

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

March 19, 2015 at 9:30 a.m.

1. **14-20327-E-7** JAMES/CHARLI BARTEAU MOTION FOR RELIEF FROM
FHS-1 AUTOMATIC STAY
2-19-15 [[69](#)]
LRS INVESTMENTS, LLC VS.

Final Ruling: No appearance at the March 19, 2015 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, parties requesting special notice, and Office of the United States Trustee on February 19, 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). 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.

LRS Investments, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as a parcel of real property located on Clark Road, Paradise, Butte County, California, APN 053-102-015 (the "Property"). Movant has provided the Declaration of Peter Schaeffer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Schaeffer Declaration states that there are 13 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$7,330.05 in post-petition payments past due. The Declaration also provides

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evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of \$6,84.00.

Linda Schuette, the Chapter 7 Trustee, filed a non-opposition on February 23, 2015.

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 \$30,834.47 secured by Movant's first deed of trust, as stated in the Schaeffer Declaration and Schedule D filed by James and Charli Barteau ("Debtor"). The value of the Property is determined to be \$20,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when 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, including defaults in post-petition payments which have come due. 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 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 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.

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

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IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow LRS Investments, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as Clark Road, Paradise, Butte County, California, APN 053-102-015.

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.

2. [10-48239-E-7](#) BARBARA STEWART AND WAYNE MOTION TO CONFIRM TERMINATION
STREWART OR ABSENCE OF STAY MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-19-15 [[143](#)]

STEVE/SUMMER ROSS VS.

Tentative Ruling: The Motion to Confirm Termination of Stay or Relief From 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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Confirm that the Automatic Stay has been Lifted 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.

Stewart Altemus, Steve Ross, and Summer Ross ("Movants") filed the instant Motion to Confirm that the Automatic Stay has been Lifted on February 19, 2015. Dckt. 143. FN.1. The Movants seek the court to issue an order for relief from the automatic stay to allow the Movants to seek relief in state court to reform a Deed of Trust and a Grant Deed in Lieu of Foreclosure, to quiet title, for ejectment or unlawful detainer, and to exercise their foreclosure rights under their Promissory Note and Deed of Trust. The property at issue is commonly known as 28555 State Highway 49, Shingletown, California

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(the "Property").

FN.1. The court notes that the Movants failed to provide a Docket Control Number as required by Local Bankr. R. 9014-1. The court waives the defect as to the instant Motion but stresses to the Movants the importance and necessity of DCNs as a means of organizing and structuring dockets.

BACKGROUND

Barbara and Wayne Stewart ("Debtors") filed the instant bankruptcy case on October 25, 2010 as a Chapter 13 bankruptcy. The Movants were listed as secured creditors with a security interest in the Property in the second amended plan, which was confirmed on October 26, 2011. Dckt. 85. Under the terms of the order confirming the second amended plan, the Debtors were to sell the Property by July 12, 2012. If the Property was unsold by that date, the order provided for the termination of the automatic stay as to the Property.

On October 9, 2012, the Debtors filed an application for conversion of their Chapter 13 case to a case under Chapter 7. Dckt. 89. On February 27, 2013, the Chapter 7 Trustee filed a Report of No Distribution, which found that there was no property available for distribution from the estate over and above that exempted by law. The Property was listed in the Debtors' Schedule A with the Movants being listed as secured creditors.

On May 1, 2013, the Movants filed a Motion to Purchase the Property, proposing to purchase the Property from the Trustee for \$6,000.00. The Motion was denied because the Movants did not provide the court with the purchase agreement and that the Trustee did not join the Motion. Dckt. 130.

The bankruptcy case was closed on July 29, 2013. Dckt. 135.

The Debtors filed an ex parte Motion to Reopen Chapter 7 Bankruptcy on January 5, 2015. Dckt. 139. The Debtors state in the motion that the purpose of reopening is to file an adversary proceeding against Movant Steve Ross, for violating the discharge injunction and for an order determining the validity and nature of any liens and encumbrances against the Property. The court granted the motion on January 6, 2015. Dckt. 141.

