UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 21, 2018, at 10:00 a.m.

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1. **18-90228-E-7** **ESTER ROSAS** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
APN-1 **Pro Se** **5-11-18 [11]**

TOYOTA MOTOR CREDIT CORPORATION VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 11, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Toyota Prius, VIN ending in 6888 ("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Ester Rosas ("Debtor").

The Rahnae Spooner Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $276.60 in post-petition payments past due. The Declaration also provides evidence that there are two pre-petition payments in default, with a pre-petition arrearage of $553.20.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Though authenticated, 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 exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

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 $16,257.13, as stated in the Rahnae Spooner Declaration, while the value of the Vehicle is determined to be $13,625.00 (replacement value), as stated on the NADA Valuation Report.

DISCUSSION

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

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 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.

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief stated with particularity (Federal Rule of Bankruptcy Procedure 9013) specified, the court will not grant additional relief merely stated in the prayer. FN.1.

FN.1. The Motion does not attempt to state with particularity any grounds for such relief. Rather, the only reference to such request for relief is in the prayer of the Motion, where Movant "prays" that the court "Waive the provisions of Federal Rules of Bankruptcy Procedure, Rule 4001(a)(3)." Motion, Dckt. 11 at 4. Though bare "prayers" for heavenly intervention are a major part of many established religions, the Supreme Court and Congress have not included such as the basis methodology for obtaining relief in the federal judicial system.

Movant has not 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 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 Toyota Motor Credit 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, 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 2014 Toyota Prius, VIN ending in 6888 ("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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

2. **18-90339-E-7** **KIMBERLY SOLARIO** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
VVF-1 **Pro Se** **5-31-18 [11]**

MECHANICS BANK, INC. VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on May 31, 2018. 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). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is denied.

Mechanics Bank, Inc., Successor by Merger with California Republic Bank, ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Chevrolet Tahoe, VIN ending in 8095 ("Vehicle"). The moving party has provided the Declaration of Violina Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kimberly Solario ("Debtor").

The Violina Brown Declaration provides testimony that Debtor has not made one post-petition payment, with a total of $450.66 in post-petition payments past due. The Declaration also provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of $1,735.05. Dckt. 13. She further testifies that the unpaid principle balance is $10,876.73. Ms. Brown fails to clearly testify the total amount actually due on the obligation.

Movant has also provided the Declaration of Vincent Frounjian to introduce a Kelley Blue Book Valuation Report for the Vehicle. Though authenticated, 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 exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

DISCUSSION

Movant contends that "cause" exists to grant the requested relief because Movant's interest in the Vehicle is not protected by an adequate equity cushion, pursuant to 11 U.S.C. § 362(d)(1). Movant, however, relies upon the "trade-in value" on the Kelley Blue Book Report. That is incorrect. The correct number is the replacement value of the Vehicle as required by law in 11 U.S.C. § 506(a)(1), which states (emphasis added):

> (2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on **the replacement value of such property as of the date of the filing of the petition** without deduction for costs of sale or marketing. With respect to **property acquired for personal**, family, or household **purposes**, replacement value shall mean the price a **retail merchant would charge** for property of that kind considering the age and condition of the property at the time value is determined.

Movant has not provided a report that includes such replacement amount, but merely one that asserts what a trade-in amount would be if Debtor were not acquiring the Vehicle, but selling (or dumping it on) to an auto dealer who will have to resell it (and make a profit on) to another.

This does not appear to be by mistake but expressly stated by counsel in his declaration as being presented to meet Movant's obligations in establishing the grounds for relief. Movant's "Bankruptcy Associate," Violina Brown, goes further, testifying under penalty of perjury:

> "7. According to the valuation of the "Kelly Blue Book", the trade-in value of this Vehicle is $10,537.00. Movant routinely utilizes "KBB Used Car Guide" values in formulating the reasonable value of used motor vehicles as it has been Movant's experience that the KBB is one of the most commonly used source for valuation data utilized by the automobile industry in the ordinary course of business, and it accurately estimates the value of used motor vehicles. (A true and correct copy of the "KBB" value is attached to Creditor's Exhibit List as Exhibit 3 and incorporated herein by reference)."

Declaration ¶ 8, Dckt. 13.

