

The Estrada Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of \$1,158.81 in post-petition payments past due. Dckt. 15 at 2:25-28. The Declaration also provides evidence that there is 1 pre-petition payments in default, with a pre-petition arrearage of \$386.27. *Id.* Additionally, the Declaration notes that Debtor was leasing and has no interest in the Vehicle, and surrendered the Vehicle to Movant. Dckt. 15 at 3:1-2.

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.

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 Nissan-Infiniti LT (“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 2016 Nissan Leaf, VIN ending in 13802 (“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.

DEBTOR IN POSSESSION'S STATEMENT OF SERVICE DEFECT

ΔIP filed an Opposition on October 25, 2018. Dckt. 54. ΔIP asserts Movant did not meet Federal Rule of Bankruptcy Procedure 4001(a)(1) requiring service on committees or, if none, those creditors holding the 20 largest unsecured claims. ΔIP argues the Motion is not properly before the court and should be denied. The ΔIP presents no substantive opposition to the grounds asserted in the Motion.

NOVEMBER 8, 2018 HEARING

At the November 8, 2018 hearing on the Motion, the court addressed Movant's improper service. Th court elected to continue the hearing, affording the ΔIP and creditors a full opportunity to respond to the substantive issues after having received sufficient notice, and allowing Movant to provide a notice of continued hearing and deadlines for filing opposition.

Movant filed and served an Amended Notice on November 9, 2018, on Debtor in possession, Debtor in possession's Attorney, parties requesting special notice, Office of the United States Trustee, and creditors. Dckts. 60, 61.

DEBTOR IN POSSESSION'S OPPOSITION

ΔIP filed an Opposition to Movant's Motion on November 15, 2018. Dckt. 63. ΔIP argues that the main grounds supporting the Motion have been resolved—ΔIP has tendered August and September 2018 adequate assurance payments; ΔIP filed Amended Schedules; and ΔIP has filed monthly operating reports itemizing all post-petition income.

ΔIP states further it has been communicating with Movant regarding restructuring secured debt, in hopes of settling this matter.

APPLICABLE LAW

Relief From Stay For Cause

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

~~court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.~~

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 Order to Be Binding in Any Bankruptcy Case for a Period of 180 Days

Movant adds in his prayer a request that this court's order be "binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Non Bankruptcy Action." Dckt. 42 at 4:14-16.

Movant does not state with particularity any legal authority or grounds supporting this request for relief, and this relief is ~~denied.~~

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 waiver of the fourteen day stay as "debtor is occupying property, paying nothing, has not provided any plan for re-payment and has made no post-filing interest payments."

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.~~

DISCUSSION

~~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 PG14, 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 PG14, LLC, 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 1200 6th Street, Modesto, 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 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.~~

3. [18-90149-E-11](#)
[AP-2](#)

SOUZA PROPERTIES, INC.
David Johnston

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
TO CONFIRM TERMINATION OR
ABSENCE OF STAY
10-26-18 [\[109\]](#)**

CIT 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.

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's Attorney, creditors, and Office of the United States Trustee on October 26, 2018. By the court's calculation, 34 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 11 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 granted.

CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Souza Properties, Inc. ("Debtor") real property commonly known as 419 West 127th Street, Los Angeles, California ("Property").

SUPPORTING EVIDENCE

Movant has provided the Declaration of Justin Roland, an employee of Compu-Link Corporation, dba Celink (the loan servicer for Movant) with personal knowledge of the matters herein, to provide and introduce evidence, including to authenticate the documents and upon which it bases the claim and the obligation secured by the Property.

