UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 29, 2018, at 10:00 a.m.

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1. **17-91029-E-7** **PAUL/TAMMIE CHOUP** **MOTION FOR RELIEF FROM**
EAT-1 **Patrick Greenwell** **AUTOMATIC STAY**
3-1-18 [17]

DITECH FINANCIAL, LLC VS.

Final Ruling: No appearance at the March 29, 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, and Chapter 7 Trustee on March 1, 2018. 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). 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.

Ditech Financial LLC ("Movant") seeks relief from the automatic stay with respect to Paul Choup and Tammie Choup's ("Debtor") real property commonly known as 2200 Giant Oak Lane, Ceres, California ("Property"). Movant has provided the Declaration of [*Illegible* (possibly Jamie McKinney)] to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of $1,848.00 in post-petition payments past due. The Declaration also provides evidence that there are eighteen pre-petition payments in default, with a pre-petition arrearage of $28,994.13.

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 $392,883.51 secured by Movant's first deed of trust, as stated in the Declaration and Schedule D. The value of the Property is determined to be $400,000.00, 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). 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.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). 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).

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.

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 Ditech Financial 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ditech Financial 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 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 2200 Giant Oak Lane, Ceres, California.

No other or additional relief is granted.

2. **17-90432-E-12** **CARLOS/BERNADETTE ESTACIO** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
SBM-1 **Peter Fear**
2-14-18 [99]

WELLS FARGO BANK, NATIONAL ASSOCIATION 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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on February 14, 2018. By the court's calculation, 43 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). Debtor in Possession, creditors, the Chapter 12 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 offer 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. At the hearing, **----------**.

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

Wells Fargo Bank ("Movant") seeks relief from the automatic stay with respect to Carlos Estacio and Bernadette Estacio's ("Debtor in Possession") real property commonly known as 4413 South Prairie Flower Road, Turlock, California ("Property"). Movant has provided the Declaration of Michael Peale to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Peale Declaration states that there are eight post-petition defaults in the payments on the obligation secured by the Property, with a total of $24,929.84 in post-petition payments past due. The Declaration also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of $12,464.92.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on March 15, 2018. Dckt. 144. Debtor in Possession argues that the filing of a new plan after this Motion was filed has resolved Movant's complaints. For this Motion, Debtor in Possession argues that it should be denied for cause because Movant's claim is oversecured, because there is a sufficient equity cushion, and because Movant has not presented evidence that the Property has depreciated.

As to 11 U.S.C. § 362(d)(2), Debtor in Possession argues that there is equity in the Property and that it is necessary for reorganization.

DEBTOR IN POSSESSION'S EVIDENTIARY OBJECTION

Debtor in Possession filed an Evidentiary Objection on March 15, 2018, based upon the Federal Rules of Evidence ("FRE"). Dckt. 145. Debtor in Possession objects to admission of an appraisal report filed as Exhibit B and referenced in the Peale Declaration on the bases that it is inadmissible hearsay (FRE 802), that it has not been authenticated (FRE 902), and that it violates the best evidence rule (FRE 1002).

Federal Rules of Evidence Invoked

Federal Rule of Evidence 401 states that evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence, and if the fact is of consequence in determining the action.

Federal Rule of Evidence 403 allows a court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing of issues, misleading a jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Federal Rule of Evidence 602 states that a witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony.

Federal Rule of Evidence 701 limits lay person testimony to opinions rationally based on the witness's perception, that are helpful to clearly understanding the witness's testimony or to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge.

Federal Rule of Evidence 702 sets forth the rules for testimony by an expert witness. The witness must be qualified as an expert by knowledge, skill, experience, training, or education and may testify in the form of opinion if (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case.

Federal Rule of Evidence 802 states that hearsay is inadmissible unless provided for by a federal statute, the Federal Rules of Evidence, or rules prescribed by the Supreme Court.

Federal Rule of Evidence 901 states that to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Federal Rule of Evidence 902 contains fourteen categories of evidence that are self-authenticating and do not need any extrinsic evidence to be admitted.

Federal Rule of Evidence 1002 requires an original writing, recording, or photograph to be provided to prove its content.

Objections to Evidence

Declaration of Michael Peale

Objection No. 1

Debtor in Possession objects to the admission of Exhibit C mentioned in the Peale Declaration on the ground that Movant failed to authenticate it (FRE 901). Additionally, Debtor in Possession argues that any statement by Mr. Peale about the exhibit is inadmissible because he lacks status as an expert witness (being a banker and not a realtor) to discuss the document (FRE 701).

