than eleven percent are generally held insufficient. *Kost v. First Interstate Bank of Greybull*, 103 B.R. 829, 831–32 (D. Wyo. 1989); *see also In re Pitts*, 2 B.R. 476, 478 (Bankr. C.D. Cal. 1979) (finding a fifteen percent cushion to be "minimal").

In the instant case, the equity cushion available for Movant in the Property is approximately 3.6%. However, as stated by the Supreme Court in *United Savings Association of Texas v. Timbers of Inwood Forest*, the lack of an equity cushion is not a *per se* showing of cause. 484 U.S. 365 (1988). The grounds as stated in the Motion for cause are:

(1) Payments due on the note secured by the deed of trust on the Property have not been made to Movant (i.e., the subject loan is in default as of November 27, 2017, and the total outstanding payments due under the loan are in the sum of $30,845.36).

Movant advances three months in payments (November, December, and January), with there now being more than $30,000 in default.

(2) The total debt owed under the subject loan is $187,955.49.

The default represents one-sixth of the total obligation.

(3) Debtor's Bankruptcy Schedules reflect a valuation for the Property of $195,000.00.

There is no equity cushion. However, Movant does not allege that the Property is declining in value or subject to any risk of a decrease in the $195,000 value of the Property.

(4) Movant has pending state court litigation in the Superior Court of Lassen County, Case No. 60854.

The court is unsure how an allegation that Movant has pending state court litigation is relevant to the present Motion.

In the Declaration, Movant's witness provides some testimony that goes beyond the grounds stated in the Motion. Dckt. 14. The witness testifies that for an unstated reason Movant has filed suit in state court for Cancellation of Instrument, and Declaratory Relief against unidentified parties. In her Declaration, the witness tells the court to review an exhibit to find out information about this state court litigation. Having stretched the bounds of Federal Rule of Bankruptcy Procedure 9013 in reading the Declaration to try to figure out the cryptic allegation in the Motion, the court will not go further to assemble a motion for Movant.

The Declaration conflicts with the grounds stated in the Motion. The Motion states that the obligation is in default as of November 27, 2017. However, in the Declaration, the witness testifies that the obligation is in default dating all the way back to November 2015 (twenty-six payments).

Movant having alleged only a three-month default, there being a small equity cushion, and there being no allegation (nor evidence to support such an allegation) that the existing value of the collateral is at risk, Movant has not alleged nor met its burden of proof to establish that cause exists to terminate the automatic stay.

The court determines that cause does not exist for terminating the automatic stay, including lack of adequate protection for Movant's claim secured by the Property. 11 U.S.C. § 362(d)(1).

The Motion is denied without prejudice.

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 CitiMortgage, 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 that the Motion is denied without prejudice.

2. 17-91035-E-7 WILLIAM/PHYLLIS DAVIS — MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
ADR-1 — 1-3-18 [16]

ROCHELLE YOUSEFIAN VS.

Final Ruling: No appearance at the February 1, 2018 hearing is required.

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

Sufficient 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 January 3, 2018. By the court's calculation, 29 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.

Rochelle Yousefian ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4563 Legacy Lane, Turlock, California ("Property"). Movant has provided her Declaration to introduce evidence as a basis for the contention that William Davis and Phyllis Davis ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that she is the owner of the Property. Movant asserts that she only rented the Property to Debtor on January 22, 2017 (according to the Residential Lease Agreement attached as Exhibit 1), and served a Three Day Notice to Pay Rent or Quit on Debtor pre-petition on December 15, 2017 (filed as

Exhibit 2). *See* Dckt. 21. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant asserts that she commenced an unlawful detainer action against Debtor.

MOVANT'S DECLARATION OPPOSING STATEMENT OF PAYMENT

Movant filed a Declaration Opposing the Statement About Payment of an Eviction Judgment on January 26, 2018. Dckt. 38. Movant testifies that she received a document in the mail entitled "State About Payment of an Eviction Judgment Against You." Movant has not provided a copy of that document, but she testifies that it Debtor signed it under penalty of perjury as saying that they paid Movant the entire amount owed in a judgment of possession. Movant disagrees.

