UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 11, 2015 at 1:30 p.m.

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1. 15-25401-E-13 MICHAEL KYALWAZI
SMR-1 Mark Shmorgon

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-15 [11]

5116 AUBURN INVESTMENTS, LLC
VS.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 13, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

5116 Auburn Investments, LLC, by Suskind Properties, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5110 Auburn Blvd., Sacramento, California (the "Property"). The moving party has provided the Declaration of Brad Suskind to introduce evidence as a basis for Movant's contention that Michael J. Kyalwazi; dba Café le Monde ("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. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit C, Dckt. 13.

Movant has provided a properly authenticated copy of the Standard Multi-Tenant Shopping Center Lease Agreement to substantiate its claim of ownership and the unlawful detainer complaint. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

MOTHORITIES

The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. FN.1. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

FN.1. The court will not deny the instant Motion on this basis – this time. However, counsel should not rely on the court's generosity in the future. Counsel is to ensure that the motion and points and authorities are two documents, filed separately in future proceedings, as required by the Local Rules. Failure to follow a rule as simple as separating the pleadings causes the court unnecessary work in ascertaining what are grounds, and what are mere argument, speculation and conjecture. Further, the court has observed that in some situations a "mothorities" is used as a device to try and confuse not only the other party, but the court.

DISCUSSION

As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only

under 11 U.S.C. Section 362(d). Hamilton, 2005 Bankr. LEXIS 3427 at *8-*9 (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.

However, the court does look at whether colorable claims to right to possession of the property have been presented. Here, for purposes of considering this motion for relief, Movant has presented evidence to show that Debtor does not have a colorable claim, as a matter of state law, to continue in possession of the property. This is cause to terminate the stay. Further, evidence of the lease having been terminated, Movant has presented grounds that there is no equity in the property (as that term is used in 11 U.S.C. § 362(d)) for the Debtor or estate. The Debtor has not presented the court with a basis for concluding that the property is necessary for an effective reorganization. 11 U.S.C. § 362(d)(2)(B) and (g).

The court shall issue an order terminating and vacating the automatic stay to allow 5116 Auburn Investments, LLC, by Suskind Properties, LLC , and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 5110 Auburn Blvd., Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

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 5116 Auburn Investments, LLC, by Suskind Properties, 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 5116 Auburn Investments, LLC, by Suskind Properties, 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 5110 Auburn Blvd., Sacramento, California.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.
>
> No other or additional relief is granted.

2. 15-25469-E-13 LELAND CLARK **MOTION FOR RELIEF FROM**
SMR-1 Pro se **AUTOMATIC STAY**
7-13-15 [15]

RONALD ELVIDGE VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Relief From the Automatic Stay is granted.

Natoma Meadows Homeowners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California (the "Property"). The moving party has provided the Declaration of Scott Bland to introduce evidence as a basis for Movant's contention that Leland Clark ("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 October 3, 2014. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of February 19, 2015. Exhibit D, Dckt. 18.

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

Pursuant to 11 U.S.C. § 362(c)(2) "the stay of any other act under subsection (a) of this section continued until the earliest of - ...(B) the time the case is dismissed." Here, the case was dismissed on July 27, 2015. Dckt. 21. Therefore, the automatic stay is no longer effective as a matter of law, as to any other act except acts against property of the estate, pursuant to 11 U.S.C. § 362(c).

The court shall issue an order terminating and vacating the automatic stay to allow Natoma Meadows Homeowners Association, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), as Debtor does not have an ownership interest in or a right to maintain possession of the Property as well as the case having been previously dismissed.

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 Natoma Meadows Homeowner Association ("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 Natoma Meadows Homeowner Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2358 Bridlewood Drive, Rancho Cordova, California.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.
>
> No other or additional relief is granted.

