

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

May 22, 2014 at 10:00 a.m.

1. [14-90407-E-7](#) RONALD/RUTH FITZGERALD MOTION FOR RELIEF FROM
PD-1 Pro Se AUTOMATIC STAY
4-9-14 [[20](#)]

FEDERAL HOME LOAN MORTGAGE
CORPORATION VS.

Final Ruling: No appearance at the May 22, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 43 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court issues its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Federal Home Loan Mortgage Corporation ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3625 Ganado Way, Modesto, California (the "Property"). The moving party has provided the Declaration of Michael M. Baker to introduce evidence as a basis for Movant's contention that Ronald John Fitzgerald and Ruth Quinell Fitzgerald ("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. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on December 12, 2012. Based on the evidence presented, Debtor would be at best be a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Stanislaus and received a judgment for possession, with a Writ of Possession having been issued by that court on March 13, 2014. Exhibit 5, Dckt. 24.

May 22, 2014 at 10:00 a.m.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership, the Judgement and Writ of Possession. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Federal Home Loan Mortgage Corporation, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 3625 Ganado Way, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant 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 moving party's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including the provisions of the deed of trust and any other contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what "non-bankruptcy law" is being asserted as the basis for attorney fees. Though the points and authorities makes reference to the deed of trust, 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.

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 Federal Home Loan Mortgage Corporation 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 Federal Home Loan Mortgage Corporation and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3625 Ganado Way, 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 waived for cause shown by Movant.

No other or additional relief is granted.

2. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA MOTION FOR RELIEF FROM
RPM-3 Robert S. Marticello AUTOMATIC STAY
4-15-14 [[857](#)]
DAIMLER TRUST VS.

Final Ruling: No appearance at the May 22, 2014 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 Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 15, 2014. By the court's calculation, 37 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 issues its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Sawtantra and Aruna Chopra ("Debtor") commenced this bankruptcy case on December 30, 2011. Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Mercedes-Benz E350, VIN ending in 5337 (the "Vehicle"). The moving party has provided the Declaration of Jennifer Montiel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

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 \$34,193.25, as stated in the Montiel Declaration.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle stating a value of \$28,200.00. Though authenticated, the Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The

court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

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

No opposition has been presented to the Motion.

RULING

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).

Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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

Movant 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

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.

Applegate Johnston, Inc. ("Debtor") commenced this bankruptcy case on July 16, 2013. Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 GMC Yukon, VIN ending in 7093 (the "Vehicle"). The moving party has provided the Declaration of Joel Dombrowe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dombrowe Declaration provides testimony that Debtor has not made seven (7) post-petition payments, with a total of \$5,578.65 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 \$52,713.13, as stated in the Dombrowe Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle stating the value is \$36,725.00. 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).

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

Movant 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 Ally 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, 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 2013 GMC Yukon ("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.

No other or additional relief is granted.

4. [13-91459](#)-E-11 LIMA BROTHERS DAIRY CONTINUED MOTION FOR RELIEF
WJS-1 Hagop T. Bedoyan FROM AUTOMATIC STAY
9-26-13 [[34](#)]

AMERICAN AGCREDIT, PCA VS.

CONT. FROM 4-10-14, 3-6-14, 2-13-14, 1-16-14, 10-31-13, 10-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on September 26, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

Final 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. The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on June 12, 2014 pursuant to the Stipulation of the parties. No appearance at the May 22, 2014 hearing is required.

American AgCredit, PCA ("Movant") seeks relief from the automatic stay with respect to an asset identified as the Dairy Herd and milk pool quota. The moving party has provided the Declarations of Teresa Rose, Eric Capron, and Steve Gallichio to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Movant seeks relief pursuant to 11 U.S.C. § 362(d)(1), as cause exists because there is a potential for damage to the dairy herd from insufficient feed.

The Rose Declaration states that Debtor had borrowed total of \$2,561,128.14 from Movant. There have been post-petition payments received by milk check assignment, which may serve to decrease the total debt slightly.