Movant argues that she has not been paid for October, November, and December 2017 in the total amount of $5,975.00. Additionally, Movant argues that now she has incurred an additional $600.00 in attorney's fees, $375.00 in court costs, $1,975.00 in January 2018 rent, $181.00 to file this Motion, and $750.00 in attorney's fees for this Motion.

Movant argues that the total amount owed now is $9,856.00.

DECLARATION

Movant has not provided a copy of any state court proceedings or judgment. However, Movant has provided a copy of its Lease Agreement and Three Day Notice to Pay Rent or Quit. Debtor amended the Schedules on January 11, 2018. Dckt. 28. Amended Schedule A does not list any interest in the Property, and Debtor has not claimed any exemption on Amended Schedule C. *Id.* Amended Schedule E/F lists Movant as having a nonpriority unsecured claim for lease payments in the amount of $6,000.00, and Amended Schedule G lists Movant's lease. Debtor also filed a Statement of Intention listing that the Property will be retained and that Debtor will enter into a reaffirmation agreement—the Statement of Intention lists both 4563 and 4536 as the street number for the Property. Dckt. 29.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Rochelle Yousefian, and her agents, representatives and successors, to exercise her rights to obtain possession and

control of the real property commonly known as 4563 Legacy Lane, Turlock, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 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 Rochelle Yousefian ("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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Rochelle Yousefian and her agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4563 Legacy Lane, Turlock, California.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

3. 15-90358-E-7 LAWRENCE/JUDITH SOUZA MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1 12-22-17 [716]

DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final Ruling: No appearance at the February 1, 2018 hearing is required.

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

Sufficient 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 22, 2017. By the court's calculation, 41 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.

Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2005-4, a holder in due course, its assignees and/or successors, ("Movant") seeks relief from the automatic stay with respect to Lawrence Souza and Judith Souza's ("Debtors") real property commonly known as 1066 N. Johnson Road, Turlock, California ("Property"). Movant has provided the Declaration of Cammorah Washington to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Cammorah Washington Declaration states that there are thirty-one post-petition defaults in the payments on the obligation secured by the Property, with a total of $88,152.22 in post-petition payments past due. The Declaration also provides evidence that there are nine pre-petition payments in default, with a pre-petition arrearage of $25,592.58

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 $653,284.94 (including $488,166.03 secured by Movant's first deed of trust), as stated in the Cammorah Washington Declaration and Proof of Claim 21-1 (for Wells Fargo Bank, N.A.'s claim secured by a second deed of trust). The value of the Property is determined to be $550,000.00, as stated in Schedules A and D (and as referenced in the Washington Declaration).

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Debtor was granted a discharge in this case on January 24, 2018. Dckt. 722. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Multiple Attorneys of Record Listed for Movant

The court has addressed with Movant's counsel on other occasions the possible confusion created by listing multiple attorneys on the pleadings as attorneys of record. For this Motion, Dean Prober, Lee S. Raphael, Cassandra J. Richey, Bonni S. Mantovani, Anna Landa, Diana Torres-Brito, Alexander G. Meissner, and S. Renee Sawyer Blume are listed as "Attorneys for Movant Deutsche Bank National Trust Company, as Indenture Trustee, for New Century Home Equity Loan Trust 2005-4."

No other or additional relief is granted by the court.

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 Deutsche Bank National Trust Company, as Indenture Trustee for New Century Home Equity Loan Trust 2005-4, a holder in due course, its assignees and/or successors, ("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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Deutsche Bank National Trust Company, as Indenture Trustee for New Century Home Equity Loan Trust 2005-4, a holder in due course, its assignees and/or successors, 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 that 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 to obtain possession of the real property commonly known as 1066 N. Johnson Road, Turlock, California.
>
> **IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to Lawrence Souza and Judith Souza ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.