The Movants are seeking retroactive relief from stay to the June 12, 2012 date so they can proceed in state court to quiet title on the Property.

IMPROPER PLEADINGS

The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for

the moving party.

The court has also observed that the more complex the Motivities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case.

However, in light of the specific disputes between the parties and their propensity to multiply, not reduce, litigation, the court waives this defect.

DISCUSSION

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section 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).

Pursuant to 11 U.S.C. § 554(c), "any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."

11 U.S.C. § 350(a) provides: "After an estate is fully administered and the court has discharged the trustee, the court shall close the case."

A review of the Debtors' schedules shows that both the Property and the Movants were scheduled. Dckt. 48. The Debtors' amended Schedule A lists the Property at a value of \$195,000.00 and amended Schedule D lists Movants Steve and Summer Ross as a creditor holding a secured claim in the Property. Dckt. 48.

At the time of the Trustee's Report of No Distribution on February 27, 2013, the Property was properly scheduled and disclosed to the Trustee, estate and creditors. Based on the schedules and the information the Trustee obtained at the Meeting of Creditors, the Trustee found that there was no assets for distribution.

Pursuant to 11 U.S.C. § 554(c), at the time of closing of the case, the Property was abandoned to the Debtors and administered for purposes of 11 U.S.C. § 350. Here, the case was closed on July 29, 2013. As the Property was not sold, previously abandoned, or otherwise administered by the Trustee during the pendency of the bankruptcy case, the Property was abandoned to the Debtors by operation of law. Upon abandonment, the Property was no longer property of the bankruptcy estate and the automatic stay terminated, by operation of law, pursuant to 11 U.S.C. § 362(c)(1).

The automatic stay, as it applies to the Property also terminated by operation of law when the bankruptcy case was closed. 11 U.S.C. § 362(c)(2)(A). At that time, it ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor. FN.1. Therefore, as of July 29, 2012, the automatic stay terminated as to the Property.

FN.1. The court does not make a factual determination as to whether the abandonment was to Debtor personally or as the trustee of the trust. Suffice it to say that the property was no longer property of the bankruptcy estate.

The mere reopening of a case does not reconstitute property into the estate nor does it reinstate the automatic stay. As the Ninth Circuit Bankruptcy Appellate Panel has found, the reopening of a case does not "undo" any of the statutory consequences of the original closing of the case. *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896 (B.A.P. 9th Cir. 1999). This means that the automatic stay is not reinstated and property abandoned by statute is not reinserted into the estate.

As discussed *supra*, the Property was abandoned to the Debtors by operation of 11 U.S.C. § 554(c). The reopening of the case on January 6, 2015 does not "yo-yo" the Property in and out of the estate nor does it provide for the automatic stay to come back into effect. As of July 28, 2012, the automatic stay was terminated and nothing since has reestablished the stay.

Barbara Stewart and Wayne Stewart, the two Chapter 7 Debtors, receive their discharges on February 12, 2013. Dckt. 110. That discharge terminated the automatic stay as to them individually (being replaced by the discharge injunction) by operation of law on that date. 11 U.S.C. § 362(c)(2)(C).

The Movants provide the one sentence statement that "The bankruptcy

court has authority to retroactively grant relief from the automatic stay." That statement is accurate, with 11 U.S.C. § 362(d) providing that the court may grant relief "terminating, annulling, modifying, or conditioning" the automatic stay. (The court interprets the request for "retroactive relief" to be a request to annul the automatic stay.) However, the Movants do not state the grounds warranting such relief (other than the general allegations for the other relief requested) or for what purposes the automatic stay is to be annulled. The court cannot guess what specific purposes that the stay is to be annulled, nor will the court issue an order stating that the "stay is annulled for whatever movant did, so long as creditor says that such act is what movant certifies to have been annulled by the court." As addressed by the Ninth Circuit, retroactive relief by annulling the stay should be granted only in "extreme circumstances." *Mataya v. Kissinger (In re Kissinger)*, 72 F.3d 107, 109 (9th Cir. 1995). While most judges have a generous interpretation of "extreme circumstances," such retroactive relief must be carefully tailored to specific actions or events.

