

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 16, 2019 at 1:30 p.m.

1. [19-20302-E-13](#) HSIN-SHAWN SHENG MOTION FOR RELIEF FROM
[JCW-1](#) Richard Jare AUTOMATIC STAY
6-12-19 [87]
WELLS FARGO BANK, 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, Debtor's Attorney, Chapter 13 Trustee, Chapter 7 Trustee, and Attorney for Chapter 7 Trustee on June 12, 2019. By the court's calculation, 34 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 denied without prejudice.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the debtor, Hsin-Shawn Sheng's ("Debtor"), real property commonly known as 2769 Barrington Ter Fremont, California ("Property"). Movant has provided the Declaration of Joselle Bracy to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. FN.1.

FN.1. The copy of the Declaration filed on the court's docket has a bleached look to it, and is difficult to read. Dckt. 91. However, the outline of the words is visible when magnified.

The Joselle Bracy Declaration states that there are 3 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,497.74 in post-petition payments past due. Declaration ¶ 7, Dckt. 91.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Response on July 1, 2019. Dckt. 96. Trustee notes that no plan has been confirmed, and that the Amended Plan proposed (Dckt. 80) does not specifically provided for Movant's claim.

DEBTOR'S RESPONSE

Debtor filed a Response on July 3, 2019. Dckt. 105. Debtor's counsel argues the Property is subject to a related Chapter 7 case, and that the Debtor's interest is therefore equitable. Debtor's counsel notes Debtor has valued the Property at \$650,000.00 on Schedule B, and argues the equity cushion is sufficient along to provide adequate protection.

REQUEST FOR JUDICIAL NOTICE

Debtor filed a request for judicial notice on July 3, 2019. Dckt. 107. Debtor requests that the court take judicial notice of Documents 181 through 184 in Case 17-25114-E-7 which are the Motion by the Trustee in the related Chapter 7 case to pay claims, including payment of contractual arrears in the secured Obligation held by the movant.

Debtor's counsel alleges that Debtor missed payments on Movant's claim because Chapter 7 Trustee Eric Nims has, in Debtor's Chapter 7 case, diverted rent monies to pay off claims. Debtor's counsel also notes a Motion To Pay filed by the Chapter 7 Trustee in Debtor's other case will allow Movant's arrearages to be cured.

DISCUSSION

Movant's claim totals \$129,978.00. Proof of Claim, No. 1. As of the filing of the petition date, there was an arrearage of \$1,166.74. *Id.*

While Debtor's counsel states Debtor's interest in the Property is valued at \$650,000.00, Schedule B actually states under penalty of perjury the Property is worth \$900,000.00. Dckt. 1. The \$650,000.00 amount is Debtor's anticipated equity in the Property if it were sold and secured claims satisfied.

In Debtor's Chapter 7 Case, No. 17-25114, Debtor lists the Property as having a value of \$850,000.00. 17-25114, Dckt. 32. The consensual liens were stated to be \$243,000.00. *Id.*

Even taking Movant's past valuation, there is a very large equity cushion providing adequate

protection.

Furthermore, on July 11, 2019 the court heard the Chapter 7 Trustee's Motion To Pay in Debtor's other case,. That Motion was granted, and the Chapter 7 Trustee authorized to cure the arrearage on Movant's claim.

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.* In this case, the equity cushion in the Property for Movant's claim 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).

The Motion is denied.

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 Wells Fargo Bank, 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 that the Motion is denied without prejudice.

No other or additional relief is granted.

2. [16-25205-E-7](#) **TIMOTHY TAPURO**
[18-2066](#) **Peter Macaluso**
RE: COMPLAINT

CONTINUED STATUS CONFERENCE

5-11-18 [1]

**TAPURO V. COUNTY OF
SACRAMENTO, DEPARTMENT OF**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Robert P. Parrish

Adv. Filed: 5/11/18
Answer: 6/29/18

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 5/20/19. A Notice of Settlement [Dckt. 44] having been filed in this case, the court continued the status conference to 7/16/19, if this matter has not been dismissed by the Parties by that date.

