

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 15, 2014 at 9:30 a.m.

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1. [13-35954-E-7](#) ICING ON THE CUPCAKE, MOTION FOR RELIEF FROM
LLC AUTOMATIC STAY
Matthew Eason 3-26-14 [[95](#)]

MARYANN MCMAHON VS.

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 the Chapter 7 Trustee on March 26, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Final Ruling: The Motion for Relief from 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).

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to grant the Motion for Relief from Automatic Stay. No appearance at the May 15, 2014 hearing is required.

Movant Maryann McMahon ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow them to continue personal injury litigation in Sacramento County Superior Court.

The Motion and supporting pleadings were only served on the Chapter 7 Trustee. Neither Debtor nor Debtor's counsel were noticed or served with the Motion or supporting pleadings. Motions for Relief from Stay are contested matters governed by Federal Rule of Bankruptcy Procedure 9014. See Fed. R. Bankr. P. 4001(a)(1) ("A motion for relief from an automatic

May 15, 2014 at 9:30 a.m.

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stay...shall be made in accordance with Rule 9014..."). Federal Rule of Bankruptcy Procedure 9014 requires that notice and opportunity for hearing shall be afforded to the party against whom relief is sought.

However, Movant has filed a stipulation, which appears to be an agreement between Maryann McMahon and Icing on the Cupcake, LLC, to allow Maryann McMahon to continue to pursue her personal injury and property damage claims against Icing on the Cupcake's insurance carrier for the limited purpose of seeking insurance proceeds. Dckt. 101. Debtor's attorney has signed the stipulation and this Stipulation resolves the service issue.

The Schade Declaration states that Movant's claims against Icing on the Cupcake, LLC arise from a premise liability accident that occurred on July 6, 2011, and Movant is seeking reimbursement for her damages through the insurance company that insured Debtor at the time of the injury.

The Chapter 7 Trustee has filed a statement of non-opposition.

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co.* (In re S. Kemble), 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc.* (In re Tucson Estates, Inc.), 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders* (In re Santa Clara County Fair Ass'n, Inc.), 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc.* (In re Plumberex Specialty Products, Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature and extent of the personal injury case warrants relief from stay for cause. The Movant is seeking relief from Debtor's insurance company to the extent of seeking insurance proceeds.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtor to allow Movant Maryann McMahon to continue the state court litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

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 the creditor 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 modified to allow Maryann McMahon, her agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the Sacramento County Superior case to final judgment regarding the personal injury claims and recovery of any payments from third party insurance companies.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

2. [13-35954-E-7](#) **ICING ON THE CUPCAKE,** **MOTION FOR RELIEF FROM**
APN-1 **LLC** **AUTOMATIC STAY**
Matthew Eason **4-2-14 [109]**

**TOYOTA MOTOR CREDIT
CORPORATION VS.**

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 in possession, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final 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). 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 respondent 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. No appearance required.

Toyota Motor Credit Corporation seeks relief from the automatic stay with respect to an asset identified as a 2012 Scion XB, VIN ending in 8750. The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ibarra Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$1,115.07 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 \$13,547.85, as stated in the Ibarra Declaration.

The Ibarra Declaration also seeks to introduce evidence establishing the value of the asset though the *Kelley Blue Book* valuation of \$15,008.00.

The court maintains the right to grant relief from stay for cause when the 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 has 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 a minute order terminating and vacating the automatic stay to allow Toyota Motor Credit Corporation, and its agents, representatives and successors, and all other creditors having lien rights against the asset, 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.

The moving party's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including any contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what law is being asserted as the basis for attorney fees and the movant was unable to direct the court to any specific provision. Further, no information is given as to the amount of legal fees requested, the legal fees counsel is actually being paid for the motion, or how the court could determine if the fees were reasonable. As such, the request for attorney fees is denied.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 the creditor 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 Toyota Motor Credit Corporation, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Scion XB, VIN ending in 8750, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

3. 14-22186-E-11 HOLLISTIC ANIMAL CARE CONTINUED MOTION FOR RELIEF
JTK-1 SERVICES, INC. A NEVADA FROM AUTOMATIC STAY, FOR ORDER
C. Anthony Hughes DETERMINING "SINGLE ASSET REAL
ESTATE" STATUS, TO CONSOLIDATE,
CONVERT OR DISMISS CASE
3-26-14 [[14](#)]
- SCOTT LEE VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 26, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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).