Ms. Brown appears to state, under penalty of perjury that the replacement value to be paid by a consumer that is charged by a retailer is the "trade-in" value that a car dealer pays to purchase a used vehicle from a customer purchasing another vehicle from the dealer. It appears that Ms. Brown's testimony,

presented by Movant's counsel, is that car dealers purchase used vehicles on "trade-ins" and then resell them retail for the same price as they paid to acquire the vehicle as a trade-in. Such testimony is clearly false.

As counsel and Ms. Brown well know, Kelley Blue Book also provides the "retail value," which is the retail price paid by a customer buying the vehicle from the dealer. Such is commonly known in the community and the court has seen thousands of such Kelley Blue Book reports over the years.

However, the Kelley Blue Book Report presented by counsel and used to support the testimony of Ms. Brown under penalty of perjury is carefully constructed not to disclose the retail value. Such does not appear to be mere inadvertence, but an intentional structuring of the report to state an erroneous value that does not comply with the plain language of the statute.

Ms. Brown goes further to argue in her Declaration that there is "**ZERO**" (emphasis in original) equity for Debtor in the vehicle. While giving her opinion, she does not provide the court with the necessary evidence for the court to make the necessary factual findings and then draw the necessary conclusion of law.

Movant has not provided the court with any admissible evidence as to the Vehicle's value, so the court is unable to determine that there is not a sufficient equity cushion in the Vehicle such that Movant's claim is not adequately protected at this time.

As referenced above, it does not appear that statement of an invalid value is by error. Rather, it appears that Movant is intentionally, in violation of Federal Rule of Bankruptcy Procedure 9011, misstating facts and the law. Whether sanctions are proper will be the subject of a subsequent Order to Show Cause, if this bankruptcy judge and the Chief District Court Judge determine such to be appropriate.

Movant having failed to provide the necessary evidence and having misstated the law, the Motion is denied.

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 Mechanics Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Relief from the Automatic Stay is denied.

3. **18-90149-E-11** **SOUZA PROPERTIES, INC.** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
FWP-1 **David Johnston** **6-7-18 [42]**

JUDITH ANSHIN VS.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 7, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxxxxxxxxxxxxxxxxx.

Judith Anshin as Trustee of the Judith Anshin Family Trust; Robert H. Baker and Lynette R. Raisbeck as Trustees of the RHB and LRR Trust dated July 7, 2011; Alan E. Bartholemy, Jr. as Trustee of the amended Alan E. Bartholemy, Jr. Living Trust dated April 25, 1996; Polycomp Trust Company as Custodian FBO Christopher T. Cleland Roth IRA Acct. No. 044251; Carol Ann Cleland; IRA Services Trust Company as Custodian FBO David T. Christensen IRA Acct. No. 030016; Charles E. Dorn and Mary G. Dorn as Trustees of the Dorn Family Trust; and Jack W. Klassen and Myrna L. Klassen as Trustees under the Klassen Trust Agreement dated December 5, 1997 ("Movant") seek relief from the automatic stay with respect to Souza Properties, Inc.'s ("Debtor") real property commonly known as the northeast corner of North Golden State Boulevard and West Canal Drive in Turlock, California, containing Debtor in Possession's business, a warehouse, and five houses ("Property"). Movant has provided the Declaration of William Watson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Watson Declaration states that there are two notes held by Movant on the Property. For the first note, there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,343.47 in post-petition payments past due. For the second note, there are also three post-petition defaults totaling $30,234.39.

The Declaration also provides evidence that there are eleven pre-petition payments in default on each note, with a pre-petition arrearage of $18,676.13 on the first note and $110,859.43 on the second note.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $1,598,256.15 secured by Movant's first and second deeds of trust, as stated in the Watson Declaration and Schedule D. The value of the Property is determined to be $1,800,000.00, as stated in Schedules A and D. The Watson Declaration presents testimony that there are various problems with the Property that may lower its value—such as structural deficiencies, electrical wiring, and plumbing—but the Declaration does not present any testimony about what the value is currently or about how much the value listed on Schedule A should be reduced. *See* Dckt. 44 at 4–5.

Aside from missed payments, the Watson Declaration also states that Debtor in Possession has not achieved certain benchmarks in this case (related to sales of real property) that had been negotiated as conditions for post-petition use of cash collateral. *Id.* at 5.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][I] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.*

For this Motion, Movant has not provided any evidence as to the Property being a value other than as stated on Schedule A. Instead, Movant has argued that prospective purchasers value the Property at less than $1.8 million and there are necessary repairs that reduce the value. Despite those allegations, Movant has not presented the court with anything more than allegations; that is insufficient.