The Roland Declaration provides a factual overview as follows:

1. On April 24, 2006, Eva Roberts executed a promissory note in the principal sum of \$544,185.00, which was made payable to Financial Freedom Senior Funding. The Note is secured by a recorded deed of trust encumbering the Property. *See* Exhibits 1 and 2, Dckt. 114.
2. The Deed of Trust was assigned to Movant on December 2, 2015. Exhibit 3, Dckt. 114.
3. Eva Roberts, the borrower, passed away on October 16, 2016. Exhibit 4, Dckt. 114. Default occurred after the borrower's passing, and a Notices of Default and Sale were recorded November 15, 2017 and March 1, 2018, respectively. Exhibits 5 and 6, Dckt. 114.
4. On July 17, 2018, Movant was the highest bidder at a foreclosure sale. Dckt. 112 at ¶ 13. That same day, Movant's foreclosure representative received a fax indicating Debtor Souza Properties, Inc. Acquired an interest in the Property on July 27, 2016, which was recorded March 16, 2018. *Id.*, ¶ 14; *See also* Exhibit 7, Dckt. 114.
5. Movant subsequently obtained a title report which does not reflect Debtor having an interest in the Property. Exhibit 8, Dckt. 114.

Fax Transmission

Movant filed a short form deed of trust and assignment of rents as Exhibit 7 (Dckt. 114 at p. 27). Movant uses this Exhibit to show an asserted deed of trust was given to the Debtor in Possession Souza Properties, Inc. on July 27, 2016 and that the transfer was recorded March 16, 2018.

A review of the document demonstrates it is a faxed document. The document has the following sending information in the header at the top of the page:

From: E & O Home Solution Fax: (888) 429-5428

To:

Fax: (858) 412-2190

Page 1 of 4 07/17/2018 9:42 AM

Exhibit 7, Dckt. 114 at 27.

While cover page of the fax transmission indicates a document recorded with Los Angeles County, the alleged deed of Trust does not include any recording information, leaving it unclear whether this purported deed of trust was actually recorded at all.

A initial internet search for "E & O Home Solution" turns up no webpages with that name. However, it does disclose a link to a Facebook page for E&O Home Solutions. That Facebook page contained no information other than the name "E&O Home Solutions Real Estate Agent." FN.1.

FN.1. <https://www.facebook.com/pages/EO-Home-Solutions/1673250179561652>.

There also is reported a Yellow Pages return for E & O Home Solutions, LLC, with the address of 18375 Ventura Blvd Suite 241, Tarzana, CA. FN.2. The "services/products" identified on the Yellow Page is "Home Modifications." A link is provided to "Http://enohomesolutions.com," which is to a nonexistent webpage.

FN. 2. <https://www.yellowpages.com/tarzana-ca/mip/e-o-home-solutions-llc-470095036>

An internet search of the (888) 429-5428 generates several returns. One is to Buzzfile, which shows an E & O Home Solutions, LLC located at 18375 Ventura Blvd, Tarzana, California. FN.3. The description of the business on the Buzzfile website is: Business Description E & O Home Solutions is located in Tarzana, California. This organization primarily operates in the Real Estate Agents and Managers business / industry within the Real Estate sector. This organization has been operating for approximately 6 years. E & O Home Solutions is estimated to generate \$250,191 in annual revenues, and employs approximately 3 people at this single location. The industry designation is "Real Estate Agents and Managers."

FN.3. <http://www.buzzfile.com/business/E.And.O-Home-Solutions,-LLC-888-429-5428>.

A check on the California Secretary of State Website reports that E & O Home Solutions, LLC status is reported as "SOS/FTB Suspended." FN. 4.

FN. 4. <https://businesssearch.sos.ca.gov/CBS/Detail>.

Case History

This is not the first contested matter in this bankruptcy case involving E & O Home Solutions faxing a short form deed of trust and assignment of rents in an attempt to stop a foreclosure sale. On October

18, 2018, the court heard another motion for relief filed by Cenlar FSB (Dckt. 82) in order to proceed with foreclosure on property commonly known as 4148 Alderwood Place, Lake Elsinore, California. The court found there that the attempted/actual transfer of property interest was a part of a scheme to hinder/delay creditor's from exercising their rights. Dckt. 106. The court granted relief finding that Debtor had no interest in the property, and to the extent Debtor did have an interest that there was cause for relief and prospective relief from future stays. Order, Dckt. 107.