The Status Conference is XXXXXXXXXXXXXXXXXXXX

3. [19-22078-E-13](#) **EDUARDO/MARIE ORTEGA**
[EAT-1](#) **Peter Macaluso**

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-10-19 [37]**

WILMINGTON TRUST, 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, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 10, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

Wilmington Trust, National Association as Trustee for MFRA Trust 2016-1 ("Movant") seeks relief from the automatic stay with respect to the debtors, Eduardo Ortego and Marie Ortega's ("Debtor") real property commonly known as 2481 Bent Tree Dr., Roseville, California ("Property"). Movant has provided the Declaration of James M. Stefani to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The James M. Stefani Declaration provides the following testimony:

1. Notices of Trustee's Sale were filed on March 1, 2012; September 16, 2013; June 27, 2014; February 11, 2016; and April 7, 2017. All sales were cancelled due to bankruptcy filings. Declaration ¶ 8, Dckt. 39.
2. A new Notice of Default was recorded April 1, 2019 but rescinded due to this bankruptcy filing. *Id.*, ¶ 9.
3. The Property was involved in several bankruptcy cases. *Id.*, ¶ 10.

4. As of May 2019, no payments have been received by Debtor since November 2018. *Id.*, ¶ 12.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick (“the Chapter 13 Trustee”) filed a Response on July 1, 2019. Dckt. 55. The Chapter 13 Trustee notes Debtor is \$8,062.38 delinquent under the plan, and that Movant is included as a Class 1 claim with a monthly payment of \$2,277.55.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 2, 2019. Dckt. 62. Debtor asserts an amended plan will be filed to cure Movant's arrearage claim by the 26th month of the plan term. Debtor requests the court deny the Motion on the basis that the amended plan will provide adequate protection.

DISCUSSION

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 \$668,011.63 (including \$532,858.08 in consensual liens, and \$121,268.16 in tax liens). *See* Schedule D, Dckt. 1 *and* Proof of Claim, Nos. 1-3, 5, 10. The value of the Property is determined to be \$575,000.00, as stated in Schedules A and D. Dckt. 1.

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 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.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that

the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, Debtor has filed now three cases and as of May 10, 2019 the total indebtedness owed to Movant is \$471,943.21.

- A. Case No. 17-22226
 - 1. Filed: April 3, 2017
 - 2. Chapter 13
 - 3. Dismissal Date: January 16, 2019
 - 4. Reason for Dismissal: Delinquency in plan payments.

- B. Case No. 16-21304
 - 1. Filed: March 2, 2016
 - 2. Chapter 13
 - 3. Dismissal Date: January 22, 2017
 - 4. Reason for Dismissal: Delinquency in plan payments.

- C. Case No. 14-27476
 - 1. Filed: July 22, 2014
 - 2. Chapter 13
 - 3. Dismissal Date: September 24, 2015
 - 4. Reason for Dismissal: Delinquency in plan payments.

- D. Case No. 12-38100
 - 1. Filed: October 10, 2012
 - 2. Chapter 7
 - 3. Result: Discharge received June 25, 2013

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property. With respect to the elements, the court concludes that the filing of the current Chapter 13 case in the Eastern District of California was part of a scheme by Debtor to hinder and delay Movant from conducting a nonjudicial foreclosure sale by filing multiple bankruptcy cases.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking nor *per se* bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. The filing of the current Chapter 13 case cannot have been for any bona fide, good faith reason in light of Movant not receiving regular monthly payments and suffering from undue delay from the foreclosure proceeding on the subject Property. In effect, this is a series of bankruptcy attempts by Debtor. Movant argues that Debtor's repeated bankruptcy filing is being used as part of a scheme to delay or hinder or otherwise interfere with Movant's ability to enforce its state law remedies. The scheme includes multiple bankruptcy filings

affecting the Property, which further hurts Movant.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Debtor has been in and out of bankruptcy for nearly a decade. In 2013, Debtor received a discharge in Debtor's Chapter 7 case. Notwithstanding being afforded that relief, Debtor proceeded to file 4 Chapter 13 bankruptcy cases. Omitting the present case, all of Debtor's Chapter 13 cases have been dismissed for delinquency in plan payments.