DISCUSSION

Movant not having presented the court with counter evidence, the court begins with the $1,800,000 of value provided by Debtor in the Schedules. A calculation of the value and the debts secured by the Property, for purposes of this summary proceeding Contested Matter only, proceeds as follows:

FMV.....$1,800,000
Claim Secured by First Deed of Trust.....($ 215,000) [rounded]
Claim Secured by Second Deed of Trust.....($1,350,000) [rounded]
Est Costs of Sale, Commercial Property.....($ 108,000) [estimated at 6%]

Projected Net Sales Proceeds Value for Movant.....$127,000 (7% equity cushion)

William Watson, the President of Money Brokers, Inc. has provided his declaration in support of the Motion. Dckt. 44. He testifies that he is the "agent" for Movant. Mr. Watson does not describe the scope of his duties and authority as such "agency." No document evidencing such agency engagement is provided with Movant's exhibits. Dckt. 45.

In his Declaration, Mr. Watson testifies that all of his testimony (he actually merely states that the "fact," possibly not recognizing that his declaration is his testimony under penalty of perjury) is based on his personal knowledge—Except information provided to him by: (1) people who report to him, (2) other persons, or (3) such "facts" as are his personal opinions. Declaration, ¶ 2; Dckt. 44. It appears that Mr. Watson's testimony is based substantially on repeating merely what he is "told by others." FN.1.

FN.1. Movant's counsel are very well-experienced, well-respected attorneys. Their initial response could well be, "we would never present anything as testimony if we had any thought that it was not 100% truthful." Such a statement would well be concurred with by many in the legal community. However, as this court recently commented to another well-known, experienced attorney in the community, "the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, and Local Bankruptcy Rules are not optional, when convenient, mere 'suggestions, as opposed to rules of conduct.'" Such failures cause the court to question the credibility of a witness who signs such a declaration, even in the light of the failure of an opposing party to interpose the proper evidentiary objections. As the Supreme Court admonished federal trial judges, relief is to be granted only when it is warranted based on the evidence and the law—not merely because a party demands it and the other party fails to oppose. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

However, the key testimony of Mr. Wilson goes to the debt, the amount of debt, and default, which based on the testimony, Mr. Wilson would know or be in the books and records of Money Brokers, Inc., which appears to be providing services as a loan servicer (or possibly the loan originator who placed Movant in these loans for which they assert the current complaints that Debtor is unable to repay the loans).

The equity cushion (which computation does not take into account foreclosure costs) of $127,000 in some circumstances could appear to be substantial, however, here it is a mere 7%, less than one year of interest. It does provide some protection, to give a creditor some interest while a debtor in possession diligently prosecutes the bankruptcy case. As experienced bankruptcy practitioners know, adequate protection does not require there being an equity cushion, but merely that the collateral is not decreasing in value (at least during the first year of the case). *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

Movant also points the court to the cash collateral use consent and the benchmarks agreed to by Debtor in Possession, alleging in the Motion:

> Post-petition, Creditors consented to Debtor's use of cash collateral conditioned upon Debtor and Creditors reaching an agreement by April 30, 2018, regarding Benchmarks for various actions to occur in Debtor's case. Creditors have

> been patient with Debtor, in part due to health and other personal issues with Debtor's counsel. However, as of the filing of this Motion, and despite repeated requests from Creditors, Debtor has not provided any proposed Benchmarks.
>
> Based on Debtor's failure to provide proposed Benchmarks, Creditors withdrew their consent to use of cash collateral as of May 7, 2018. To date, Debtor has not sought or obtained Court approval of its continued use of Creditors' cash collateral and continues to use cash collateral without consent or Court permission.

Motion ¶ B,1; Dckt. 42. No copy of any consent agreement or withdrawal of consent has been provided to the court. Exhibits, Dckt. 45. In his Declaration Mr. Watson testifies to various "facts" about the consent and the withdrawal of the consent, but he fails to demonstrate how he has any personal knowledge of such events. These possibly are events that he has been told by others and now seeks to parrot the statements of others to the court.