3. 15-24080-E-13 HENRY SMART
RAP-2 Robert P. Huckaby

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-15 [28]

RONALD ELVIDGE VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 13, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Ronald Elvidge ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1227 Emerald Bay Road, South Lake Tahoe, California and the personal property provided as collateral under a Security Agreement (the "Property"). Movant has provided the Declaration of Ronald Elvidge to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Elvidge Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,700.00 in post-petition payments past due. The Declaration also provides evidence that there are 11 full and 1 partial pre-petition payments in default, with a pre-petition arrearage of $36,850.00.

The Declaration further states that Henry Smart ("Debtor") has failed to maintain an insurance policy covering the Property as required by Debtor's security agreement. Finally, the Declaration states that Debtor has failed to pay taxes owed to the City of Lake Tahoe and has yet to renew his business license, leaving the Property's Motel business open to closure.

Movant also filed a Supplemental Declaration in response to Debtor's Opposition. Dckt. 40. In the Supplemental Declaration Ronald Elvidge testifies that while Debtor's Plan indicates that Debtor will pay Movant $3,280.00 a month outside the plan to maintain monthly installments, no such payments have been made to Movant. FN.1.

FN.1. The Declaration and Supplemental Declaration provided by Movant (Dckts. 30, 40) may not actually provide testimony under penalty of perjury which the court can rely on to make the necessary factual findings and draw the legal conclusions therefrom. Declarations, in lieu of live in court testimony, may be presented in federal court if they comply with the requirements of 11 U.S.C. § 1746, which states:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

Testimony of a non-expert witness must be based on that witness' personal, first hand knowledge, and mere speculation or belief. Fed. R. Evid. 602; Weinstein's Federal Evidence §§ 602.02.

Here the declarations provide the court with some testimony which is based on actual knowledge and some which the declarant merely, based on

"information and belief," "believes" to be true (quite possibly because if he so "believes," then he can win the motion). This lack of personal knowledge is shown in which the declarant states,

> "Except to the extent stated on information and belief, and as to those matters, I believe such matters to be true, I have personal knowledge of the facts set forth in this Declaration and if called as a witness to testify to the truth of the matters contained herein, I could and would so testify."

Declaration p.1:22-25, Dckt. 30; Supplemental Declaration p. 1:21-24.

Thus, the witnePss states (admits) that not all of the testimony provided is (1) based on his personal knowledge, (2) is subject to the certification that all of it is true and accurate based on personal knowledge, and (3) is stated subject to the penalties of being true and correct based on the witnesses personal knowledge. It may be that the witness in this Contested Matter has personal knowledge of all the factual statements made in the declarations, or it may be that the only personal knowledge the witness has is that "I am the moving party." The court is not presented with clear, personal knowledge testimony.

CHAPTER 13 TRUSTEE'S REPLY

A Reply has been filed by David Cusick, the Chapter 13 Trustee, stating that the Debtor is current under the proposed Plan, paying a total of $1,385.00 to date. The Reply also states that, while the proposed Plan includes Class 1 mortgage arrears of $19,680.00, the monthly installment contract to the creditor is not provided for. Both the Trustee's and the Creditor's objections to Debtor's proposed Plan are set to be heard August 11, 2015.

DEBTOR OPPOSITION

Opposition has been filed by Henry Smart ("Debtor"), asserting that Debtor has a Plan which proposes to cure the arrears of Movant; that the subject Property is a hotel business, and is essential to Debtor's reorganization; that the Debtor has insurance on the Property; that any lien of the City of South Lake Tahoe for Transient Occupancy Tax would be junior to Movant's First Deed of Trust, and therefore would have no effect on his collateral; and, because Movant has not filed any proof of claim, that Debtor is unsure what the amount owed to Movant is, or what basis was used to determine that amount.

Debtor has provided his Declaration in opposition to the Motion. Dckt. 38. In the Declaration, Debtor provides the following testimony:

A. He has filed the Chapter 13 case to cure the arrearage on "my mortgage with creditor."

B. "The subject property is a hotel business, which is essential to my reorganization."

C. "I have property insurance on the property."

D. "My Plan also proposes to cure the TOT owed to the City of South Lake Tahoe."

Declaration, Dckt. 38. No other testimony or evidence is presented to the court in opposition.