Debtor does not appear to be capable (or willing) of prosecuting a Chapter 13 case in good faith. Rather, it appears Debtor is merely using bankruptcy protections to stop foreclosure on the Property, and live in the Property while paying only what Debtor wants to pay.

Debtor has engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases, and relief is granted pursuant to 11 U.S.C. § 362(d)(4).

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(c)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than filing several bankruptcy cases that are then dismissed.

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 Wilmington Trust, National Association as Trustee for MFRA Trust 2016-1 ("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 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 that is recorded against the real property commonly known as 2481 Bent Tree Dr., Roseville, California ("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 Property.

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

"If recorded in compliance with applicable State laws governing notices

of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.”

No other or additional relief is granted.

4. [19-23689-E-13](#) **MONICA LAM**
[SC-1](#) **Pro Se**

BRECKENRIDGE PROPERTY FUND
2016, LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-17-19 [10]

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, Chapter 13 Trustee, other parties of interest, and Office of the United States Trustee on June 17, 2019. By the court’s calculation, 29 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.

Breckenridge Property Fund 2016, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 124 Illinois Street Vallejo, California 94590 (“Property”). The moving party has provided the Declaration of Olivia Reyes to introduce evidence as a basis for Movant’s contention that Monica K. Lam’s (“Debtor”) 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. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on February 13, 2019. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano. Motion for Summary Judgment and various other motions on calendar set for June 11, 2019 were continued to June 18, 2019 and it was anticipated at the time they will be continued again because of the filing of this petition.

Movant has provided a certified copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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).

The court shall issue an order terminating and vacating the automatic stay to allow Breckenridge Property Fund 2016, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 124 Illinois Street Vallejo, California 94590 , including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Breckenridge Property Fund 2016, LLC (“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 Breckenridge Property Fund 2016, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 124 Illinois Street Vallejo, California 94590 .

EVELYN THOMAS VS.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

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 13 Trustee, and Office of the United States Trustee on June 13, 2019. By the court’s calculation, 33 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). 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 and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion for Relief from the Automatic Stay is granted.

The movant, Evelyn Thomas (“Movant”), seeks relief from the automatic stay with respect to the debtor, DeAndra Renee Jackson’s (“Debtor”), real property commonly known as 1207 Shell Court, Fairfield, California (“Property”). Movant has provided her own Declaration to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Dckt. 24.

In her Declaration, Movant provides the following testimony:

1. Debtor is a tenant at the Property with a 13 month lease. Declaration ¶ 2, Dckt. 24.
2. Debtor has not paid the May and June 2019 payments. *Id.*, ¶ 3.
3. Movant inspected the Property on May 24, 2019, and found it to be in a deteriorating condition. *Id.*, ¶ 4.
4. During Movant’s inspection, Movant observed upwards of 4 subtenants residing at the Property.

5. Movant is seeking possession of the Property, not a monetary judgement.

David Cusick (“the Chapter 13 Trustee”) filed a Response indicating non-opposition on July 1, 2019. Dckt. 28.

DISCUSSION

Movant has presented evidence she is the owner of the Property, Debtor has not made any post-petition payments on the lease agreement, and Debtor has failed to maintain the Property. Debtor did not file any opposition to the Motion.

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).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, 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. Movant argues this relief is necessary due to post-petition defaults, Debtor’s history of bankruptcy filings, Movant not being listed on as a creditor in this case, and violations of the lease agreement.

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 Evelyn Thomas (“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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1207 Shell Court, Fairfield, California (“Property”).

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.

6. [19-20238-E-13](#) [RPZ-1](#) **MANUEL SAUCEDO-GONZALEZ AND REGINA SAUCEDO**
Chad Johnson **MOTION FOR RELIEF FROM AUTOMATIC STAY**
6-12-19 [36]

PENNYMAC LOAN SERVICES, LLC
VS.

Final Ruling: No appearance at the July 16, 2019 hearing is required.

The Motion For Relief is dismissed without prejudice.

Creditor PennyMac Loan Services, LLC having filed “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 12, 2019, Dckt. 57; no prejudice to the responding party appearing by the dismissal of the Motion; Movant having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtor”); the Ex Parte Motion is granted, Movant’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 filed by Creditor PennyMac Loan Services, LLC having been presented to the court, movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 57, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion For Relief is dismissed without prejudice.