Ruling: As to Mr. Peale's statements about the appraisal report, the court sustains the objection under FRE 802, 902, and 1002. Mr. Peale states that he is employed by Movant, but he does not testify that he was involved in obtaining the appraisal. Dckt. 103. He states that Movant had an appraisal done in 2015. A review of the cover letter for the appraisal shows that it is addressed to Mr. Grant, not to Mr. Peale, and it involves a discussion with parties other than the party testifying, outside of court, making the exhibit hearsay that is inadmissible without further showing of an exception applying or some showing that the exhibit is nonhearsay. As to the best evidence rule, the objection is sustained as well. As presented, effectively Mr. Peale is trying to slip in somebody else's appraisal as his personal statement.

Wells Fargo Bank, N.A., a federally insured financial institution that not only appears regularly in this court but federal courts across the nation trying to slip in an expert's report without providing the declaration of the expert is concerning.

For the objection to Exhibit C, the objection is sustained pursuant to FRE 901, but not according to FRE 701 or 702. Mr. Peale's statement is that Debtor in Possession's listing of the property is attached as an exhibit, not that Mr. Peale has any opinion about that value listed that would be proper from an expert witness. Regarding authentication, though, Mr. Peale does not testify that he pulled the listing; he says only that a copy is attached, from some unknown source that Mr. Peale may not be willing to disclose.

Declaration of Jawaharlal Khatri

Objection No. 2.

Debtor in Possession objects to references to Exhibit "NS, pages 1-5" in the Jawaharlal Khatri declaration filed in support of the separate Khatri Brothers, LP, motion for relief. Debtor in Possession argues that the exhibit cannot be identified, that references to it are hearsay (FRE 802), and that it lacks foundation for this Motion (FRE 602).

Ruling: For the objection to Exhibit "NS, pages 1-5" in the Khatri declaration, the objection is overruled. While the declaration misstates that the exhibit is Exhibit 3, the text of the surrounding sentence leaves no doubt whatsoever that the referenced exhibit is "a Notice of Trustee's Sale Under Deed of Trust" filed on April 21, 2017, with "Instrument Number DOC-2017-0029065-00 in the Office of the Recorder of Stanislaus County, California." Dckt. 115 at 3. That Notice is the five-page Exhibit 3.

Objection No. 3

Further for the Khatri declaration, Debtor in Possession objects to the Motion's use of the phrase "I am informed and believe that the Debtors . . ." from that declaration on the basis that it is hearsay (FRE 802).

Ruling: For the objection to Jawaharlal Khatri testifying based upon information and belief, the objection is sustained. The Declaration has conflicting, qualifying language showing that Mr. Khatri's testimony is limited, not actual personal knowledge testimony.

> 2. I have personal knowledge, information and belief of the facts set forth in this declaration and if called upon as a witness to testify, I could and would competently testify as to the facts set forth below.

Declaration, ¶ 2; Dckt. 115. While using the words "personal knowledge," the witness then qualifies it by saying that such "personal knowledge" is based on information and belief.

Counsel for Movant may argue that this is merely "stock language, of no real significance." Then the entire declaration may well be "stock language" and of no evidentiary significance. Testifying under penalty of perjury in federal court is not merely "legalese," words of mere form for which no real substance is required.

Preparing a declaration for use in federal court is simple, especially the "stock language" in which a witness states that the testimony is of his or her actual personal knowledge. FED. R. EVID. 601, 602.

Objection No. 4

Debtor in Possession objects to statements in that declaration by Jawaharlal Khatri that Debtor in Possession has "listed the property . . . for sale at a price so high that it will likely not attract any purchase offer" on the basis that it exceeds the scope of a lay witness (FRE 701), that Jawaharlal Khatri is not a real

estate expert witness competent to testify (FRE 702), that the statement is speculative and lacks foundation (FRE 602), that the statement is hearsay (FRE 802), and that the statement is not relevant (FRE 401).

Ruling: For the objection to the Khatri declaration stating that the Property has been listed "for sale at a price so high that it will likely not attract any purchase offer," the objection is sustained. Debtor in Possession objects that the statement is inadmissible hearsay, improper attempted expert testimony, lacking in foundation, and irrelevant. On these grounds, it fails as purported expert testimony. The witness is providing the court with his personal opinion—or argument—that he disagrees with the stated listing price.