The court also heard a motion for relief filed by U.S. Bank National Association as trustee for the RMAC Trust, Series 2016-CTT (Dckt. 97) seeking relief as to property commonly known as 24833 Peachland Avenue, Santa Clarita, California. Also here, the court found there that the attempted/actual transfer of property interest was a part of a scheme to hinder/delay creditor's from exercising their rights. Dckt. 117. The court granted relief finding that Debtor had no interest in the property, and to the extent Debtor did have an interest that there was cause for relief and prospective relief from future stays. Order, Dckt. 118.

The Contested Matter here is more similar to the latter case, as the faxed short form deed of trust in the Cenlar FSB case contained information indicating the deed was recorded.

DISCUSSION

Notice as a Motion Under LBR 9014–1(f)(1) or (f)(2) Unclear

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states "Opposition, if any, shall be presented at the hearing on the Motion." Dckt. 110 at 2:7-9. The Notice goes on to state "any opposition to the granting of the Motion shall be in writing, supported by written evidence, and shall be served . . . not less than fourteen (14) calendar days preceding the noticed (or continued) date of hearing." Dckt. 110 at 2:10-15.

Based upon language that there may be submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). 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)(1).

Relief From Stay

The case here is the same as the aforementioned cases. Debtor in Possession does not claim, and does not appear to have, a legitimate interest in the Property. Debtor in Possession has not listed the Property on its Schedules A/B, does not list Creditor's claim on its Schedule D, and has not filed opposition to this Motion.

Determination that No Automatic Stay Exists

Based on the evidence presented (and lack thereof, given the deed of trust does not definitively indicate it was recorded) and no contrary contention by either the Debtor or Debtor in Possession, the court concludes that there is no Souza Deed of Trust that is property of the bankruptcy estate. There being no such property of the estate, there is no automatic stay that came into existence as to the exercise of the power of sale and foreclosure conducted by Movant and Movant's representative.

Termination and Annulment of the Automatic Stay, If Any

To the extent that the automatic stay may have existed, proper grounds have been provided for terminating and annulling the automatic stay with respect to the Movant's, and Movant's representatives, exercising rights under the Note and Deed of Trust.

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

Here, good cause exists for terminating and annulling the automatic stay because Debtor does not have a legitimate interest in the Property, and this bankruptcy case is merely being used as part of a scheme to hinder and delay Movant's exercising its rights.

The court shall issue an order terminating, vacating, and annulling effective as of the March 8, 2018, 3:05:50 p.m. filing of this bankruptcy case by Souza Properties, Inc., 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.

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 CIT 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 automatic stay provisions of 11 U.S.C. § 362(a) are annulled effective as of the March 8, 2018, 3:05:50 p.m. filing of this bankruptcy case, and are also terminated and vacated, to allow (and have allowed as of and after the above annulment date and time) CIT Bank, N.A., 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 419 West 127th Street, Los Angeles, California (“Property”).

4. [10-94467-E-7](#)
[AP-1](#)

TINA BROWN
Michael Germain

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
10-17-18 [200]

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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 17, 2018. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay is denied.

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Tina M. Brown (“Debtor”) real property commonly known as 17480 High School Road, Jamestown, California 95327 (“Property”). Movant has provided the Declaration of Rachel Marcella Cathcart Love to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states the following grounds with particularity:

1. On August 5, 2003, Debtor executed a promissory note in the principal sum of \$190,000.00 which was made payable to Wells Fargo Home. The Note is secured by a recorded Deed of Trust encumbering the Property.
2. As of September 10, 2018, the arrearage owed under the Note is \$3,469.10. An additional payment will come due on October 1, 2018, and on the 1st day of each month thereafter until the Loan is paid in full.
3. Cause exists to terminate the automatic stay because Debtor has not made payments due, and the Debtor does not have equity in the Property. The Property has a fair market value of \$246,000. The Property is encumbered by Movant's Deed of Trust in the amount of \$132,748.80, and Bank of America's Equity Line of Credit in the amount of \$99,964.00. Adding an 8 percent cost of sale (\$19,680), the total debt secured by the Property is \$252,392.40.
4. Movant also moves the Court to waive the 14-day stay of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure as the debtor's Statement of Intention indicates that debtor intend to surrender the Property.