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay and determine that this case is a "Single Asset Real Estate Case" as defined by the Bankruptcy Code. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Scott B. Lee, Trustee of the Scott Lee and Elizabeth Aghbashian Family Trust ("Creditor") seeks relief from the automatic stay with respect to the real property commonly known as 5441 Hackberry Lane,

Sacramento, California. Creditor moves for relief pursuant to 11 U.S.C. § 362(d)(1), (2), (3) and (4). The moving party has provided the Declaration of Scott B. Lee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lee Declaration states that the Debtor has not made one post-petition payment, with a total of \$8,020.83 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 property is determined to be over \$1,000,000.00, as stated in the Lee Declaration, while the value of the property is determined to be \$600,000.00, as stated in Schedules A and D filed by Debtor.

Creditor argues that Debtor filed this bankruptcy in bad faith after the court in a prior case issued a stay relief order. Creditor states that on October 22, 2013, two days before the hearing on Creditor's motion to appoint a receiver, Baird filed her voluntary petition commencing the Baird bankruptcy, Case No. 2013-33618, as a Chapter 13 case, which was converted to a Chapter 7 on November 4, 2013. On November 14, 2013, Creditor states he filed a motion for relief from the automatic stay and on January 21, 2014, the Court entered its order granting relief from stay allowing Creditor to complete his nonjudicial foreclosure proceedings against the property. Creditor asserts that on February 10, 2014, he caused a Notice of Sale to be recorded in the nonjudicial foreclosure proceedings setting the sale for 1:30 p.m. on Tuesday, March 4, 2014.

However, Creditor states thereafter, on November 13, 2013 Baird reserved the name "Holistic Animal Care Services" with the Office of the Nevada Secretary of State and the next day, November 14, 2013, filed Articles of Incorporation commencing the company Holistic Animal Care Services, a Nevada corporation. Creditor argues that on February 7, 2014, Baird executed a Grant Deed to the Property in favor of Holistic, and on February 14, 2014, the Grant Deed was recorded. Creditor states that at or about 9:52 a.m. on March 4, 2014, Holistic filed its chapter 11 petition, just hours before the Trustee's Sale set for 1:30 p.m. that same date.

Additionally, Creditor argues that Debtor has no equity in the subject real property and has no income which precludes any possibility for any reasonable likelihood of effective reorganization.

Lastly, Creditor argues that pursuant to 11 U.S.C. § 362(d)(4), Debtor has acted in a scheme to delay, hinder or defraud creditors involving property transfer and serial filings.

OPPOSITION

Debtor Holistic Care Animal Services, Inc., filed opposition to the motion for relief arguing that cause does not exist for relief pursuant to 11 U.S.C. § 326(d)(1) because Debtor will be making the default adequate protection payments and this case was not filed in bad faith. Debtor argues that the Managing Member of Debtor, Carole Baird ("Baird") will be making March's payment by April 11, 2014 and will pay for April's payment on or before April 21, 2014. Once both payments to Creditor have been made, Debtor will continue to make the on-going payment due under the Note to Creditor as

adequate protection payments during the pendency of this case.

Debtor states she is able to make the on-going payment due to Baird's separate business, Creekside Pet Resort, providing the income from the business operations on the Property which includes kenneling, grooming and other various services towards animal care. Debtor asserts that she has not filed this case in bad faith because she incorporated months before the filing of this case and the sole purpose was to further her business income through other ventures.

Debtor also argues that relief from the stay pursuant to 11 U.S.C. § 362(d)(2) is not appropriate, because while there is no equity in the property, it is necessary for an effective reorganization. Debtor argues that the plan will be filed shortly and provide for a plan payment for the property taxes within five years of the filing of this case at the applicable interest rate, will not impair the claim of Creditor, and provide a pro-rata payment to the general unsecured creditors. Debtor argues that Creekside will be providing payments to Debtor to make the on-going mortgage payment and to pay the delinquent property taxes within a Chapter 11 Plan.