Declaration of Jon Zagaris

Objection No. 5

Debtor in Possession objects to reference in the Memorandum of Points and Authorities to another declaration for the Khatri Brothers, LP, motion for relief—the declaration of Jon Zagaris. Specifically, Debtor in Possession objects to statements in four separate paragraphs. In paragraph 3 of the Zagaris declaration, Debtor in Possession objects to the statement

> "I have been advised by the listing agent that the seller of the property has a dairy permit for 696 milking cows, but no milk supply contract, and that the free stalls and loafing barn on the property are in poor condition, and need repair"

on the grounds that it is hearsay to the extent that the declarant relies upon someone else's statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: For the Zagaris declaration statement that the Property is in poor condition and in need of repairs, according to a listing agent, the objection is sustained pursuant to FRE 802, but not pursuant to FRE 402 or 602. The declaration states clearly that a listing agent told Mr. Zagaris, who is now telling the court. That is an out-of-court statement offered for the truth of the matter asserted—that the Property is in poor condition and in need of repairs. Were that statement admissible, it could be relevant to determining the state of the Property, how that would impact a potential sale, and whether a creditor's claim would be protected by equity in the Property. As to foundation, Mr. Zagaris is testifying as a licensed real estate broker about the condition of the Property based upon his professional perspective. That is a sufficient foundation to discuss the Property's condition.

Objection No. 6

In paragraph 4 of the Zagaris declaration, Debtor in Possession objects to the statement by Zagaris:

> "I have been provided by my licensed realtor salesperson with the following listing and sale information for properties in the vicinity of the property:

(a) 5725 Erlich Road (approx. 1 miles from the property) Sold on December 29, 2017, for $32,805 per acre; on market 52 days. 4 Homes, operational dairy (permit for over 900 head), and 2 lagoons for dairy flush and irrigation on 213.38 acres.

(b) 2254 Eucaluptus Avenue, Patterson, CA (approx [sic] 7 miles from the property) Sold November 3, 2017, for $27,200 per acre; on market 255 days. Operational dairy with all facilities: free stalls, hay barns, milk barn, and 2 domestic wells on 25 acres.

(c) 6124 Hogan Road (approx [sic] 4 miles from the property) Listed for sale for 159 days at $29,878 per acre. Formerly a dairy, now a feedlot on 167.35 acres."

on the grounds that the statement is hearsay to the extent it relies upon someone else's statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: For the Zagaris declaration statements about three comparable properties, the objection is sustained pursuant to FRE 402, 602, and 802. Mr. Zagaris has not testified how real estate transactions for other properties affects, and is relevant to, the court's analysis for the current Property, and any implication he makes from the information lacks foundation. Additionally, he does not testify that he pulled the information or that he instructed an agent to pull the information on his behalf; instead, he testifies that a salesperson provided information to him, which constitutes inadmissible hearsay.

Objection No. 7

In paragraph 5 of the Zagaris declaration, Debtor in Possession objects to the statement "Attached in the accompanying Exhibits, market 'Exhibit E, Exhibit E-1, and Exhibit H,' respectively, are true copies of the listings of each of the above-described comparative properties" on the grounds that the statement is not relevant (FRE 401) and that the supposed exhibits cannot be located, making the statement speculative and lacking in foundation (FRE 602). Debtor in Possession argues that the exhibits filed with the Khatri Brothers, LP, motion for relief are not identified the way mentioned in the statement.

Ruling: For Mr. Zagaris's reference to Exhibits E, E-1, and H, the objection is sustained pursuant to FRE 402, but not pursuant to FRE 602. As addressed in the preceding paragraph, Mr. Zagaris fails to testify to the court why comparable property transactions are relevant to a potential sale for this Property. Furthermore, he does not discuss how the comparable properties were chosen, especially about what makes them truly comparable to the Property. Nevertheless, if the comparables had been admissible, there was a clear foundation from the prior paragraph to establish that misidentified Exhibit 1 contains the three reports for the three named properties. *See* Dckt. 118.

Objection No. 8

In paragraph 6 of the Zagaris declaration, Debtor in Possession objects to the statement "In its current state, based on the above information, I am informed and believe that the property is worth between $34,500 and $35,000 per acre, and should be sold at a price between $1,338,945 and $1,358,350" on the ground that the statement is hearsay to the extent that the declarant is merely repeating what he has been told or what has been written but not submitted to the court (FRE 802). Debtor in Possession also objects on the grounds that Jon Zagaris is not a competent expert qualified to appraise real property, despite being a licensed real estate broker (FRE 702), that the statement is irrelevant (FRE 401), that it is speculative and lacks foundation (FRE 602), and that it is more prejudicial than probative (FRE 403).