The court grants the motion and confirms that by operation of law the automatic stay terminated on February 12, 2013 as to the Debtors and on July 29, 2013 as to the Property.

TERMINATION OF STAY PURSUANT TO CHAPTER 13 PLAN

Movants also argue that pursuant to the terms of the Debtors' confirmed Chapter 13 Plan the automatic stay was terminated on July 12, 2012. The Order Confirming the Chapter 13 Plan that the amendments to the Plan includes the following term,

"5. On or about July 12, 2012, if the real property [28555 Highway 44 in Shasta County] identified in [paragraph] number 4 above is unsold and no further court order has been obtained the automatic stay will terminate without further notice or court hearing."

Confirmation Order, Dckt. 85. Counsel for Movants signed off on the form of the order and the above language. The Civil Minutes for the confirmation hearing states that the amendment shall provide for the termination both the plan stay and the automatic stay. Dckt. 76.

The Confirmation Order does not address what was to occur if the Debtors defaulted and the case converted to one under Chapter 7. The Movants do not address that issue in the Motion. While conversion of a case from one chapter to another does not create a new automatic stay; *Ramirez v. Whelan (In re Ramirez)*, 188 BR 413 (B.A.P. 9th Cir. 1995); the relief from stay is given in the Chapter 13 Plan, which appears to be no longer of any force and effect. The court does not make a determination on this issue, denying without prejudice this request for relief. If the time period from conversion to dismissal is critical on this issue, Movants may file a motion and provide a separate points and authorities addressing this issue.

DECLARATION OF EFFECT OF DISCHARGE INJUNCTION

Movants request further an order that the discharge injunction did not apply to the state court action initiated by Movants to reform the Deed of Trust and Deed in Lieu. However, the Movants have not provided any grounds to

justify the court granting such relief. Furthermore, while Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014 does not incorporate Rule 9018 for contested matters.

Here, Movants ask the court to provide a determination that "Since the stay was lifted, the section 524 injunction does not apply to the state court action initiated by Movants to reform the Deed in Lieu and Deed of Trust." The court is unsure as to why the lifting of the stay renders the discharge injunction ineffective as to the state court action. Rather, there may be proper grounds for obtaining such a determination, but they do not appear to be the grounds stated in the Motion. This is one of the problems when multiple claims for relief are smashed together in one, "give me everything," motion. Additionally, Movants do not direct the court to the authority as to how the court grants such relief by contested matter.

ORDER EFFECTIVE UPON ISSUANCE

The automatic stay having been previously terminated by operation of law, the court waives the 14 day stay imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3), to the extent that it applies to this order.

CHAMBERS PREPARED ORDER

The court shall issue an order (not 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 Stewart Altemus, Steve Ross, and Summer Ross ("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 court confirms that the automatic stay terminated on February 12, 2013 as to Wayne Elden Stewart and Barbara Jane Stewart the Debtors and on July 29, 2013 with respect to the real property commonly known as 28555 State Highway 49, Shingletown, California and more particularly described as:

Parcel 1 of Parcel Map #87-77 filed August 11, 1977 in Book 13 of Parcel Maps at Page 8, Shasta County Records. EXCEPTING THEREFROM all that portion described in the Deed to the State of California by Deed recorded January 7, 1982 in Book 1863, page 19, Official Records.

Parcel Number: 094-070-42

IT IS FURTHER ORDERED that the fourteen day stay of

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enforcement of this order pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3), to the extent that it applies to an order confirming the absence of the automatic stay, is waived.

IT IS FURTHER ORDERED that the other relief requested in the Motion is denied without prejudice. No determination has been made by this court as to whether the July 12, 2012 termination of the stay provided in the Debtors' confirmed Chapter 13 Plan continued in full force and effect after the conversion of this case and that the termination of the automatic stay as to the Property occurred earlier than the abandonment and closing of the bankruptcy case.

No other or additional relief is granted.