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 $786,885.71 (including $726,885.71 secured by Movant's first deed of trust), as stated in the Elvidge Declaration ("Debtor"). The value of the Property is determined to be $700,000.00, with additional personal property being valued at $2,800.00, for a total of $702,800.00, as stated in Schedules A and D filed by Debtor. While the Debtor states in his opposition that he is unsure of what is owed to Movant, the Elvidge Declaration reflects the above stated amounts. Furthermore, Debtor's Schedule A and D indicate that there is no equity in the Property under either the Movant's or the Debtor's determination of what is owed.

The Movant's arguments are well-taken. While the Debtor's Opposition states that the proposed Plan will cure the arrears of Movant, the monthly installment contract is not provided for within the Plan. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). From evidence provided in Movant's Supplemental Declaration, it appears that Debtor has not been making the monthly installment payments inside or outside of the Plan.

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

The Debtor's opposition points out that no proof of claim has been filed by Movant, and maintains that Debtor is therefore ignorant as to what Movant claims is owed, and what the basis for that debt is. This statement appears to reflect Debtor's proposed Plan, section 6.01, which states that "Debtor had a loan modification which [Movant] failed to implement, so Debtor will make the primary modified payment directly." In spite of the Debtor's tumult, the basis for Movant's claim is clearly outlined in the Movant's present Motion and declarations, and appears to be based on the Promissory Note and Security Agreement, attached as Exhibits A and B. The court notes that if the Debtor disputes the amount owed and desires to enforce an allegedly agreed upon modification, he can file an adversary proceeding.

The Debtor's Opposition further states, "I have insurance on the property." Debtor has not offered any other evidence, such as a copy of the insurance policy, to rebut Movant's assertion that the Property is not adequately insured. The court cannot determine the adequacy of Debtor's

insurance policy, if there is any policy, with such a bare assertion. Because the Property may not be adequately protected, this is also cause for terminating the automatic stay. FN.2.

FN.2. Debtor's conclusion that he has insurance is not a binding determination that there is adequate insurance on the property. It would well be that Debtor has a $1,000,000 insurance policy, of which $999,999.00 is self insured and the last $1.00 is covered by the insurance policy. The court will not speculate what the Debtor concludes is "insurance" is adequate insurance for purposes of this motion for relief from the stay.

The Debtor's Opposition also states that "any potential lien by the City of South Lake Tahoe for transient occupancy tax would be junior to [Movant's] mortgage, and so would be of no effect on his collateral." However, Debtor has failed to provide any legal authority for this assertion, leaving only a legal conclusion. Conversely, Movant does not provide the court with a legal basis for determining that the occupancy tax would create a lien senior to that of Movant's lien.

In reviewing the court's own files in this case, a Proof of Claim has been filed by El Dorado County for property taxes in the amount of $12,676.05. Proof of Claim, No. 1. No provision has been made for this property tax claim in Debtor's proposed Chapter 13 Plan. Dckt. 11. Real property tax liens have priority over all other liens as provided by California Revenue & Tax Code § 2192.1. *See In re Hassen Imports P'ship*, 502 B.R. 851, 863 (C.D. Cal. 2013).

Finally, the Debtor's Opposition states that the "subject property is a hotel business, which is essential to Debtor's reorganization." Once again, the Debtor has failed to provide the court with more than a bare legal conclusion. Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization.

> "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means, as many lower courts, including the *en banc* court in this case, have properly said, that there must be 'a reasonable possibility of a successful reorganization within a reasonable time.' 808 F. 2d, at 370-371, and nn. 12-13, and cases cited therein. The cases are numerous in which § 362(d)(2) relief has been provided within less than a year from the filing of the bankruptcy petition. And while the bankruptcy courts demand less detailed showings during the four months in which the debtor is given the exclusive right to put together a plan, see 11 U. S. C. §§ 1121 (b), (c)(2), even within that period lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief."