Movant also complains that Debtor in Possession has not obtained authorization to employ a property manager for the several residences on the Property. In the Points and Authorities, the legal authority for such court "authorization" is explained as follows by Movant:

> Based on Debtor's monthly operating reports and testimony at the 341 meeting, Debtor is renting four of the residences located on the Property and paying a property manager. However, in the three months that its chapter 11 bankruptcy case has been pending, Debtor has not applied to this Court to employ a property manager. Debtor's failure to employ a property manager is further cause to grant relief from stay.

Points and Authorities, Dckt. 46 at 8:14–18. It appears that Movant has no legal authorities for such contention, but is merely a conclusion that Movant dictates to the court.

Movant also complains that Debtor in Possession has engaged the services of a real estate broker (professional) to market the Property for sale. However, it is further reported that Debtor in Possession has not obtained an order to employ such professional. Movant asserts that the failure to obtain such authorization is grounds for relief from the stay. In reality, the failure to obtain such authorization and the real estate broker having agreed to provide such service may well work to increase the equity in the property for the bankruptcy estate. Failure to obtain such authorization does not excuse such professional from fulfilling obligations and duties to the bankruptcy estate (as a fiduciary to the estate), but results in the professional "volunteering" to help the creditors and provide such services for free. 11 U.S.C. § 327; *Atkins v. Wain*, 69 F.3d 970, 973 (9th Cir. 1995); *see* 3 COLLIER ON BANKRUPTCY ¶ 327.03.

However, the failure to obtain such authorization by Debtor in Possession (fiduciary to the bankruptcy estate) raises serious questions of the ability of Debtor in Possession to prosecute this case. Such employment is routinely obtained, a well-known requirement, and not something that would be "missed" by a fiduciary of the bankruptcy estate prosecuting a case in good faith. (The court notes that counsel for Debtor in Possession ensured that his application to be employed as a professional was filed and an order obtained thereon. Motion, Dckt. 23; Order, Dckt. 26.)

A review of the docket in this case reveals that, though having been tipped off by Movant two weeks prior to the hearing, Debtor in Possession has failed to act to remedy this shortcoming. Such failure to act may evidence a belief by Debtor in Possession that no prosecution of this case can be done and nothing remains to be done but allow Movant to foreclose.

Debtor in Possession's Status Report

In its Status Report filed on March 29, 2018, Debtor in Possession reported that Aasim Propane Gas Corporation has breached its obligation to lease the commercial property of the bankruptcy estate. Dckt. 21 at 3–10. It is asserted that this "breach" of the "obligation" to lease the property led to this bankruptcy case being filed. A review of the docket does not disclose any action being taken by Debtor in Possession to enforce its rights arising from the "breach" of the "obligation" to lease this Property.

From a review of the docket, the court cannot see Debtor in Possession taking any action to prosecute this case.

Additional Arguments Presented at Hearing

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

~~In this case, the equity cushion in the Property for Movant's claim provides/not provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).~~

~~A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). As the court has noted, there appears/does not appear to be sufficient equity at this time, which defeats the first element of 11 U.S.C. § 362(d)(2).~~

~~The Motion is **xxxxxxxxxxx**.~~

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 Judith Anshin as Trustee of the Judith Anshin Family Trust; Robert H. Baker and Lynette R. Raisbeck as Trustees of the RHB and LRR Trust dated July 7, 2011; Alan E. Bartholemy, Jr. as Trustee of the amended Alan E. Bartholemy, Jr. Living Trust dated April 25, 1996; Polycomp Trust Company as Custodian FBO Christopher T. Cleland Roth IRA Acct.

No. 044251; Carol Ann Cleland; IRA Services Trust Company as Custodian FBO David T. Christensen IRA Acct. No. 030016; Charles E. Dorn and Mary G. Dorn as Trustees of the Dorn Family Trust; and Jack W. Klassen and Myrna L. Klassen as Trustees under the Klassen Trust Agreement dated December 5, 1997 ("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 **xxxxxxxxxxxxxxxxx**.

4.	**17-90981-E-11** **MHK-1**	**THE LIVING CENTERS OF FRESNO, INC.** **David Johnston**	**CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** **4-11-18 [43]**

RONALD LEOB, ET AL. VS.