3. [11-36557-E-7](#) MARTHA RAMIREZ
PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-27-15 [[254](#)]

HSBC BANK USA, N.A. VS.

Final Ruling: No appearance at the March 19, 2015 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, parties requesting special notice, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 51 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.

HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-3 Trust, Home Equity Asset-Backed Certificates, Series 2005-3 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1766 Jamie Drive Yuba City, California (the "Property"). Movant has provided the Declaration of Yvette Rojas to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rojas Declaration states that there are 38 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$121,802.74 in post-petition payments past due. The Declaration also provides evidence that there are 28 pre-petition payments in default, with a pre-petition arrearage of \$81,558.12.

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 \$538,183.51 secured by Movant's deed of trust, as stated in the Rojas Declaration and Schedule D filed by Martha Ramirez ("Debtor"). FN.1. The value of the Property is determined to be \$269,000.00, as stated in Schedules A and

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D filed by Debtor.

FN.1. The Rojas Declaration lists the debt secured by Movant's deed of trust as \$538,183.51. However, the Motion and the Relief from Stay Summary Sheet list different amounts. For purposes of this Motion, the court will use the amount provided in the Rojas Declaration under the penalty of perjury.

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, including defaults in post-petition payments which have come due. 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 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 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.

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, the Movant requests the court to issue an order "[p]ermitting Movant to offer and provide Debtor with information re: a potential Forbearance Agreement, short sale, deed in lieu, loan modification, Refinance Agreement, or other loan workout/loss mitigation agreement, and to enter into such agreement with Debtor without further order of the court." Dckt. 257. First, the court points out that the prayer for relief is buried in the Movant's Points and Authorities rather than the Motion as required by Local Bankr. R. 9014-1. Secondly, the Movant offers no authority or grounds as to why or how such relief is justified. The court will not just "rubber stamp" requests for relief that are improperly buried in the Points and Authorities. The only time such relief is requested is in the prayer and the Movant does not provide any argument in the Motion or Points and Authorities to support such. In fact, the majority of the Points and Authorities is seeking attorney's fees. Without any grounds justifying such relief, this request is denied.

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 HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-3 Trust, Home Equity Asset-Backed Certificates, Series 2005-3 ("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 immediately vacated to allow HSBC Bank USA, National Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-3 Trust, Home Equity Asset-Backed Certificates, Series 2005-3, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1766 Jamie Drive Yuba City, California.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.

4. [15-20081-E-7](#) JANET ROBINSON
RAC-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-12-15 [[32](#)]

MERCEDES-BENZ FINANCIAL
SERVICES USA, LLC VS.

Final Ruling: No appearance at the March 19, 2015 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 February 12, 2015. By the court's calculation, 35 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.

Janet Robinson ("Debtor") commenced this bankruptcy case on January 7, 2015. Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Mercedes-Benz GL450, VIN ending in 6167 (the "Vehicle"). The moving party has provided the Declaration of Juan Orellana to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Orellana Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$447.91 in post-petition payments past due. The Declaration also provides evidence that there are 7 pre-petition payments in default, with a pre-petition arrearage of \$3,135.37.

The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Orellana to be that she obtained the *Kelley Blue Book* valuation and is providing that

March 19, 2015 at 9:30 a.m.

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to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 \$11,373.48, as stated in the Orellana Declaration, while the value of the Vehicle is determined to be \$11,179.00

The Trustee has filed a non-opposition to this Motion.

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). 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 Mercedes-Benz Financial Services USA LLC, 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 by Mercedes-Benz Financial Services USA 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 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 2007 Mercedes-Benz GL450, VIN ending in 6167

("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.

5. [14-29284-E-7](#) CHARLES MILLS
FWP-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-4-14 [[105](#)]

STACY LACKEY, JOSEPH LACKEY
VS.

Final Ruling: No appearance at the March 19, 2015 hearing is required.

The court having previously issued an order vacating the automatic stay pursuant to the stipulation of the parties (Dckt. 217) on March 12, 2015, **and the matter is removed from the calendar.**