

as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on June 18, 2020.

First Savings Bank (“Movant”) has filed a Motion for Relief From the Stay that states with particularity the grounds and relief sought, as required by Federal Rule of Bankruptcy Procedure 9013, the following:

- A. Movant seeks relief from the automatic stay so that it may exercise its “rights and remedies” as to “real property collateral.” Motion, p. 1:27-28, 2:1-2; Dckt. 139.
- B. Movant made a loan to Cool Roofing Systems (“Borrower”), which the Debtors guaranteed. The guaranty is secured by “real properties.” *Id.*, p. 2:3-5.
- C. Debtors owe Movant’s not less than \$2,000,000 on the guaranty. *Id.*, p. 2:6.
- D. The “real properties” are “either underwater or very close to being under water.” *Id.*, p. 2:6-7.
- E. “Any equity cushion is eroding to nothing, and Movant is not adequately protected.” *Id.*, p. 2:8-9.
- F. “Cause exists for the Court to grant immediate relief from the stay.” *Id.*, p. 2:9-10.
- G. For grounds, the identity of the collateral, the values of the collateral, the amount of the debt, what is asserted to be cause, and other basis for the relief, the court is instructed to read other pleadings, including the Memorandum of Points and Authorities, Declarations, Request for Judicial Notice, and Appendix of Exhibits filed with the Motion. *Id.*, p. 2:1-12.

Based on the above, the only “grounds” stated with particularity in the Motion is that Movant is owed a nonspecific amount of money, secured by unidentified property, for which Movant has made the legal conclusion that cause exists to terminate the stay, and there is no need to know what other collateral exists to secure the obligation that may have been provided by Borrower.

Other Pleadings Filed by Movant

To support the grounds stated with particularity in the Motion, Movant has filed the following additional pleadings:

- A. Declaration of Theodore Krings (2 pages), Dckt. 141.

1. Mr. Krings testifies that he is a license real estate appraiser and he has appraised three properties identified in the declaration.
 2. He has prepared three appraisals, which are filed as Exhibits 10, 11, and 12 in support of the Motion.
- B. Declaration of Thomas Maciejewski (6 pages), Dckt. 142.
1. He is a vice president for Movant.
 2. He provides testimony about the loan made to borrower and the guaranty given by Debtors.
 3. His testimony includes how Movant computes the amount of the obligation.
 4. He then restates what he reads the appraisals state.
 5. Using information from the appraisal reports, tax records, and his debt calculations, Mr. Maciejewski testifies as to how he computes the value of any equity cushion.
 6. Buried in a footnote in the Declaration, Mr. Maciejewski makes reference to other, unspecified, collateral provided by the Borrower for the obligation that Debtors have guaranteed.
- C. Declaration of Melvin Peters (2 pages), Dckt. 143.
1. Mr. Peters testifies that he is a real estate appraiser.
 2. He testifies that he appraised an identified property, with his appraisal report filed as Exhibit 13.
- D. Declaration of Gerrick Warrington (2 pages) , Dckt. 144.
1. Mr. Warrington testifies he is an attorney with the law firm that is representing Movant in this Contested Matter.
 2. Mr. Warrington authenticates several Exhibits (Exhibits 14, and 16-19).
- E. Appendix of Exhibits (208 pages), Dckt. 145.
1. There are 19 Exhibits provided. These include the four appraisal reports, Schedule D, Claims Register, and four tax bills.
- F. Memorandum of Points and Authorities (4 pages), Dckt. 146.

1. The first two pages of text (not including the caption page) the “Points and Authorities” states many factual grounds upon which the Motion would appear to be based.
 2. Pages four and five of text include factual grounds upon which the Motion is based.
 3. The last part of page five is a statement of the grounds upon which Movant seeks to have the court waive the fourteen day stay of enforcement imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3).
- G. Request for Judicial Notice (2 pages), Dckt. 147.
1. Judicial Notice is requested for the following identified documents:
 - a. Exhibit 14, Debtor’s Schedule D. (A document filed in this court’s case.)
 - b. Exhibit 15, a printout of the Claims Register in this case.
 - c. Exhibits 16-19 - the amount of taxes as shown on printouts which Mr. Warrington authenticates in his Declaration.