Ruling: For Mr. Zagaris' statements about price per acre and about what the Property should sell for, the objection is sustained. First, he merely states that he is "informed and believes" as to the value, not willing to state his personal knowledge opinion. Though he is a real estate broker and could provide his own expert opinion, he offers only his "information and belief" statement. Further, to the extent that he would be providing expert testimony as permitted by Federal Rule of Evidence 702, he provides the court with at best his ultimate opinion of the value, and fails as an expert to provide the court, as the trier of fact, with much information to determine the value of the Property. FED. R. EVID. 702(a). For the court to use Mr. Zagaris's conclusion as to value, the court would have to abdicate the role of finder of fact to Movant's witness.

Objection No. 9

Debtor in Possession also objects to three exhibits filed with the Khatri Brothers, LP, motion for relief—Exhibits 1–3. For each exhibit, Debtor in Possession argues that Movant has failed to authenticate the exhibit or to identify its purpose (FRE 901).

Ruling: For Exhibits 1 through 3 to the Khatri Brothers, LP, motion for relief, the objections are overruled. As the court has discussed previously, Exhibits 1 and 3 were simply misidentified, but they were clearly discussed and authenticated in the declarations. Exhibit 2 suffers from the same misidentification, but as with Exhibit 3, the Khatri declaration identifies the document by its recorded instrument number and title. There is no problem with authentication of the exhibits.

DISCUSSION

From the evidence presented, the court is left with the basic facts:

FMV.....$1,400,000 (Debtor's valuation on Schedule A/B)
Movant's Claims.....($ 359,000) (Movant's Proof of Claim No. 4)

Equity Cushion for Movant's Claim.....$1,041,000 (290 % equity cushion)

The Property is subject to other liens for which the following proofs of claims have been filed:

A. Khatri Brothers, LP.....($1,050,000) (Schedule D, Additional Collateral)
B. Stanislaus County Tax.....($ 31,350) (Proof of Claim No. 14)

C. Internal Revenue Service .....($ 37,865) (Proof of Claim No. 2)

It appears that these additional debts, may exhaust the value of the Property. However, Khatri Brothers, LP's claim is also secured by the 6955 Faith Home Road property, according to Schedule D. Khatri has not filed a proof of claim, and in its motion for relief (Dckt. 113) does not state with particularity the amount of its claim (only the same principal amount as set out in Schedule D) or provide information about other collateral securing that claim.

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 $1,963,333.84 (including $365,637.64 secured by Movant's first deed of trust), as stated in the Peale Declaration and Schedule D. However, more than $1,000,000 of this debt, Khatri's, has additional collateral. That additional collateral is stated on Schedule A to have a value of $2,000,000. Dckt. 12 at 5. The value of the Property that is the subject of this motion is determined to be $1,400,000.00, as stated in Schedules A and D. Dckt. 12. With the additional $2,000,000 in collateral (Movant and Khatri appear to rely on Debtor's opinion of value) for Khatri, there is equity in the Property for the Estate and for Debtor. Khatri's failure to file a proof of claim and failure in its motion for relief to state its position on the additional collateral precludes the court from making a specific dollar determination at this time.

If the court were to use the information provided by Debtor on Schedule D, and assumed that all of the other creditors listed had senior liens to Khatri, then there would be at least $1,886,000 of value in Khatri's additional collateral, rendering it grossly oversecured and causing there to be almost $1,000,000 in equity in the Property for the bankruptcy estate, and ultimately, for Debtor.

Relief pursuant to 11 U.S.C. § 362(d)(2) is denied without prejudice.

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.

Based on the evidence presented, Movant is grossly oversecured. While Movant may feel frustrated with Debtor in Possession's strategy decisions and an apparent inability to act, such can be addressed other than allowing Movant to foreclose on the Property.

In this case that is now ten months old, cause does not exist to grant relief because Debtor in Possession has not confirmed a plan. Movant has been, and continues to be, adequately protected. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

The Motion for Relief pursuant to 11 U.S.C. § 362(d)(1) 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 Wells Fargo Bank ("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.

3. 17-90432-E-12 CARLOS/BERNADETTE ESTACIO MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
VFG-1 Peter Fear
2-16-18 [113]

KHATRI BROTHERS, LP 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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held to seek relief from the automatic stay to proceed with foreclosure proceedings against real property, and the hearing will be based upon submitted pleadings. The court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, Chapter 12 Trustee, and Office of the United States Trustee on February 15, 2018. FN.2. By the court's calculation, 42 days' notice was provided. 14 days' notice is required.