CHAPTER 7 TRUSTEE'S OPPOSITION

Michael D. McGranahan ("the Chapter 7 Trustee") filed an Opposition to the Motion on November 15, 2018. Dckt. 207. The Chapter 7 Trustee opposes Movant's request for relief from stay on the following grounds:

1. The estate's interest in the Property is a judgment lien arising pursuant to an abstract of judgment in the amount of \$80,499.34 recorded on August 6, 2014. *Id.*, at ¶ 3.
2. Title to the Property is held by Timothy Michael Brown, who is the debtor in a pending chapter 7 bankruptcy case before this Court (Case No. 18-90679). *Id.*, at ¶ 4.
3. The claim of Bank of America was paid and its lien was released pursuant to the Substitution of Trustee and Full Reconveyance recorded on October 24, 2012. *Id.*, at ¶ 6.
4. Movant's sole source of evidence as to the Property's fair market value is a reference to the Debtor's schedules filed more than eight years ago on November 12, 2010. Debtor's schedules refer to a different property, namely that certain real property located at 14789 High School Road in

Jamestown, California. By contrast, the Property is located down the street at 17480 High School Road. *Id.*, at ¶ 7.

5. This Court found that the appraised value of the property as of May 17, 2018, is \$355,000. *See* the Order Granting Application for Sale of Dwelling House, etc., 3:2-4, entered in *McGranahan v. Brown*, Adv. Proc. No. 12-09003, on June 29, 2018, Dckt, 107. Movant's lien is protected by an equity cushion of approximately \$222,239.20. *Id.*, at ¶ 8.
6. The Estate's interest in the Property is only a judgement lien. Movant does not have a secured interest in the judgement lien. *Id.*, at ¶ 12.
7. There is no genuine issue of material fact regarding the aforesaid facts and circumstances. Accordingly, the Motion should be denied at the initial hearing as a further evidentiary hearing would be fruitless. *Id.*, at ¶ 13.

Ownership of the Property & Adversary Proceeding

The Declaration of the Trustee indicates title of the Property is held by Timothy Michael Brown. Dckt. 208 at ¶ 4. However, the Note and Deed of Trust were both executed by the Debtor. *See* Exhibits 1 and 2, Dckt. 205.

In his own bankruptcy case, Timothy Brown lists himself as the sole owner of the Property on his Schedule A/B and Movant as a secured claim holder on his Schedule D. Case No. 18-90679, Dckt. 1.

In a related Adversary Proceeding, Case no. 12-09003, Trustee sought turnover of various property of Timothy Michael Brown. Complaint, *McGranahan v. Brown*, Adv. Proc. No. 12-09003, Dckt. 1. The court in that case issued a judgement requiring Timothy Brown to turn over two motorcycles and one Chevrolet Corvette to Plaintiff. Judgement, *McGranahan v. Brown*, Adv. Proc. No. 12-09003, Dckt. 41. Alternative relief in the form of a monetary judgment was also granted in the event that Timothy Brown failed to deliver the vehicles and Trustee determined that a monetary judgment was the method by which the value of the vehicles would be obtained for the bankruptcy estate.

Thereafter, the Trustee sought and the court issued an Order To Show Cause for the sale of the Property. Order To Show Cause, *McGranahan v. Brown*, Adv. Proc. No. 12-09003, Dckt. 88. On June 29, 2018, the court issued an Order Granting Application For Sale Of Dwelling House Pursuant To C.C.P. § 704.780. Order, *McGranahan v. Brown*, Adv. Proc. No. 12-09003, Dckt. 107.

The Order:

- (1) sustained the court's Order To Show Cause;
- (2) authorized the U.S. Marshal , Eastern District of California, to sell the Property for no less than 90 percent of its appraised value of \$355,000 (\$328,500.00);

(3) provided if the sale price is less than \$328,500.00 Trustee may file a motion for supplemental order authorizing that lesser amount;

(4) specified proceeds shall be paid to the County Tax Assessor for the County of Tuolumne (to be determined amount), Wells Fargo Bank, N.A. (\$133,170.26), Timothy Brown (\$75,000), the U.S. Marshal as levying officer (to be determined), Michael McGranahan (\$80,499.34);

(5) required Trustee to comply with service requirements of C.C.P. § 704.790(b).