The Local Bankruptcy Rules have long required that a motion, points and authorities, each declaration, and the exhibits must be filed as separate pleadings. L.B.R. 9004-2(c), 9014-1(d)(4). While it may be practice in state court that a “motion” is merely a notice that the moving party is seeking relief, and the judge and opposing party are told to review a “bunch of” other documents and assemble for the moving party the grounds for the relief and to state the specific relief. That is not what is required in the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules.

Here, Movant has elected to spread the “grounds” throughout documents other than the Motion, and have only in the Motion nonspecific conclusions. The obligation and collateral are not even identified in the Motion.

Continuance to Afford Movant the Opportunity to Supplement the Motion

Movant and its counsel may argue that the Points and Authorities, when read into the Motion, can be read by the court to state the grounds. That such analysis is why judges get paid the “big bucks.”

While Movant’s counsel has written clearly, in multiple pleadings, why, how, and what relief is requested, the court does not grant exemptions for good writers and only make the less skilled attorneys actually comply with the Rules. The Rules apply to all.

If the court were to allow the “good attorneys” to skirt the Rules, then the appearance is created that indulgences are given to the “judge’s pets” and those attorney who are not part of the clique don’t get such breaks. Additionally, it creates an open season on all the Rules, if this Rule can be fudged, then the attorneys should be allowed to fudge another Rule, and then another Rule, and

For attorneys who may not understand that the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and other rules are properly and evenly applied in this court, and are not “repeat offenders,” the court has developed a procedure to honor the Rules but minimize the disruption and cost for the party who has not provided sufficient pleadings.

The court will continue the hearing to the next available hearing date, June 18, 2020. Movant shall file a Supplement to the Motion (not an amended motion). The Supplement will state all of the grounds that are to be stated with particularity. There being no opposition filed, the court will review the Supplement when filed, and if it adequately complies with what is to be in a motion, the court may remove the Motion from the June 18, 2020 calendar and issue the ruling and order before that date.

**Additional Information Distilled by the Court’s
Law Clerk From the Various Documents Filed
That May be Grounds**

The judicial law clerk for this Department assembled for Movant what the law clerk believed to be possible grounds. It may be that the court uses portions of this in a final ruling, or it may identify misunderstandings as to what is being asserted (subject to the Fed. R. Bankr. P. 9011 certifications by counsel and Movant), which Movant would address in setting forth the grounds and relief requested, with particularity, in the Supplement to the Motion.

First Savings Bank (“Movant”) seeks relief from the automatic stay with respect to Jamie Benjamin Billman and Melissa Marnell Billman’s (“Debtors”) real properties commonly known as:

- A. 12309 Shooting Star Court, Groveland, California;
- B. 4498 Burson Road, Valley Springs, California;
- C. 3968 Burson Road, Valley Springs, California; and
- D. Vacant land (38 acres) located at Burson Road, Valley Springs, California

collectively, (“Properties”).

Movant has provided the following: Declaration of Thomas Maciejewski, Declaration of Melvin Peters, Declaration of Theodore Krings, Declaration of Melvin Peters, and the Declaration of Gerrick M. Warrington to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Properties. Dkts. 141, 142, 143, 144. In support of the Motion, Movant has also provided a total of 19 exhibits, all properly authenticated through the declarations previously listed. Dckt. 145. As part of the exhibits, Movant provided copies of the four Appraisal Reports of the Properties. The Reports have been properly authenticated by their respective appraisers.

Movant argues that Debtor has not made any post-petition payments. Declaration, Dckt. 142.

Debtor's Obligation As Guarantor

The Motion expressly and clearly states that Debtor provided a personal guaranty for the obligation of Cool Roofing Systems, Inc. The copy of the Loan Agreement shows that Cool Roofing Systems, Inc. is obligated for the debt on the loan. Exhibit 1, Dckt. 145.

The first page of Exhibit 3 is titled "U.S. Small Business Administration UNCONDITIONAL GUARANTEE." Dckt. 145 at 12 (emphasis in original). It identifies Cool Roofing Systems, Inc. as the "SBA Loan Name/Borrower" and "Jamie B. Billman" as the "Guarantor" of the obligation of Cool Roofing Systems, Inc. Under Section 1 of the Guarantee, there is the following language:

Guarantor unconditionally guarantees payment to lender of all amounts owing under the Note. This Guarantee remains in effect until the Note is paid in full. Guarantor must pay all amounts due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

Id.