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2018. By the court's calculation, 15 days' notice was provided. The court set the hearing for 2:00 p.m. on April 26, 2018. Dckt. 55.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing Debtor in Possession stated an Opposition for which the court determined that further briefing and final hearing was warranted.

The Motion for Relief from the Automatic Stay is granted.

Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust ("Movant") seek relief from the automatic stay with respect to The Living Centers of Fresno, Inc.'s ("Debtor in Possession") real property commonly known as 4576 E. Shields Avenue, Fresno, California ("Property"). Movant has provided the Declaration of Ronald Loeb to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ronald Loeb Declaration states that Movant transferred the Property to Debtor in Possession in exchange for a promissory note and deed of trust, securing an obligation of $540,000.00. The Declaration states that Debtor in Possession failed to pay the obligation when it came due in October 2015 and had made only six monthly payments. The Declaration states that no payments have been made on the obligation since June 2015.

APRIL 26, 2018 HEARING

At the hearing, Debtor in Possession asserted that the Property was necessary because it is where treatment is provided. Also, Debtor in Possession contended that its revenues are not rents, but payments for the treatment services provided. Also, the property tax installment was stated to have been paid for April 2018. Movant questioned whether there is an effective reorganization happening. Dckt. 64.

The court continued the hearing to 10:30 a.m. on May 31, 2018, requiring opposition by May 11, 2018, and any replies by May 18, 2018. Dckt. 66.

MAY 31, 2018 HEARING

At the hearing, Debtor in Possession requested a continuance to file late opposition. Dckt. 69. Counsel explained that health issues had prevented him from preparing a timely opposition.

In the discussion, Debtor in Possession also disclosed that the principal may have advanced money to pay property taxes. That is inconsistent with the fiduciary duties of a responsible representative and ignores the separate legal entity to which one owes duties.

The court continued the hearing to 10:00 a.m. on June 21, 2018, for a final hearing and ordered Debtor in Possession to make a $2,000.00 adequate protection payment to Movant on or before June 6, 2018. Dckt. 70. The court also ordered Debtor in Possession to provide evidence of paying property taxes, including documentation for the source of those funds. *Id.*

Finally, the court ordered that if Debtor in Possession fails to make the adequate protection payment, then the court would order that Troy Dorman as the responsible representative and David Johnston as counsel would each pay a $2,000.00 corrective sanction to Movant. *Id.*

DECLARATION OF MOVANT'S COUNSEL

Movant's Counsel filed a Declaration on June 13, 2018. Dckt. 71. Counsel states that on June 8, 2018, he received delivery of four cashier's checks payable to Movant, each in the amount of $500.00.

Counsel also states that he received an e-mail from Debtor in Possession's counsel on June 8, 2018, relating to property tax payments. Counsel reports that there were two parcels, and that on May 8, 2018, Debtor paid $416.19 on the smaller parcel.

Additionally, Counsel reports that the e-mail contained documentation from the Fresno County Tax Collector's website showing another payment on June 6, 2018, for the larger property in the amount of $3,429.67.

DISCUSSION

Despite the continuance, Debtor in Possession has not filed opposition to this Motion.

A review of the most recent Monthly Operating Report, for May 2018, shows that there is revenue being generated for the estate, notwithstanding Debtor in Possession demonstrating an inability to prosecute this case. Dckt. 74. The May monthly gross revenue is stated to be $45,873, and the cumulative revenues from the commencement of this case in December 2017 is stated to be $310,923 (which averages $51,820 per post-petition month). *Id.* at 4. However, for the month of May, Debtor in Possession shows a loss of ($1,300). *Id.* The Amended Monthly Operating Report for December 2017 states that the cash balance was $3,509 at the end of the first post-petition month (*Id*. at 62), which the May Monthly Operating Report states has increased to $44,518 as of May 31, 2018 (Dckt. 74 at 4).

The Bank statements attached to the May Monthly Operating Report provide the following information as to where this $44,518 closing balance of cash from operation of the business of the bankruptcy estate is located:

Wells Fargo Bank Business Checking -8486 5/31/18 Balance.....$4,690.51
Wells Fargo Bank Business Checking -8494 5/31/18 Balance.....($ 4.47)
Wells Fargo Bank Business Checking -8502 5/31/18 Balance.....$ 18.72

On the Summary of Financial Status, page 1 of the May 2018 Monthly Operating Report, Debtor in Possession states that the cash balance at the end of May 2018 is $4,695. This is a different number than shown in the cumulative filing-to-date computation or the amounts shown on the bank statements. The $4,695 number is shown on page 2 of the May Monthly Operating Report as the cash and cash equivalents held by Debtor in Possession at the end of May 2018.