FN.2. The Proof of Service states that service was performed on February 15, 2014. The court treats the reference to 2014 as a mere scrivener's error that should have been 2018. The Proof of Service was filed on February 16, 2018, and it was signed on February 15, 2018.

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). Debtor in Possession, creditors, the Chapter 12 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 offer 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. At the hearing, ----------.

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

Khatri Brothers, LP, ("Movant") seeks relief from the automatic stay with respect to Carlos Estacio and Bernadette Estacio's ("Debtor in Possession") real property commonly known as 4413 South Prairie Flower Road, Turlock, California ("Property"). Movant has provided the Declaration of Jawaharlal Khatri to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Khatri Declaration does not list the amounts in default for pre- and post-petition, and the Declaration does not state the amounts contractually owed under the note to the second deed of trust. Additionally, Movant has not provided a copy of the note with the Motion. Nevertheless, the court has reviewed Movant's claim in this case (Proof of Claim No. 11-1) and observes that the note is attached. The note states that beginning March 1, 2016, Debtor shall pay monthly installments of "interest only, or more" for two years, at the end of which the entire unpaid principal and interest would become due. The Khatri Declaration states that Debtor is in default since the March 1, 2016 payment. Dckt. 115 at 2:27–28.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on March 15, 2018. Dckt. 139. Debtor in Possession argues that the filing of a new plan after this Motion was filed has resolved Movant's complaints. For this Motion, Debtor in Possession argues that it should be denied for cause because Movant's claim is oversecured, because there is a sufficient equity cushion, because Movant has not presented evidence that the Property has depreciated, and because Debtor in Possession offered adequate protection payments to the senior lienholder.

As to 11 U.S.C. § 362(d)(2), Debtor in Possession argues that there is equity in the Property and that it is necessary for reorganization.

Additionally, Debtor in Possession argues that Movant has provided little evidence of the Property's value, has not shown that it could have exercised state law remedies, has not met the minimum pleadings for 11 U.S.C. § 362(d)(1) & (2), and has violated Federal Rule of Bankruptcy Procedure 9013.

DEBTOR IN POSSESSION'S EVIDENTIARY OBJECTION

Debtor in Possession filed an Evidentiary Objection on March 15, 2018, based upon the Federal Rules of Evidence ("FRE"). Dckt. 140.

Federal Rules of Evidence Invoked

Federal Rule of Evidence 401 states that evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence, and if the fact is of consequence in determining the action.

Federal Rule of Evidence 403 allows a court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing of issues, misleading a jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Federal Rule of Evidence 602 states that a witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony.

Federal Rule of Evidence 701 limits lay person testimony to opinions rationally based on the witness's perception, that are helpful to clearly understanding the witness's testimony or to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge.

Federal Rule of Evidence 702 sets forth the rules for testimony by an expert witness. The witness must be qualified as an expert by knowledge, skill, experience, training, or education and may testify in the form of opinion if (1) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principles and methods to the facts of the case.

Federal Rule of Evidence 802 states that hearsay is inadmissible unless provided for by a federal statute, the Federal Rules of Evidence, or rules prescribed by the Supreme Court.

Federal Rule of Evidence 901 states that to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Objections to Evidence

Declaration of Jawaharlal Khatri

Objection No. 1

Debtor in Possession objects to the Khatri Declaration relying upon "the declaration of Michael Peale, filed by" Wells Fargo Bank in support of its motion for relief on the grounds that the declaration was not filed in support of this Motion and that its incorporation by reference constitutes hearsay (FRE 802).

Ruling: As to incorporation of Mr. Peale's declaration in support of Wells Fargo Bank's motion for relief, the objection is overruled. The court notes that the declaration is part of the official docket in this case and that it has been served properly. Dckt. 103, 105. Additionally, citation to documents on the record does not constitute hearsay.

However, in allowing this incorporation by reference, the court also incorporates Debtor in Possession's evidentiary objections to Mr. Peale's declaration. The rulings on those objections are stated as follows.

Debtor in Possession objects to the admission of Exhibit C mentioned in the Peale Declaration on the ground that Movant failed to authenticate it (FRE 901). Additionally, Debtor in Possession argues that any statement by Mr. Peale about the exhibit is inadmissible because he lacks status as an expert witness (being a banker and not a realtor) to discuss the document (FRE 701).

