

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

April 7, 2016 at 10:00 a.m.

1.	<u>16-90104-E-7</u>	CHARLES WILLIAMS Brian S. Haddix	MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 3-17-16 [<u>11</u>]
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BANK OF THE WEST VS.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on March 17, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

April 7, 2016 at 10:00 a.m.

The Motion for Relief From the Automatic Stay is granted.

Charles Gartside Williams ("Debtor") commenced this bankruptcy case on February 11, 2016. Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Alumaweld 17 LS Boat, VIN ending in L708 (the "Boat"), 2008 EZ Loader 17 Foot, VIN ending in 1757 (the "Trailer") and 2008 Honda Outboard Boat Motor, VIN ending in 3005 (the "Boat"). The moving party has provided the Declaration of Catherine Worth to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Worth Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$212.27 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$19,288.63, as stated in the Worth Declaration, while the value of the Vehicle is determined to be \$19,000.00, as stated in Schedules B and D filed by Debtor.

The Movant states that it is currently in possession of the assets and that the Debtor indicated that the Debtor intends to surrender the assets.

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).

The court shall issue an order terminating and vacating the automatic stay to allow Bank of the West, 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 pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of the West ("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 2008 Alumaweld 17 LS Boat ("Boat"), 2008 EZ Loader 17 Foot (the "Trailer") and 2008 Honda Outboard Boat Motor ("Boat"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

2. [16-90104-E-7](#) CHARLES WILLIAMS
MET-2 Brian S. Haddix

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-17-16 [[17](#)]

BANK OF THE WEST VS.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on March 17, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief From the Automatic Stay is granted.

Charles Gartside Williams ("Debtor") commenced this bankruptcy case on February 11, 2016. Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2003 Keystone Montana Fifth Wheel, VIN ending in 5848 (the "Vehicle"). The moving party has provided the Declaration of Catherine Worth to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Worth Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of \$244.63 in post-petition payments past due. The Declaration also provides evidence that there are 1 pre-petition payments

in default, with a pre-petition arrearage of \$244.63.

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 \$13,103.11, as stated in the Worth Declaration, while the value of the Vehicle is determined to be \$14,900.00, as stated in Schedules B and D filed by Debtor.

The Movant states that it is currently in possession of the assets and that the Debtor indicated that the Debtor intends to surrender the assets.

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).

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief From the Automatic Stay filed by Bank of the West ("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 2003 Keystone Montana Fifth Wheel ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.

3. [16-90155-E-7](#) LUIS ROJAS AND ANA
HERNANDEZ
Pro se

ORDER RE: RENTAL DEPOSIT FUNDS
3-8-16 [[24](#)]

Final Ruling: No appearance at the April 7, 2016 hearing is required.

Debtors' Atty: Pro Se

The Court shall issue an Order for the Clerk to disburse the \$1,280.00 rental deposit made by the Debtor for the post-petition rental value of the property to Adriana Green the landlord. **The Hearing is removed from the Calendar.**

Notes:

Set by court order dated 3/8/16 [Dckt 24]. To be heard in conjunction with the Motion for Relief from Stay filed by Adriana Green.

APRIL 7, 2016 HEARING

In light of the landlord seeking relief from the automatic stay with respect to the property that is the subject of the \$1,280.00 rental deposit, the court set a hearing on the disposition of the rental deposit. The court, by final ruling, has granted the unopposed motion of the landlord for relief from the automatic stay to obtain possession of the property. DCN: ADR-1, April 7, 2016 hearing.

Debtor confirms that the rent for the property is \$1,280.00 a month. Statement of Intention, Part 2; Dckt. 1 at 40. In the Initial Statement About an Eviction Judgment Against You, Debtor states that Debtor has deposited with the Clerk the deposit for the rent which will accrue during the 30 days after the filing of the bankruptcy Petition. Dckt. 7. This is repeated in the Statement About Payment of an Eviction Judgment Against You. Dckt. 8.

In the Motion for Relief From the Automatic Stay, Adriana Greene, identified by Debtor and Ms. Greene as the "landlord," asserts the right to have Debtor evicted from the rental property, a three-day notice to cure or quit having been given, and Debtor having failed to cure the default.

The \$1,280.00 deposit for the rental value of the property for the first 30 days after the commencement of the bankruptcy case was made pursuant to 11 U.S.C. § 362(1)(1)(B). The Clerk of the Court shall then transfer the rental deposit to the landlord. 11 U.S.C. § 362(1)(5)(D).

Debtor has provided the certifications required under 11 U.S.C. § 362(1)(1)(A) and that Debtor has cured the defaults by paying the entire amount owed as stated in the judgment for possession. Statement About Payment of an Eviction Judgment Against You. Dckt. 8.

By making the Deposit and making the Statement alleging payment of the pre-petition defaults, Debtor maintained the automatic stay. 11 U.S.C. § 362(1)(1)(2).