United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd., 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2).

While the hurdle of making a "necessary for an effective reorganization" may be low at the start of a case, there must be some showing. The Debtor

could have explained what change in circumstances have occurred, such that he will be able to maintain payments under his installment contract, pay his other expenses, and still be able to pay arrears and unsecured debts owed. The actual words used by Debtor do not reference any potential "effective reorganization," but only that he concludes that the property "is essential to my reorganization."

In fully considering this case, and giving the Debtor the benefit of the court, the court review other documents and pleadings filed by Debtor under penalty of perjury which could relate to his conclusion that the property could be necessary to an effective reorganization. First, the Chapter 13 Plan provides for a $1,382.00 a month plan payment for sixty months. Dckt. 11. From this the Debtor projects making a $328 a month payment on the arrearage (stated to be $19,680) to Movant. Debtor will then make monthly payments (amortizing over sixty months the $56,000 due) of $934 to the City of South Lake Tahoe for the delinquent occupancy tax. Finally, the unsecured claims (amortized over sixty months) would be paid $57 a month. On top of that, the court estimates a Chapter 13 Trustee administrative fee of $97 (7% x $1,382). These required payments as projected by Debtor total $1,416, which is $34 a month more than the plan payment.

The Chapter 13 Plan also provides for Movant to be paid only its arrearage claim through Class 1, and states that the current on-going post-petition payments of $3,280 (amount stated in Plan by Debtor) shall be made directly to Movant as a Class 4 Claim. However, for a creditor's claim to be provided for as a Class 4 Claim, it must meet the following plan terms: "Class 4 claims mature after completion of this plan, are not in default, and are not modified by this plan." Chapter 13 Plan ¶ 2.11, Dckt. 11. On its face, the Plan states that Movant's claim cannot be so classified, and that both the arrearage and current monthly payment must be paid as either a Class 1 or Class 2 claim. FN.3.

FN.3. It is a common debtor lament that the debtor doesn't want to have to make the current monthly payment through the plan because it will require the Debtor to compute the Trustee's fees to include that payment. Here, the $3,280 a month amount would equate to $229 a month (estimated at 7%). But that is what is required for the Trustee to administer a business case like this. The bankruptcy process is not free and the Debtor has chosen to avail himself of all of the benefits in this court. The $229 a month is a modest expense for such extraordinary relief for the Debtor's business endeavors.

While a $260 a month increase in plan payments (trustee's fees and shortfall in projected payments required under plan) does not appear substantial, the court considers Debtor's statements under penalty of perjury on Schedules I and J with respect to there being a possible, potential, effective reorganization in this case. On Schedule I Debtor states that he has monthly net income of $5,784.00 from his business. Dckt. 10 at 15. This is the Debtor's total net income from the month. *Id.*

The Attachment to Schedule I showing the computation of this monthly gross income of $11,417 and $5,633.00 a month in operating expenses (not including the current monthly payment to movant). No expenses are provided for: (1) income taxes, (2) property taxes, or (3) occupancy taxes. *Id.* at 16.

This yields the monthly net income amount of $5,784.00 on Schedule J.

On Schedule J Debtor states that he has monthly expenses of $4,402.00. *Id.* at 17-18. Of these, $3,280.00 is for Movant's current monthly payment and $520.00 is for real property taxes. After subtracting these from the total expenses, the Debtor is left with $602 a month for all other expenses. While the Debtor lists no expense for electricity, gas, water, sewer, garbage, telephone, internet, and cable, the court infers that these personal expenses are included in the business expenses listed on the Attachment to Schedule I.