**SELECT PORTFOLIO SERVICING,
INC. 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.

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, Debtor's Attorney, Chapter 13 Trustee, interested parties, and parties requesting special notice on May 24, 2019. By the court's calculation, 32 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 XXXXXXXXXX.

Select Portfolio Servicing, Inc., servicing agent for U.S. Bank National Association, as trustee, on behalf of the holders of the Home Equity Asset Trust 2005-4 Home Equity Pass Through Certificates, Series 2005-4 ("Movant") seeks relief from the automatic stay with respect to the debtor, Thomas Edward Warren's ("Debtor"), real property commonly known as 11563 Quartz Drive Unit 3, Auburn, California (the "Property"). Movant has provided the Declaration of Kendall Proeun to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Kendall Proeun Declaration provides testimony that Debtor has not made 8 post-petition payments, with a total of \$1,715.39 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 \$30,735.56, as stated in the Kendall Proeun Declaration, while the value of the Property is determined to be \$78,000.00, as stated in Schedules B and D filed by Debtor.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on June 11, 2019. Dckt. 78. Trustee notes Debtor is delinquent \$6,521.00 under the confirmed plan, and that there is a pending motion to dismiss the case.

INCOMPETENCY OF DEBTOR

This court has been barraged with ineffective attempts by Debtor's sister, Susan Rose, and Debtor's attorney to have a personal representative appointed due to Debtor being mentally incompetent. *See* Civil Minutes, Dckt. 64, for discussion of latest efforts. This has been sought notwithstanding Debtor's sister asserting that the Debtor was legally competent to sign a post-petition power of attorney in favor of the sister on September 27, 2018.

On Schedule A/B Debtor, to the extent he was competent when the case was filed, states that the property securing Movant's claim has a value of \$78,000.00. Dckt. 11 at 3. Movant's claim is only \$30,000, meaning that this incompetent debtor is looking at losing \$50,000 because his sister and counsel cannot prosecute a motion for appointment of a personal representative.

As discussed in the Civil Minutes (Dckt. 64) referenced above, the court was not impressed with the two line expert "to whom it may concern" note (not testimony) from a person identified as an "MD" that the Debtor "is not capable of making complex, legal and financial decisions. . . ." Dckt. 62 at 2. This could be said of many "least sophisticated consumer debtors" who seek relief in the bankruptcy court.

In her latest Declaration (Dckt. 54) Debtor's sister testifies under penalty of perjury that the Debtor was "released to my [Sister's] care" in the summer of 2018. Declaration ¶ 3; Dckt. 54. She continues to testify that while in her "care," Debtor's sister noted a deterioration in the Debtor's mental health. *Id.*, ¶¶ 4, 5.

Because of his deteriorating mental health, Debtor's sister took him to an attorney to obtain a power of attorney in favor of the sister. She testifies that both she and the attorney concluded that Debtor had sufficient competency to give the power of attorney so his sister could act for him in his legal and financial dealings. *Id.*, ¶¶ 6, 7.

With the power of attorney, sister owes fiduciary duties to Debtor. Debtor's counsel owes duties to his client.

Unfortunately, sister and Debtor's counsel, in fulfilling their duties to the Debtor, have only given the court "sister wants to" and "here is a two line note (not expert testimony under penalty of perjury) saying Debtor cannot handle complex legal matters" explanations. While the court has no doubts about Debtor's counsel's ethics, the rules and fulfilling of duties cannot be selectively applied and counsel be given a pass because "he's a good guy."

In reality Debtor's sister and counsel have given the court nothing more than, "sister says put her in charge, you don't need to see the debtor, you don't need any expert testimony, just give the sister the keys to the Debtor's kingdom."

Now the court sees that Debtor's case is crumbling and those responsible for, and having fiduciary duties to, Debtor are allowing Debtor's rights, interests, and property to be lost.

Though a simple motion, supported by simple expert (independent) doctor testimony, presented by a special counsel (whose credibility on this issue had not been squandered as it has by Debtor's current counsel) to show this is all on the up and up, could have been filed to get a personal representative appointed, none has been done.