The Motion for Relief From the Automatic Stay asserts, and provides evidence to the contrary, Debtor not having cured the default. No Opposition has been filed by Debtor alleging a cure of the pre-petition arrearage.

April 7, 2016 at 10:00 a.m.

Pursuant to 11 U.S.C. § 362(1)(5)(D), the Deposit shall be disbursed to the landlord, to be applied to the value of the Debtor's use of the property post-petition.

The court shall issue an order consistent with this Ruling.

4. 16-90155-E-7 LUIS ROJAS AND ANA MOTION FOR RELIEF FROM
ADR-1 HERNANDEZ AUTOMATIC STAY AND/OR MOTION
Pro Se FOR ADEQUATE PROTECTION
3-2-16 [15]
ADRIANA GREENE VS.

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on March 2, 2016. By the court's calculation, 36 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.

Adriana Greene ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 535 Klopping Court, Patterson, California (the "Property"). The moving party has provided the Declaration of Adriana Greene to introduce evidence as a basis for Movant's contention that Luis Maurillo Rojas and Ana Isabel Hernandez ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property.

Movant asserts that it is the owner of the Property. The Movant asserts that the Debtor has no right to continued occupancy of the premises because a 3-day notice was served and Debtors failed to pay or quit within the time

allowed by state law. The Movant asserts that the Debtor are over \$5,000.00 delinquency in rent.

On February 29, 2016, the Debtor filed a Statement About Payment of an Eviction Judgment Against You. Dckt. 8. The Debtor, under the penalty of perjury, declares:

Under the state or other nonbankruptcy law that applies to the judgment for possession (eviction judgment), I have the right to stay in my residence by paying my landlord the entire delinquent amount.

Within 3 days after I filed my Voluntary Petition for Individuals Filing for Bankruptcy (official Form 101), I have paid my landlord the entire amount I owe as stated in the judgement for possession.

Dckt. 8.

The Movant filed a supplemental declaration on March 21, 2016. Dckt. 26. The Movant asserts that neither of the statements made in the Statement About Payment of an Eviction Judgment Against You are accurate. The Movant states that the Debtor has failed to pay the full amount of rent for the month of November and December, 2015 and January and February 2016.

The Movant does not provide a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership, a copy of the complaint, a copy of the Judgment or Writ of Possession.

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).

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

The court shall issue an order terminating and vacating the automatic stay to allow Adriana Greene, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 535 Klopping Court, Patterson, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

No other or additional relief is granted by the court.

The court shall issue 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 Adriana Greene ("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 Adriana Greene and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 535 Klopping Court, Patterson, California.

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. [15-90486-E-7](#) EDWARD PAYNE MOTION FOR RELIEF FROM
APN-1 Martha Lynn Passalacqua AUTOMATIC STAY
3-10-16 [[27](#)]

NISSAN MOTOR ACCEPTANCE
CORPORATION VS.
DISCHARGED: 8/17/15

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 10, 2016. 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.

Edward Antonio Payne ("Debtor") commenced this bankruptcy case on May 18, 2015. Nissan Motor Acceptance Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Nissan Rogue, VIN ending in 0660 (the "Vehicle"). The moving party has provided the Declaration of John Pierson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Pierson Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of \$2,140.55 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$21,082.12, as stated in the Pierson Declaration, while the value of the Vehicle is determined to be \$16,275.00.

Movant has also provided a copy of the [Kelly Blue Book/NADA] Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the

public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

RULING

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

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on August 17, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Nissan Motor Acceptance Corporation, 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 Nissan Motor Acceptance Corporation ("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,

April 7, 2016 at 10:00 a.m.

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 2013 Nissan Rogue ("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 to the extent the Motion seeks relief from the automatic stay as to Edward Antonio Payne ("Debtor"), the discharge having been granted in this case, the motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

IT IS FURTHER ORDERED that the fourteen (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.

6. [16-90192-E-7](#) GUADALUPE DELOSSANTOS
ADR-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
3-10-16 [[9](#)]

ELSIE SWANN VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Movant failed to provide a Proof of Service the states the parties who were served and when service was processed. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

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

Elsie Swann ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 203 Jones Street, #9, Modesto, California (the "Property"). The moving party has provided the Declaration of Shelly Painter to introduce evidence as a basis for Movant's contention that Guadalupe R. DelosSantos ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property.

Unfortunately, the Movant failed to file a Proof of Service that states the date service was processed nor what parties were served. Without this information, the court cannot determine if sufficient notice was given nor if all necessary parties were served.

Failure to Provide Evidence

Additionally, the declaration (the only evidence) of Shelly Painter in support of the Motion consists only of page 1 of the purported declaration. Dckt. 11. The court has not been provided with evidence to support the allegations

Therefore, the Motion is denied without prejudice.

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

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

The Motion for Relief From the Automatic Stay filed by Elsie Swann ("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.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

ALTERNATIVE RULING

Elsie Swann ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 203 Jones Street, #9, Modesto, California (the "Property"). The moving party has provided the Declaration of Shelly Painter to introduce evidence as a basis for Movant's contention that Guadalupe R. DelosSantos ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance.