However, Debtor fails to provide for any expenses for the following, stating under penalty of perjury that he does not have any such expenses:

Expense	Amount Stated On Schedule J
Clothing, Laundry, Dry Cleaning	$0.00
Personal Care Products	$0.00
Medical and Dental Expenses	$0.00
Entertainment, Clubs, Recreation, Newspapers, Magazines, and Books	$0.00
Health Insurance	$0.00
Vehicle Insurance (on the Attachment to Schedule I Debtor lists a $150 a month auto expense, but Debtor does not list any automobiles on Schedule B)	$0.00
Taxes No Income Tax Stated No Self-Employment Tax Stated	$0.00

Schedule J, Dckt. 10 at 18-19. Debtor also states on Schedule J that he does not expect any increase or decrease in expenses during the year after filing this case.

In reviewing the Statement of Financial Affairs, Question 4, Debtor states that he is holding property for others, including "Rent-A-Center, Reno Nevada," with the property described as "beds, tv's on rental." No expense is shown on the Attachment to Schedule I for such rental expense. Dckt. 10 at 16. For "Equipment Lease" the Attachment shows no expense.

On the Statement of Financial Affairs, Question 1, Debtor states under penalty of perjury that his gross income has been:

2015 January - March	$25,653.00
2014	$90,119.00
2013	$87,701.00

The Gross income number of $25,653 for the first three months of 2015 is less than the $34,251 projected on the Attachment to Schedule I. Dckt. 10 at 16. The gross income for 2014 was $7,506 ($3,911 less than the projected amount on the Attachment to Schedule I) and for 2013 was $7,308 ($4,109 less than on the projected amount on the Attachment to Schedule I).

Though the court has endeavored to find some evidence of there being a potential of a possible effective reorganization at this early stage in the case, Debtor has not provided evidence of such. Rather, the statements under penalty of perjury indicate that there is no such effective reorganization, Debtor cannot make payments as required under a Chapter 13 Plan, and that defaults are destined to continue.

Even if the court were to discount the declarations provided by Movant for being on information and belief, the Debtor's response and the files in this case establish a basis for relief. Debtor has filed a patently defective plan. Debtor's Schedule J and Attachment to Schedule I fail to make any provision for Debtor to pay income tax or self-employment tax. Nothing in the record shows a basis for the Debtor being exempt from the federal and state income and self-employment tax laws.

Also, as discussed above, Debtor's expenses on Schedule J appear not only to be unreasonable, but fabricated to create the appearance of having some projected disposable income with which to fund a plan.

Further, the Debtor's assurance that he has insurance is pregnant with there not being adequate or any insurance. No copy of an policy is provided, no confirmation is provided that the insurance has been paid for the year or that it is current. No copy of the coverage page or other information as to the extent of the coverage and the additional insureds is provided.

Using Debtor's calculations on Schedule D, he states that Movant's claim is $682,283 and Debtor states that the collateral has a value of $700,000. This, by Debtor's calculation, provides an "equity cushion" of $17,717 (2.6% of the secured claim stated on Debtor on Schedule D). FN.4 This does not provide Movant with a sufficient equity cushion by which the court can allow the case to proceed while the Debtor determines if he can remedy the various deficiencies and information which has been provided under penalty of perjury in this case.

FN.4. Though Movant states that the claim is $726,885.71, since that statement may be on information and belief, the court uses the lower amount stated by Debtor under penalty of perjury. In stating this, the court notes the irony that the national forms include the following with the Debtor's certification of the Schedules, "I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of __20__sheets, and that they are true and correct *to the best of my knowledge, information, and belief*. Dckt. 10 at 22 [emphasis added].

Based on the totality of the evidence presented, cause exists to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Ronald Elvidge ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Ronald Elvidge, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, Security Agreement, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1227 Emerald Bay Road, South Lake Tahoe, California.
>
> **IT IS FURTHER** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Ronald Elvidge, its agents, representatives, and successors, and their respective agents and successors to exercise all rights and powers under the Security Agreement dated June 21, 2011, (Exhibit B, Dckt. 9) and applicable non-bankruptcy law to obtain possession and dispose of the personal property constituting collateral thereunder, and for the purchaser at any such sale obtain possession of said collateral.
>
> No other or additional relief is granted.