Lastly, Debtor argues that its Corporation was not created for the sole purpose of filing this bankruptcy nor is this filing part of a scheme to delay, hinder or defraud creditors. Debtor states that it intends on paying its creditors in this case, continue making the on-going payment on the Note and Creditor and pay the taxes in full.

U.S. TRUSTEE'S NON-OPPOSITION

Tracy Hope Davis, United States Trustee for the Eastern and Northern Districts of California and the District of Nevada ("UST") filed a non-opposition to the Motion for Relief. The UST states that this case was filed in bad faith and that the debtor is afflicted with the "new debtor syndrome." UST states that Debtor failed to disclose in the petition for this case, that its president, Baird, has a pending Chapter 7 bankruptcy case. In that case, UST states that Baird transferred real property without court authorization to the debtor-corporation, on or about the same date the debtor-corporation was formed, and approximately 4 months before this case was filed. UST asserts that no consideration was made for the transfer of real property and such real property is the debtor's only real property asset. UST also states that the debtor has few, if any, unsecured creditors in this case and the debtor presently has no employees and receives no income. Hence, it has no means to service the debt on the real property, owing to the Movant. UST argues that such bad faith is "cause" to grant in rem stay relief.

Additionally, the UST states that at the Meeting of Creditors, Baird testified that the Debtor presently has no employees and receives no income and that all secured debts in this case are associated with 5441 Hackleberry Lane. Furthermore, there are three (3) general unsecured debts in this case, totaling \$3,500; two of the general unsecured debts in this case, the unsecured claims of El Rinchak and Associates and Jesse Cole, pre-date the existence of the Debtor. UST argues that these facts show Debtor is afflicted with the "new debtor syndrome" and that cause exists for relief from the automatic stay due to the bad faith filing of the petition.

MOVANT'S REPLY

Creditor argues that Baird signed the Grant Deed on February 7, 2014 and that she had no authority to do so at that time. Baird recorded the Grant Deed on February 14, 2014, the Court never entered any order granting her motion to abandon, so the transfer violated the interests of the Baird bankruptcy estate existing as of that date. Additionally, Creditor argues that the transfer violated the terms of the Deed of Trust held by Creditor, which creates an additional basis for default.

Creditor also questions the validity of Holistic's Corporate Documents supporting the opposition filed by Debtor. Creditor argues that these documents are a sham, designed to give the appearance of corporate action, but lacking those details that demonstrate truthful conduct of business. Debtor asserts that based on these sham documents, Baird was never lawfully made a Director or an Officer of Holistic and had no authority to sign any resolution authorizing the corporation to file bankruptcy.

Creditor argues that Baird's unilateral actions show that she believes she, alone, controls Holistic, in disregard of its own corporation documents, and thereby demonstrates its "alter ego" status.

INTERIM ORDER

On April 16, 2014, the court ordered all claims stated in the Motion, except for Relief from the Automatic Stay and Determination of Single Asset Bankruptcy Case, are dismissed without prejudice. Dckt. 49.

DISCUSSION

11 U.S.C. § 362(d)(1)

The court maintains the right to grant relief from stay for cause when the 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 has 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 existence of bad faith in commencing a bankruptcy case constitutes cause for granting relief from the stay pursuant to § 362(d). *Duvar Apt. v. FDIC (In re Duvar Apt.)*, 205 B.R. 196, 200 (B.A.P. 9th Cir. Cal. 1996). A broad review of relevant cases reveals certain patterns and conduct that have in specific cases been characterized as bad faith, which include:

- (1) a perceived improper impact on nonbankruptcy rights;
- (2) a recent transfer of assets, i.e., the "new debtor syndrome" cases;
- (3) an inability to reorganize; and

(4) unnecessary delay, i.e., serial filings.

3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The concept of bad faith filing should be used sparingly to deny bankruptcy relief to statutorily eligible debtors only in extraordinary circumstances. *Id.*

The "new debtor syndrome" is described as,

a pattern of conduct which exemplifies bad faith cases. [citations omitted] Indicia of the new debtor syndrome include: (1) transfer of distressed property into a newly created corporation; (2) transfer occurring within a close proximity to the bankruptcy filing; (3) transfer for no consideration; (4) the debtor has no assets other than the recently transferred property; (5) the debtor has no or minimal unsecured debt; (6) the debtor has no employees and no ongoing business; and (7) the debtor has no means, other than the transferred property, to service the debt on the property. *In re Yukon Enter., Inc.*, 39 Bankr. 919, 921 (Bankr. C.D. Cal. 1984).