JUNE 25, 2019 HEARING

At the June 25, 2019 hearing the court noted Debtor's stated incompetency and that therefore no effective order can be issued. Movant consented to a continuance of this hearing rather than denial to avoid the cost and expense of having to file a new motion.

SUPPLEMENTAL FILING

Since the prior hearing, the Declaration of Peter Macaluso and a Residential Listing Agreement identified as Exhibit A have been filed. Dckts. 83, 84.

Mr. Macaluso testifies (1) he was retained by Susan Rose to assist in protecting Debtor's property and preserve this case, (2) Macaluso has drafted declarations for Susan Rose and an attendant doctor attesting to Debtor's condition and anticipates having a Motion for Omnibus/Nomination of Representative filed by the date of the hearing, and (3) Debtor's real property has been listed for sale and a motion to employ realtor will be filed by the date of the hearing.

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).

While Susan Rose's counsel testifies under penalty of perjury that motions to appoint a representative and employ a realtor would be filed by the date of the hearing, nothing has been filed as of July 15, 2019, the eve of the hearing date.

At the hearing, **xxxxxxxxxxxxxxxx**.

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

The letter closes with Ms. Loofbourrow's request that the court "PLEASE RE-
INVESTIGATE CASE #19-20520."

The Clerk of the Court, based on established procedures, interprets such a letter as a "complaint" to initiate the necessary adversary proceeding for the denial of discharge or nondischargeability of debt. FED. R. BANKR. P. 7001. This Adversary Proceeding was opened. The court then issued its Order Regarding Letter/Pleading Filed, in which the Clerk was authorized to open this adversary proceeding and Viki Loofbourrow, as Plaintiff, was ordered to:

- A. Pay the \$350.00 Adversary Proceeding Filing Fee;
- B. File a completed Adversary Proceeding Cover Sheet, Form 1040, as required by the Local Bankruptcy Rules;
- C. File an amended pleading, an amended complaint, complying with the pleading rules and stating the claims as required by federal law.

Order, Dckt. 5. That order was issued on May 2, 2019.

As of July 15, 2019, no amended complaint has been filed. No Adversary Proceeding Cover Sheet has been filed. Plaintiff Viki Loofbourrow has filed a Motion to Waive Filing Fee. Dckt. 9. The form Ms. Loofbourrow used is for the Chapter 7 filing fee by a debtor, and does not state the grounds and basis for waiving an adversary proceeding filing fee.

Ms. Loofbourrow went further, taking an Order form for waiving a Chapter 7 filing fee and purported to have it set the date, a date in the end of August 2019, for a hearing. Ms. Loofbourrow printed the name of the judge in the signature block where the judge would sign the order if the judge issued the order.

On June 3, 2019, Plaintiff elected to file an additional one-page document, not an amended complaint, on a pleading form, to which she attaches her prior letter. Dckt. 11. It is obvious that she took the Summons issued by the court, copied the page with the Adversary Proceeding caption (including the May 3, 2019 filing and Doc #2 data at the top of the page), blanked out the text below the caption, and merely placed handwritten additional conclusions that there will be testimony of assets being hidden, that debt was intentionally incurred with the plan of filing bankruptcy, and that her prior letter attached is her affidavit.

SPECIAL STATUS CONFERENCE

On June 25, 2019, Plaintiff Viki Loofbourrow had not filed the required amended complaint to prosecute this Adversary Proceeding. Before dismissing the Adversary Proceeding for failure to prosecute, the court ordered this Special Status Conference to be conducted. The attendance, in person, of Viki Loofbourrow is ordered. At this Special Status Conference the court considers whether Ms. Loofbourrow intends to properly pursue this Adversary Proceeding or whether it is proper.

Additionally, in light of the allegations of fraud, abuse of government programs, and theft, as well as disturbing statements concerning a life insurance policy, the court directed the Clerk to serve informational copies of this Order on the Chapter 7 Trustee in the Defendant-Debtor's case, the U.S. Trustee,

and the U.S. Attorney.

July 16, 2019 Special Status Conference

At the Special Status Conference **XXXXXXXXXXXXXXXXXXXXXX**