The Capron Declaration states that Debtor had approximately 60 days of feed on hand on August 20, 2013. However, supplements needed to be purchased to generate feed mix with appropriate nutrition level (estimated cost of \$50,000). As of September 4, 2013, Debtor has failed to file a motion to appoint a broker to liquidate the herd.

The Gallichio Declaration states that he performed a Dairy Valuation. He found that additional feed will need to be purchased. Also, the Debtor did not have supplements such as oat hay, straw or corn stalks for supplements with alfalfa. There are 3,403 animals which he valued at \$2,880,500.

May 22, 2014 at 10:00 a.m.

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Movant argues that it has been in contact with Debtor's Counsel and understood that the herd would be sold, but no motion to sell has been brought forward and then the September 11, 2013 status report by the Debtor also stated that Debtor expected to employ a broker to sell its livestock. However, no such motion has been filed to date.

PRIOR HEARINGS

Stipulation for Relief and Continued Hearing

The parties stated on the record a stipulation to grant the Motion and modifies the automatic stay the hearing to modify the stay to allow Movant to exercise its rights in the "Dry Cows," "bred heifers," "open heifers," "bucket calves (0-6 months)." For this relief, the 14-day stay of enforcement is waived. The hearing is continued as to the balance of the motion and collateral to 10:00 a.m. on October 31, 2013.

No additional documents have been filed to date either arguing for or against further relief from the stay.

DECEMBER 11, 2013 ORDER

On December 11, 2013, the court continued the hearing on the motion for relief from the automatic stay. Dckt. 81.

JANUARY 8, 2014 ORDER

On January 8, 2014, the court ordered that the hearing on the Motion for Relief be continued until February 13, 2013, to be heard at 10:00 am. Dckt. No. 98. It was further ordered that any opposition to the Motion be filed on or before January 30, 2014, and that any reply to opposition to the Motion be filed on or before February 6, 2014.

FEBRUARY 3, 2014 ORDER

On February 3, 2014, the court ordered that the hearing on the Motion for Relief be continued until March 6, 2014 at 10:00 a.m., and trailed to be heard with the Chapter 11 Case Status Conference on the 3:30 p.m. calendar. Dckt. No. 136. It was further ordered that any opposition to the Motion be filed on or before February 20, 2014, and that any reply to opposition to the Motion be filed on or before February 27, 2014.

Nothing has been filed to date in conjunction with this Motion for Relief to date.

MARCH 6, 214 HEARING

The court notes the Status Conference Statement states that the Debtor-in-Possession has requested that Ag Credit agree to continue the hearing on this motion 30 days to give the Debtor-in-Possession time to file a Plan and Disclosure Statement.

The parties filed a stipulation to continue the hearing to April 10, 2014.

APRIL 10, 2014 HEARING

The parties filed a stipulation to continue the hearing to May 22, 2014. Dckt. 190.

MAY 22, 2014 HEARING

The parties filed a stipulation to continue the hearing to June 12, 2014. Dckt. 232.

5.	14-90273-E-7	CINDY CARMICKLE Martha Lynn Passalacqua	MOTION FOR RELIEF FROM AUTOMATIC STAY 5-1-14 [13]
		SW-1	
		WELLS FARGO BANK, N.A. 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, Chapter 7 Trustee, and Office of the United States Trustee on May 1, 2014. 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.

Cindy Luellen Carmickle ("Debtor") commenced this bankruptcy case on February 27, 2014. Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Chevrolet Malibu, VIN ending in 5182 (the "Vehicle"). The moving party has provided the Declaration of Carina Olivares to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Olivares Declaration provides testimony that Debtor has not made one (1) post-petition payment, with a total of \$355.43 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 \$13,506.22, as stated in the Olivares Declaration.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle stating the value at \$10,175.00. 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).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., 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.

Movant 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.

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. 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 denied.