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).

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

The court shall issue an order terminating and vacating the automatic stay to allow Elsie Swann, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 203 Jones Street, #9, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

No other or additional relief is granted by the court.

The court shall issue 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 Elsie Swann ("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 Elsie Swann and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 203 Jones Street, #9, Modesto, California.

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

No other or additional relief is granted.

7. [15-90893](#)-E-7 FRANCISCO SANCHEZ AND CONTINUED MOTION FOR RELIEF
WFM-1 ALMA DOMINGUEZ FROM AUTOMATIC STAY
Pro Se 1-25-16 [[30](#)]
CITIMORTGAGE, INC. VS.
DISCHARGED: 1/19/16
CONTINUED: 3/17/16

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter7 Trustee, and Office of the United States Trustee on January 25, 2016. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

CitiMortgage, Inc. ("Movant") filed the instant Motion for Relief from the Automatic Stay on January 25, 2016. Dckt. 30.

The Motion, as filed, failed to comply with Federal Rule of Bankruptcy Procedure 9013 in that it does not state with particularity the grounds (or any grounds) upon which the requested relief is based. Rather, it appears that the grounds are listed in various other pleadings filed with the court and documents on the docket.

The court continued the hearing to 10:00 a.m. on April 7, 2016 to allow Movant to file a supplemental pleading in which the grounds are stated with particularity to that the court may properly consider the grounds upon which Movant relies. Dckt. 42.

On March 25, 2016, the Movant filed a supplement to the Motion.

The Movant seeks relief from the automatic stay with respect to the real property commonly known as 44129 Beech Avenue, Lancaster, California, California (the "Property"). Movant has provided the Declaration of Patrick Walter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Movant asserts that the original borrower on the loan was Leaford F. Hackett. The Movant argues that on May 1, 2013, a Deed of Trust and Assignment of Rents was executed whereby Mr. Hackett purported to create a lien on the property in favor of Francisco Sanchez, the Debtor. Dckt. 34, Exhibit 3.

The Walter Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$11,403.45 in post-petition payments past due. The Declaration also provides evidence that there are 64 pre-petition payments in default, with a pre-petition arrearage of \$232,779.90.

The Movant asserts that it is entitled to relief pursuant to 11 U.S.C. § 362(d)(1) and (4) because Mr. Hackett attempted to create a lien in favor of the Debtor in order to delay and hinder the Movant. The Movant asserts that relief from the automatic stay is justified pursuant to § 362(d)(1) because the Movant is attempting to foreclose on the Property for which there is nearly \$250,000.00 delinquent payments but the Debtor's second deed of trust is hindering the Movant from executing the foreclosure sale.

DISCUSSION

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).

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

As before, the Movant does not provide sufficient grounds in the Motion nor its supplement nor in the Declaration how, pursuant to 11 U.S.C. § 362(d)(4), how the Debtor, not Mr. Hackett, has filed the instant case as part of a scheme to delay or hinder the Movant. The Movant's argument is attempting to have the court "fill in the blank" as to the Debtor's alleged "bad faith." However, the Movant does not provide any testimony, evidence, or argument to support a finding under § 362(d)(4). FN.1. Therefore, the request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied without prejudice.

FN.1. The court does note that there are two other pending Motions for Relief from the Automatic Stay set for hearing in May. The court's cursory review of the Motions show that the creditors in those cases are also seeking relief pursuant to § 362(d)(4). However, unlike the instant Motion, those creditors provide evidence, testimony, and argument as to how the Debtor, as part of an alleged scheme, filed the instant case to hinder or delay the creditor from exercising that right. While there appears to be a possibility that § 362(d)(4) is applicable, the court will not super-impose the other Motions for Relief on the Movant's instant Motion.

However, as to the request for relief pursuant to 11 U.S.C. § 362(d)(1), the court finds sufficient cause to grant relief from the stay. While not artfully argued, the Movant asserts that it is attempting to foreclose on the Property but due to the Debtor's second deed of trust on the Property, the Movant cannot continue with the foreclosure.

Of note, the Trustee filed a Report of No Distribution on November 12, 2015. A review of the Debtor's schedules does not show that the Debtor has listed any interest in the Property or the underlying second deed of trust. The Debtor's discharge was entered on January 19, 2016.

The court determines that cause exists for terminating the automatic stay. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). In order for the Movant to be able to exercise its right to foreclose on the Property, the Movant must get relief from the stay as to the Debtor's interest in the underlying note. As stated by the Movant, the Debtor has not attempted to, as the second in place deed of trust holder, to cure the delinquency. As such, cause exists to grant relief from stay.

Debtor was granted a discharge in this case on January 19, 2016. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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

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.

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

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow CitiMortgage, Inc., 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 44129 Beech Avenue, Lancaster, California, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Francisco Sanchez and Alma Dominguez ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

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.