It appears there may be a business of the estate that could be operated, Movant's claim paid, and other creditors' claims provided for through a Chapter 11 Plan. However, Debtor in Possession has demonstrated that it is incapable of such good faith prosecution of this bankruptcy case. Possibly, another fiduciary of this bankruptcy estate could so act, fulfill the obligations of a fiduciary of the estate, and come up with a reorganization rather than allowing Movant to foreclose. Such fiduciary would be a Chapter 11 Trustee. Such Trustee could make a determination as to how Movant's claim could, if possible, be provided for as part of a plan—or could determine that foreclosure is proper. The Chapter 11 Trustee could also review the various expenses that the principal of Debtor in Possession is running through this case.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxx**

RULING

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 $505,031.23 (including $412,069.83 secured by Movant's first deed of trust), as stated in the Loeb Declaration and the Proofs of Claim. The value of the Property is determined to be $380,000.00, as stated in the Loeb Declaration as an admission of a party opponent.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). As instructed by the Supreme Court, merely there being the lack of an equity cushion is not grounds, in and of itself, of a showing of lack of adequate protection. *United Savings Association of Texas v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). ~~The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.~~

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Movant has successfully argued that there is no equity in the Property, but Movant has not presented any argument as to the second element that the Property is not necessary for an effective reorganization. Movant states that Debtor in Possession is not likely to obtain confirmation of a plan of reorganization. That is not the same as arguing that property is specifically not necessary in this case.

~~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.~~

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 argues that the lack of payment, the general lack of a prospect of an ability to reorganize in Chapter 11, and the failure to pay real property taxes all show that the Property is not necessary, warranting waiving the stay. Those arguments show cause to grant relief from the automatic stay, but they do not demonstrate why the court should waive the fourteen-day stay as imposed by the Supreme Court. With no real grounds for such relief specified, the court will not grant additional relief.

In the Motion, Movant did not plead 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). However, this matter has been continued since April 26, 2018, to afford Debtor in Possession the opportunity to file written opposition as requested at the prior hearing. No opposition has been filed. Sufficient grounds exist, with the continuance of the hearing and there being no opposition, to waive the fourteen-day stay of enforcement.

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 Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust ("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 Ronald Loeb, Edwin Loeb, Carolyn Radford, and Becky Griffin, as assignees of The Loeb Living Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 4576 E. Shields Avenue, Fresno, California.~~
>
> ~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.~~
>
> ~~No other or additional relief is granted.~~

5. **18-90184-E-7** **JAMES DENEGRI** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
MEL-1 **Pro Se** **5-4-18 [13]**

BANK OF AMERICA, N.A. VS.

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

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

Sufficient 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 May 4, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Chevrolet Silverado, VIN ending in 5219 ("Vehicle"). The moving party has provided the Declaration of Jonathan Jackson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by James Denegri ("Debtor").

The Jonathan Jackson Declaration provides testimony that Debtor has not made one post-petition payments, with a total of $352.00 in post-petition payments past due. The Declaration also provides evidence that there are twelve pre-petition payments in default, with a pre-petition arrearage of $4,224.00.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. Though authenticated, 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 exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

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 $19,300.87, as stated in the Jonathan Jackson Declaration. While Movant argues that the value of the Vehicle is $14,700.00, the court notes that Movant has provided the trade-in value, not the correct replacement value, which is $19,025.00, and which is the value that the court uses.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 4, 2018. Dckt. 20. Debtor asserts that the Vehicle was involved in a car accident on May 7, 2017, and that the Vehicle sustained major damages. Debtor states that he was not able to fund the repair fees and that he has not been in possession of the Vehicle since the time of the accident. Debtor also asserts that the auto loan has been charged off according to his credit report.

Unfortunately for Debtor, he has not provided any evidence in support of his arguments, and he has not presented his statements as sworn under penalty of perjury.