Ruling: As to Mr. Peale's statements about the appraisal report, the court sustains the objection under FRE 802, 902, and 1002. Mr. Peale states that he is employed by Movant, but he does not testify that he was involved in obtaining the appraisal. Dckt. 103. He states that Movant had an appraisal done in 2015. A review of the cover letter for the appraisal shows that it is addressed to Mr. Grant, not to Mr. Peale, and it involves a discussion with parties other than the party testifying, outside of court, making the exhibit hearsay that is inadmissible without further showing of an exception applying or some showing that the exhibit is nonhearsay. As to the best evidence rule, the objection is sustained as well. As presented, effectively Mr. Peale is trying to slip in somebody else's appraisal as his personal statement.

Wells Fargo Bank, N.A., a federally insured financial institution that not only appears regularly in this court but federal courts across the nation trying to slip in an expert's report without providing the declaration of the expert is concerning.

For the objection to Exhibit C, the objection is sustained pursuant to FRE 901, but not according to FRE 701 or 702. Mr. Peale's statement is that Debtor in Possession's listing of the property is attached as an exhibit, not that Mr. Peale has any opinion about that value listed that would be proper from an expert witness. Regarding authentication, though, Mr. Peale does not testify that he pulled the listing; he says only that a copy is attached, from some unknown source that Mr. Peale may not be willing to disclose.

Objection No. 2

Debtor in Possession objects to references to Exhibit "NS, pages 1-5" in the Khatri Declaration. Debtor in Possession argues that the exhibit cannot be identified and that it lacks foundation (FRE 602).

Ruling: For the objection to Exhibit "NS, pages 1-5" in the Khatri Declaration, the objection is overruled. While the declaration misstates that the exhibit is Exhibit 3, the text of the surrounding sentence leaves no doubt whatsoever that the referenced exhibit is "a Notice of Trustee's Sale Under Deed of Trust" filed on April 21, 2017, with "Instrument Number DOC-2017-0029065-00 in the Office of the Recorder of Stanislaus County, California." Dckt. 115 at 3. That Notice is the five-page Exhibit 3 and has been identified by sufficient foundation.

Objection No. 3

Further for the Khatri Declaration, Debtor in Possession objects to the phrase "I am informed and believe that the Debtors . . ." on the basis that it is hearsay (FRE 802).

Ruling: For the objection to Jawaharlal Khatri testifying based upon information and belief, the objection is sustained. The Declaration has conflicting, qualifying language showing that Mr. Khatri's testimony is limited, not actual personal knowledge testimony.

> 2. I have personal knowledge, information and belief of the facts set forth in this declaration and if called upon as a witness to testify, I could and would competently testify as to the facts set forth below.

Declaration, ¶ 2; Dckt. 115. While using the words "personal knowledge," the witness then qualifies it by saying that such "personal knowledge" is based on information and belief.

Counsel for Movant may argue that this is merely "stock language, of no real significance." Then the entire declaration may well be "stock language" and of no evidentiary significance. Testifying under penalty of perjury in federal court is not merely "legalese," words of mere form for which no real substance is required.

Preparing a declaration for use in federal court is simple, especially the "stock language" in which a witness states that the testimony is of his or her actual personal knowledge. FED. R. EVID. 601, 602.

Objection No. 4

Debtor in Possession objects to statements in the Khatri Declaration that Debtor in Possession has "listed the property . . . for sale at a price so high that it will likely not attract any purchase offer" on the basis that it exceeds the scope of a lay witness (FRE 701), that Jawaharlal Khatri is not a real estate expert witness competent to testify (FRE 702), that the statement is speculative and lacks foundation (FRE 602), that the statement is hearsay (FRE 802), and that the statement is not relevant (FRE 401).

Ruling: For the objection to the Khatri Declaration stating that the Property has been listed "for sale at a price so high that it will likely not attract any purchase offer," the objection is sustained. Debtor in Possession objects that the statement is inadmissible hearsay, improper attempted expert testimony, lacking in foundation, and irrelevant. Khatri is not an expert witness and is not presented as such. His declaration (based merely on information and belief) is not based on personal knowledge, but only information and belief ("really, I believe it because I win"). *See* Declaration ¶ 9, Dckt. 115.