Thomas E. Schaal, as Trustee of the Schaal Family 2002 Trust and Thomas R. Rose ("Movants") seeks relief from the automatic stay with respect to the real property commonly known as 1609 North Center Street, Stockton, California (the "Property"). Movant has provided the Declaration of Honey Urrutia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Urrutia Declaration states that relief is being sought pursuant to 11 U.S.C. § 362(d)(1) and (2). The Urrutia Declaration does not state the number of post-petition defaults in the payments on the obligation secured by the Property. The Urrutia Declaration states that the debt secured by this property is \$163,282.91 (including \$146,282.91 secured by Movant's first deed of trust). The value of the property is determined to be \$200,000.00 as stated on Schedules A and D filed by Debtor.

No Opposition has been filed to the Motion.

From the evidence provided to the court, it does not appear that relief can be granted pursuant to 11 U.S.C. § 362(d)(2), as there is equity in the subject real property.

However, Movant also argues that cause exists because Debtor is not the owner of the subject property. Movant states that the promissory note secured by a first priority deed of trust against the subject real property was executed on July 20, 2012 by the Debtor for the entity, Future 4 Properties, LLC, A California Limited Liability Company. Movant has provided authenticated copies of the Note and Deed of Trust, which state the Borrower as Future 4 Properties, LLC, A California Limited Liability Company, signed by Warren Ramsey. A search of the California Secretary of State database shows Future 4 Properties, LLC is an active limited liability company in California, with the Agent for Service of Process listed as Warren Ramsey.

DISCUSSION

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." Bankruptcy Code § 362(a)(3) states that the automatic stay applies to, "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."

Based on the evidence provided, it appears that the loan was made to and the subject property is owned by Future 4 Properties, LLC. Although Debtor lists the subject property as his real property in Schedule A, no evidence has been presented to show that Debtor has any interest in the subject real property. Therefore, it does not appear the automatic stay applies to the subject property, as it does not appear to be property of the bankruptcy estate of Warren Ramsey.

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 Thomas E. Schaal and Thomas R. Rose 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, the automatic stay provisions of 11 U.S.C. § 362(a) not in effect against the real property commonly known as 1609 North Center Street, Stockton, California, as it is not property of the bankruptcy estate of Debtor Warren Ramsey.

7. [14-90291-E-7](#) JOSE COVARRUBIAS AND MOTION FOR RELIEF FROM
MDE-1 ANALISA AGUILAR-COVARRUBIAS AUTOMATIC STAY AND/OR MOTION
Kathleen H. Crist FOR ADEQUATE PROTECTION
4-9-14 [[13](#)]

THE BANK OF NEW YORK MELLON
VS.

Final Ruling: No appearance at the May 22, 2014 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 43 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.

The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders of The CWALT, Inc., Alternative Loan Trust 2006-OA6 Mortgage Pass-Through Certificates, Series 2006-OA6 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 304 East Roseburg Avenue, Modesto, California (the "Property"). Movant has provided the Declaration of Cynthia Wallace to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Wallace Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$1,586.16 in post-petition payments past due. The Declaration also provides evidence that there are 38 pre-petition payments in default, with a pre-petition arrearage of \$62,722.02.

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 \$496,830.06 (including \$449,957.06 secured by Movant's first deed of trust), as stated in the Wallace Declaration and Schedule D filed by Jose Covarrubias and Analisa Aguilar-Covarrubias ("Debtor"). The value of the Property is determined to be \$140,000.00, as stated in Schedules A and D filed by Debtor.

The Wallace Declaration also states that pursuant to Debtor's Individual Statement of Intention, Debtor intends to surrender the property.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and

all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court 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 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 Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders of The CWALT, Inc., Alternative Loan Trust 2006-OA6 Mortgage Pass-Through Certificates, Series 2006-OA6 ("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 Movant, 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 304 East Roseburg Avenue, Modesto, California.

No other or additional relief is granted.