DISCUSSION

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

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988) Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The "Opposition" by Debtor does not state a basis for not granting the Motion and allowing Movant to take possession of the damaged vehicle. Debtor is not using the Vehicle. Debtor did not insure the Vehicle. Debtor, possibly in the innocence of a pro se, states that he does not "own" the Vehicle because

it is in the possession of the tow company, he cannot afford to repair it, and the debt has been "charged off." Debtor does not explain what the term "charged off" as used on a credit report means. It is commonly known that such reference is made to indicate that the creditor has "charged off" the asset on its taxes against profits as uncollectable, not that the debt does not exist.

The attached police report indicates that this was a one-driver accident, with Debtor's vehicle colliding with a street sign post and a utility pole. The report also indicates that there were impairments to Debtor when operating the Vehicle. *See* Traffic Collision Report Attached to Opposition, Dckt.20 at 3–11.

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 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.

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 America, N.A. ("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 2011 Chevrolet Silverado ("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.

6. **18-90196-E-11** **BARRENO ENTERPRISES, LLC** **MOTION FOR RELIEF FROM**
LAJ-1 **David Johnston** **AUTOMATIC STAY**
5-24-18 [33]

VERDUCCI ENTERPRISES, LP VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on May 24, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FN.1.

FN.1. Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service be filed within three days of the motion. Here, the Motion was filed on May 24, 2018, and the Proof of Service was filed five days later on May 29, 2018. Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Verducci Enterprises, LP ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 880 Broadway Ave., Suites C-1 and C-2, Seaside, California ("Property"). The moving party has provided the Declaration of Jack Verducci to introduce evidence as a basis for Movant's contention that Barreno Enterprises, LLC ("Debtor in Possession") does 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. Dckt. 35. Based on the evidence presented, Debtor in Possession would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Monterey. Exhibit E, Dckt.37.

DECLARATION OF ALBERT BARRENO

Albert Barreno filed a Declaration in Opposition on June 6, 2018. Dckt. 41. Mr. Barreno disputes facts referenced in the exhibits in support of the Motion for Relief from Stay provided by Movant. Mr. Barreno contends that he was entitled to a $500.00 per month discount on rent. He argues that the Three-Day Notice filed was defective and that he can assume the lease in this case.

MOVANT'S REPLY

Movant filed a Reply on June 14, 2018. Dckt. 43. Movant argues three points. First, Movant argues that contrary to Debtor's assertions, the monthly rent was stated properly in the Notice of Default Movant issued because the reduced rate was contingent upon Debtor making monthly payments, which Debtor ceased to do in November 2017. Second, Movant argues that Debtor does not dispute that it stopped paying rent.

Third, Movant argues that the discussion of what rent amount was to be paid is not appropriate in this court because a motion for relief from the automatic stay is a summary proceeding at which time the court does not adjudicate the underlying merits of the pending action.

DISCUSSION

Movant asserts that Debtor's failure to pay rent since November of 2017, coupled with the Debtor's failure to cure the amounts owing in response to the Movant's issuance of the "Three Days Notice," consitutes "cause" pursuant to 11 U.S.C. § 362(d)(1). Section 362(d)(1) allows a bankruptcy court to grant relief from the automatic stay for "cause." *In re Delaney-Morin*, 304 B.R. 365, 369 (B.A.P. 9th Cir. 2003). "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *MacDonald v. MacDonald (In re MacDonald)*, 755 F.2d 715, 717 (9th Cir.1985).

Movant has requested Relief from Stay to proceed with the unlawful detainer action in state court. Movant has also provided sufficient facts and arguments in support of allowing the action state action to proceed. Dckt. 36. Movant has provided evidence of a significant number of months unpaid rent. Dckt. 37. Debtor's dispute regarding the accounting of the delinquency may be relevant for the proceedings in state court, but not for instant motion. Dckt. 41.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Review of File

This bankruptcy case was filed on March 26, 2018. Monthly Operating Reports for April and May have come due, but none have been filed by Debtor in Possession.

The court shall issue an order terminating and vacating the automatic stay to allow Verducci Enterprises, LP, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 880 Broadway Ave., Suites C-1 and C-2, Seaside, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 for various reasons, including that the stay would further delay litigation while Movant has already not been receiving rent payments for seven months.

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 Verducci Enterprises, LP ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Verducci Enterprises, LP and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 880 Broadway Ave., Suites C-1 and C-1, Seaside, California.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.