The first page of Exhibit 4 is titled "U.S. Small Business Administration UNCONDITIONAL LIMITED GUARANTEE." Dckt. 145 at 18 (emphasis in original). It identifies Cool Roofing Systems, Inc. as the "SBA Loan Name/Borrower" and "Melissa M. Cotta" as the "Guarantor" of the obligation of Cool Roofing Systems, Inc. Under Section 1 of the Guarantee, there is the following language:

Guarantor unconditionally guarantees payment to lender of all amounts owing under the Note, as limited below. This Guarantee remains in effect until the Note is paid in full. Guarantor must pay all amounts due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

Id.

The limitation is qualified under Section 4 of the guarantee:

COLLATERAL/RECOURSE: The guarantee is limited to the amount lender obtains from the following Collateral pledged by Guarantor.

Property known as 4498 S. Burson Road, Valley Springs, CA 9252.

Id. at 19.

As to third guarantee provided by Movant, the first page of Exhibit 5 is titled "U.S. Small Business Administration UNCONDITIONAL GUARANTEE." Dckt. 145 at 24 (emphasis in original). It identifies Cool Roofing Systems, Inc. as the "SBA Loan Name/Borrower" and "Jamie B. Billman Revocable Trust dated February 23, 2007" as the "Guarantor" of the obligation of Cool Roofing Systems, Inc. Under Section 1 of the Guarantee, there is the following language:

Guarantor unconditionally guarantees payment to lender of all amounts owing under the Note. This Guarantee remains in effect until the Note is paid in full. Guarantor must pay all amounts due under the Note when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

Id.

Movant provides the deeds of trust for all four properties which show Debtors transferring the deeds to Movant. Exhibits 6, 7, 8, 9. Dckt. 145.

DISCUSSION

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 \$2,047,844.13. Declaration, Dckt. 142. Debtor values the Property at \$3,245,000.00, as stated in Schedules B and D filed by Debtor. Dckt. 27. Movant values the Property at \$2,954,000.00. Declaration, Dckt. 142.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See JE Livestock, Inc. v. Wells Fargo Bank, N.A. (In re JE Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re JE Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, Movant asserts that “cause” for granting relief from the stay exists on the following grounds. Movant made a \$2,000,000.00 loan to Cool Roofing Systems, Inc. (“Borrower”) on June 27, 2019, with Debtors guarantying Borrower’s loan obligations. Exhibits 1-5, Dckt. 145. The evidence presented by Movant demonstrates that the Property securing the obligation of Cool Roofing Systems, Inc. is owned by Debtors. Furthermore, Debtors listed the Movant as a creditor with a claim secured by property in Schedule D, Dckt. 27. This shows Debtors knowledge that they are liable for this debt as their own and not an obligation owned by Cool Roofing Systems, Inc. Thus, Debtors are the proper party for whom Movant seeks relief.

The instant bankruptcy was filed on November 1, 2020. Dckt. 1. Debtors have not made any payment for their guaranty obligations on the loan since November 2019. Declaration, Dckt. 142.

Moreover, Movant is not adequately protected. Movant presents appraisal reports valuing the Property at \$2,954,000.00. Though that may seem like a high valuation which provides for equity cushion, Movant shows that such is not the case. While Movant estimates that there is a 9.11% equity cushion, the court agrees with Movant that this equity cushion is quickly declining due to the accrual of interests, fees, and ad valorem real estate property taxes that Debtor has failed to pay. *See Exhibits 16, 17, 18, 19, Dckt. 145.*

The Chapter 7 Trustee has not opposed this Motion. The Trustee has been actively administering other assets of the estate.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 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 First Savings Bank (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:00 a.m. on June 18, 2020. On or before **XXXXXXXXXX**, 2020, Movant shall file a Supplement to the Motion, which shall state with particularity the grounds upon which the requested relief is based and the relief itself.

Upon review of the Supplemental pleading, if determined appropriate, the court may removed this matter from the June 18, 2020 calendar and issue a ruling based on the record without further oral argument.