In re Duvar Apt., 205 B.R. at 200.

Here, the court finds sufficient bad faith to warrant Creditor relief from the automatic stay. Debtor is an entity which manifest the indices of "new debtor syndrome." On October 22, 2013, Baird commenced her individual Chapter 13 case, Case No. 13-33618, in this bankruptcy court, which is presently pending in Chapter 7. E.D. Cal. Bankr. Case 13-33618, Dckt. 1. The subject real property was the only real property asset in that case. *Id.* Baird transferred the subject real property to the Debtor on or about November 14, 2013, the same date the Debtor was incorporated. Creditor's Exhibit 18, Dckt. 21.

However, at that time, the subject real property was property of the estate of Baird's individual bankruptcy case and had not been abandoned. A review of the docket shows no court order in Baird's individual bankruptcy case authorizing Baird to transfer the subject real property, which occurred approximately 4 months before the commencement of this case. See E.D. Cal. Bankr. Case 13-33618. On November 14, 2013, Creditor filed a motion for relief from the automatic stay and on January 21, 2014, the Court entered its order granting relief from stay allowing Creditor to complete his nonjudicial foreclosure proceedings against the property. *Id.* at Dckt. 59. On February 7, 2014, Baird executed a Grant Deed to the subject real property in favor of Debtor, and on February 14, 2014, the Grant Deed was recorded. Creditor's Exhibit 18, Dckt. 21.

More importantly, the transfer was made for no consideration. Gee Declaration, Dckt. 34. The Grant Deed was also recorded four days after Creditor caused a Notice of Sale to be recorded in the nonjudicial foreclosure proceedings setting the sale for 1:30 p.m. on Tuesday, March 4, 2014. Creditor's Exhibit 14, Dckt. 21. On March 4, 2014, Debtor filed its chapter 11 petition, just hours before the Trustee's Sale set for 1:30 p.m. that same date. Dckt. 1.

The Debtor really has only one major asset, the subject real property, which she transferred into a newly created corporation after the automatic stay was lifted as to Creditor in her individual bankruptcy case. The unauthorized transfer occurred only four months before the commencement of this case and was done for no consideration. The Debtor appears to have no other real estate assets other than the recently transferred subject real property. A further review of the instant case reveals that the Debtor has no or minimal unsecured debt; of the three general unsecured debts in this case, totaling \$3,500, two of the general unsecured debts in this case (El Rinchak and Jesse Cole) pre-date the existence of the Debtor. Petition, Dckt. 1. Furthermore, the Debtor has no employees and presently receives no income. It appears the Debtor has no means, other than the transferred property, to service the debt on the property. Based on the foregoing factors, the Creditor has shown a prima facie case of bad faith filing under the new debtor syndrome.

Additionally, the court does not find Debtor's testimony to be credible that the creation of this new entity has been created as part of a good faith, bona fide economic endeavor. In this case, the evidence shows that Baird orchestrated the creation of a new legal entity, Debtor, whose sole purpose is to be the title holder for the subject real property and prevent foreclosure on the property by filing for chapter 11 relief while Baird and her other business endeavors continue to use the property.

The use of Chapter 11 for a newly created entity for the continued use by Baird (a debtor in her own case) of her other businesses, and not to reorganize or rehabilitate an existing enterprise, is a misuse of the reorganization process. *In re Powers*, 135 Bankr. 980, 996 (Bankr. C.D. Cal. 1991)(quoting *In re Victory Constr. Co., Inc.*, 9 Bankr. 549, 565 (Bankr. C.D. Cal. 1981)). The debtor has not made a sufficient showing to overcome the prima facie case of bad faith filing under the new debtor syndrome. The considerable bad faith indicia that are present, coupled with the delay of the foreclosure sale and the delay of receiving any payments on the property, adversely affect Creditor's rights. Therefore, there is sufficient cause to lift the automatic stay as to Creditor regarding the subject real property.