Declaration of Jon Zagaris

Objection No. 5

Debtor in Possession objects to statements in four separate paragraphs of the Jon Zagaris Declaration. In paragraph 3 of the Zagaris Declaration, Debtor in Possession objects to the statement

> "I have been advised by the listing agent that the seller of the property has a dairy permit for 696 milking cows, but no milk supply contract, and that the free stalls and loafing barn on the property are in poor condition, and need repair"

on the grounds that it is hearsay to the extent that the declarant relies upon someone else's statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: For the Zagaris declaration statement that the Property is in poor condition and in need of repairs, according to a listing agent, the objection is sustained pursuant to FRE 802, but not pursuant to FRE 402 or 602. The declaration states clearly that a listing agent told Mr. Zagaris, who is now telling the court. That is an out-of-court statement offered for the truth of the matter asserted—that the Property is in poor condition and in need of repairs. Were that statement admissible, it could be relevant to determining the state of the Property, how that would impact a potential sale, and whether a creditor's claim would be protected by equity in the Property. As to foundation, Mr. Zagaris is testifying as a licensed real estate broker about the condition of the Property based upon his professional perspective. That is a sufficient foundation to discuss the Property's condition.

Objection No. 6

> In paragraph 4 of the Zagaris Declaration, Debtor in Possession objects to the statement
>
> "I have been provided by my licensed realtor salesperson with the following listing and sale information for properties in the vicinity of the property:
>
> (a) 5725 Erlich Road (approx. 1 miles from the property) Sold on December 29, 2017, for $32,805 per acre; on market 52 days. 4 Homes, operational dairy (permit for over 900 head), and 2 lagoons for dairy flush and irrigation on 213.38 acres.
>
> (b) 2254 Eucaluptus Avenue, Patterson, CA (approx [sic] 7 miles from the property) Sold November 3, 2017, for $27,200 per acre; on market 255 days. Operational dairy with all facilities: free stalls, hay barns, milk barn, and 2 domestic wells on 25 acres.
>
> (c) 6124 Hogan Road (approx [sic] 4 miles from the property) Listed for sale for 159 days at $29,878 per acre. Formerly a dairy, now a feedlot on 167.35 acres."

on the grounds that the statement is hearsay to the extent it relies upon someone else's statement or writing (FRE 802), that it is not relevant (FRE 401), and that it is speculative and lacks foundation (FRE 602).

Ruling: For the Zagaris declaration statements about three comparable properties, the objection is sustained pursuant to FRE 402, 602, and 802. Mr. Zagaris has not testified how real estate transactions for other properties affects, and is relevant to, the court's analysis for the current Property, and any implication he makes from the information lacks foundation. Additionally, he does not testify that he pulled the information or that he instructed an agent to pull the information on his behalf; instead, he testifies that a salesperson provided information to him, which constitutes inadmissible hearsay.

Objection No. 7

In paragraph 5 of the Zagaris Declaration, Debtor in Possession objects to the statement "Attached in the accompanying Exhibits, market 'Exhibit E, Exhibit E-1, and Exhibit H,' respectively, are true copies of the listings of each of the above-described comparative properties" on the grounds that the statement is not relevant (FRE 401) and that the supposed exhibits cannot be located, making the statement speculative and lacking in foundation (FRE 602). Debtor in Possession argues that the exhibits filed with the Motion are not identified the way mentioned in the statement.

Ruling: For Mr. Zagaris's reference to Exhibits E, E-1, and H, the objection is sustained pursuant to FRE 402, but not pursuant to FRE 602. As addressed in the preceding paragraph, Mr. Zagaris fails to testify to the court why comparable property transactions are relevant to a potential sale for this Property. Furthermore, he does not discuss how the comparable properties were chosen, especially about what makes them truly comparable to the Property. Nevertheless, if the comparables had been admissible, there was a clear foundation from the prior paragraph to establish that misidentified Exhibit 1 contains the three reports for the three named properties. *See* Dckt. 118.

Objection No. 8

In paragraph 6 of the Zagaris Declaration, Debtor in Possession objects to the statement "In its current state, based on the above information, I am informed and believe that the property is worth between $34,500 and $35,000 per acre, and should be sold at a price between $1,338,945 and $1,358,350" on the ground that the statement is hearsay to the extent that the declarant is merely repeating what he has been told or what has been written but not submitted to the court (FRE 802). Debtor in Possession also objects on the grounds that Jon Zagaris is not a competent expert qualified to appraise real property, despite being a licensed real estate broker (FRE 702), that the statement is irrelevant (FRE 401), that it is speculative and lacks foundation (FRE 602), and that it is more prejudicial than probative (FRE 403).

Ruling: For Mr. Zagaris' statements about price per acre and about what the Property should sell for, the objection is sustained. First, he merely states that he is "informed and believes" as to the value, not willing to state his personal knowledge opinion. Though he is a real estate broker and could provide his own expert opinion, he offers only his "information and belief" statement. Further, to the extent that he would be providing expert testimony as permitted by Federal Rule of Evidence 702, he provides the court with at best his ultimate opinion of the value, and fails to provide the court, as the trier of fact, with much information as an expert to determine the value of the Property. FED. R. EVID. 702(a). For the court to use Mr. Zagaris's conclusion as to value, the court would have to abdicate the role of finder of fact to Movant's witness.

Objection No. 9

Debtor in Possession also objects to the three exhibits filed with the Motion—Exhibits 1–3. For each exhibit, Debtor in Possession argues that Movant has failed to authenticate the exhibit or to identify its purpose (FRE 901).

Ruling: For Exhibits 1 through 3 to the Motion, the objections are overruled. As the court has discussed previously, Exhibits 1 and 3 were simply misidentified, but they were clearly discussed and authenticated

in the declarations. Exhibit 2 suffers from the same misidentification, but as with Exhibit 3, the Khatri Declaration identifies the document by its recorded instrument number and title. There is no problem with authentication of the exhibits.

DISCUSSION

Movant's Motion states with particularity the following grounds for relief:

A. Khatri is the beneficiary under a second deed of trust on the Property to secure its claim.

B. The Property is over-encumbered.

1. According to Wells Fargo Bank, N.A., the Property is encumbered by a first deed of trust to secure a $365,637 claim of the Bank.

2. Movant's claim of $1,264,177.26 is secured by a second deed of trust on the Property.

3. Property taxes in the amount of $10,905.36 are secured by the Property.

4. The Internal Revenue Service has a claim of $29,263.26 secured by the Property (and as set out in the Internal Revenue Service Proof of Claim No. 2, all of Debtor's property).

C. Relief is sought pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

D. Debtor in Possession has not been unsuccessful in confirming a plan of reorganization in the first ten months of this case.

E. Debtor in Possession's purported attempts at marketing the Property for sale with a listing price of $2,300,000 when Debtor states under penalty of perjury on Schedule A the Property has a value of $1,400,000 are merely efforts to delay creditors without making any adequate protection payments.

From the evidence presented the court is left with the basic facts:

FMV.....$1,400,000 (Debtor's valuation on Schedule A/B)
Movant's Claims.....($1,210,787.32) (Movant's Proof of Claim No. 11)

Equity Cushion for Movant's Claim.....$189,212.68

The Property is subject to other liens for which the following proofs of claims have been filed:

A. Wells Fargo Bank, N.A.....($359,000) (Proof of Claim No 4)

B. Stanislaus County Tax.....($ 31,350) (Proof of Claim No. 14)

C. Internal Revenue Service .....($ 37,865) (Proof of Claim No. 2)

It appears that these additional debts, may exhaust the value of the Property. However, Khatri Brothers, LP claim is also secured by the 6955 Faith Home Road property, according to Schedule D. Khatri has not filed a proof of claim and in its motion for relief (Dckt. 113) does not state with particularity the amount of its claim (only the same principal amount as set out in Schedule D) or provide information about other collateral securing that claim.

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 $1,963,333.84 (including $365,637.64 secured by Movant's first deed of trust), as stated in the Peale Declaration and Schedule D. However, more than $1,000,000 of this debt, Khatri's, has additional collateral. That additional collateral is stated on Schedule A to have a value of $2,000,000. Dckt. 12 at 5. The value of the Property that is the subject of this Motion is determined to be $1,400,000.00, as stated in Schedules A and D. Dckt. 12. With the additional $2,000,000 in collateral (Movant and Khatri appear to rely on Debtor's opinion of value) for Khatri, there is equity in the Property for the Estate and for Debtor. Khatri's failure to file a proof of claim and failure in its motion for relief to state its position on the additional collateral precludes the court from making a specific dollar determination at this time.

If the court were to use the information provided by Debtor on Schedule D, and assumed that all of the other creditors listed had senior liens to Khatri, then there would be at least $1,886,000 of value in Khatri's additional collateral, rendering it grossly oversecured and causing there to be almost $1,000,000 in equity in the Property for the bankruptcy estate, and ultimately, Debtor.

Relief pursuant to 11 U.S.C. § 362(d)(2) is denied without prejudice.

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).

Based on the evidence presented, Movant is grossly oversecured. While Movant may feel frustrated with Debtor in Possession's strategy decisions and an apparent inability to act, such can be addressed other than allowing Movant to foreclose on the Property.

In this case that is now ten months old, cause does not exist to grant relief because Debtor in Possession has not confirmed a plan. Movant has been, and continues to be, adequately protected. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

The Motion for Relief pursuant to 11 U.S.C. § 362(d)(1) 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 Khatri Brothers, LP, ("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.