11 U.S.C. § 362(d)(2)

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor 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).

Under the standard set by the Supreme Court in *Timbers*, to establish that property is necessary for an effective reorganization under § 362(d)(2)(B), a debtor is required to show that "the property is essential for an effective reorganization that *is in prospect* . . . This means a reasonable possibility of a successful reorganization within a reasonable time." 484 U.S. at 376 (internal quotations omitted); *In re Dev., Inc.*, 36 B.R. 998, 1005 (Bankr. D. Haw. 1984) (cited with approval by *Timbers*). "While it is true that a relief from stay hearing should not be converted

into a confirmation hearing, the effective reorganization requirement . . . requires a showing by the debtor . . . that a proposed or contemplated plan is not patently unconfirmable and has a realistic chance of being confirmed." *Sun Valley Newspaper, Inc. v. Sunworld Corp.* 171 B.R. (9 Cir. B.A.P. 1994). The debtor fails to show necessity of the property for an effective reorganization if the debtor's plan is unsupported by credible assumptions and projections that offer some basis for confidence that the plan could succeed. *In re Pegasus Agency, Inc.*, 101 F. 3d 882 (2d Cir. 1996). Courts usually require the debtor to do more than manifest unsubstantiated hopes for a successful reorganization. A debtor must do more than merely assert that it can reorganize if only given the opportunity to do so. *In re Sun Valley Newspapers*, 171 B.R. 71.

Here, Debtor has not shown a reasonable possibility of a successful reorganization within a reasonable time. Debtor has provided no credible assumptions or projections that offer a basis that the plan (which has not been filed to date) will succeed. Furthermore, with the court's findings that this filing was in bad faith and that Debtor is afflicted with the "new debtor syndrome," the court is not confident that Debtor can file a plan in good faith.

11 U.S.C. § 362(d)(4)

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.).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning the bad faith filing by Debtor and a series of bankruptcy cases being filed with respect to the subject property. The unauthorized transfer of the interest in the subject property to a newly formed legal entity that is solely controlled by the same individual, was a deliberate attempt as a stay to foreclosure. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

Single Asset Real Estate Determination

Congress has provided a specific statutory definition of, and certain limitations on, for an entity which exists to only own one piece of real property. The term "Single asset real estate" is defined as real property consisting of a single property or project, other than a residential property with fewer than four units, which generates substantially all of the gross income of a debtor who is not a family farmer, on which no substantial business is being operated other than operating the real property. 11 U.S.C. § 101(51B).

With respect to the automatic stay in a Single Asset Real Estate Case, 11 U.S.C. § 362(d)(3) provides,

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

. . .

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later-

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that-

(I) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmaturing statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate.

Here, it appears that relief from stay pursuant to 11 U.S.C. § 362(d)(3) is not appropriate, as the applicable time period in subsection (d)(3) has not run. Relief from stay must be granted unless, within the latest of (1) 90 days after the order for relief, (2) such longer period as the court determines during the initial 90-day period or (3) 30 days after the court determines that the debtor is subject to the single asset real estate provisions, the debtor files a plan or commences payments. This case was filed March 4, 2014. Ninety days after the order for relief has not passed, nor has a longer period been established by this court. Additionally, the court has not to date determined that this case is a "single asset real estate case" for the thirty day time period to apply.

However, the court can grant relief under subsection 362(d)(1) or (2) when it is appropriate to do so even if the applicable time period in subsection (d)(3) has not run.

Relief Granted

The court shall issue an order terminating and vacating the automatic stay to allow Scott B. Lee, Trustee of the Scott Lee and Elizabeth

Aghbashian Family Trust, and his 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. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

The court shall also determine that the case is one as defined to be a single asset real estate case. 11 U.S.C. § 362(d)(3). However, the time period applicable in subsection (d)(3) has not run. Therefore, the court cannot grant relief pursuant to this subsection.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 the creditor 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 Scott B. Lee, Trustee of the Scott Lee and Elizabeth Aghbashian Family Trust, his 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 5441 Hackberry Lane, Sacramento, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDER that the court determines that this case is one as defined pursuant to 11 U.S.C. § 362(d)(3) to be a single asset real estate case.

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.