(6) authorized the U.S. Marshal to issue a Marshal's Deed in exchange for the total amount of the winning bid;

(7) authorized the U.S. Marshal to withhold \$5,000 for 60 days to cover unaccounted for costs, fees, or other claims;

and (8) provided that the court maintains continuing jurisdiction over all aspects of the sale of the Property, the distribution of funds, the allowance of any claims to the funds, and all other matters relating thereto.

Id.

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

Judgment For the Chapter 7 Trustee Against Tim Brown

The Trustee's judgement being enforced arises from the conduct of Tim Brown in connection with this bankruptcy case. On December 13, 2012, the court entered judgment to the Trustee against Tim Brown in Adversary Proceeding No. 12-09003. The judgement adjudicated that the Tina Brown's bankruptcy estate was the owner of two Harley Davidson Motorcycles and a Chevrolet Corvette that was in the possession of Tim Brown. 12-09003, Dckt. 41. Tim Brown was ordered as part of the judgment to

deliver possession of the three vehicles to the Trustee in the Tina Brown case. The court further adjudicated the value of the three vehicles to be \$41,915.00, and the Trustee could elect to enforce it as a monetary judgment for vehicles not turned over by Mr. Brown or at the election of the Trustee.

On September 8, 2014, almost two years later, the Trustee filed a motion for the assignment of Tim Brown’s accounts and rights to payment, and an order restraining him from transferring, selling, or encumbering such accounts or rights to payment. *Id.*, Motion, Dckt. 59. The court granted the Motion. *Id.*; Order, Dckt. 69.

On April 27, 2018, five and one-half years after entry of the judgment against Tim Brown, the Trustee filed a motion for an order authorizing the sale of the 17480 High School Road, Jamestown, California Property. *Id.*; Motion, Dckt. 85. On June 29, 2018, the court granted the Motion for Sale of the High School Road Property. *Id.*; Order, Dckt. 107.

Tim Brown Bankruptcy

On September 13, 2018, Tim Brown commenced his current Chapter 7 bankruptcy case, No. 18-90679. This is not Tim Brown’s only recent bankruptcy case or related proceeding. A summary of Mr. Brown’s proceedings in this court are as follows:

Chapter 7 Case, Converted From Chapter 13 14-91596	Filed: December 4, 2014	Closed with Discharge: May 2, 2016	
	Order Waiving Chapter 7 Discharge: Tim Brown consented to an order waiving his Chapter 7 Discharge. 14-91569; February 18, 2016 Order, Dckt. 118.		
Adv. Proceeding 16-0900	Filed: February 1, 2016	Dismissed: March 9, 2016	

The U.S. Trustee sought denial of Tim Brown's discharge in bankruptcy case 14-91596, alleging that Tim Brown failed to disclose assets, including: (1) real property in San Felipe, Mexico; (2) real property in El Dorado, Mexico; (3) 2008 Harley Davidson Cross Bones Motorcycle; (4) 2010 Chevrolet Camaro; (5) failure to turn over property of the bankruptcy estate to the trustee in his Chapter 7 case; (6) failure to turn over financial records to the trustee in his Chapter 7 case; (7) Tim Brown being held in contempt for failure to comply with multiple orders of the court in the Tina Brown bankruptcy case; and (8) transfer or concealment of assets to hinder, delay, or defraud the Chapter 7 trustee in the Tim Brown bankruptcy case. 16-0900; Complaint; Dckt. 1. The Complaint sought relief pursuant to 11 U.S.C. §§ 727(a)(2), (3), (4), (5), or (6).

Tim Brown consented to the entry of an order waiving his Chapter 7 discharge as provided in 11 U.S.C. § 727(a)(1), without making any admission of wrong-doing, fault, omission, or negligence. *Id.*, Stipulation, Dckt. 10. Pursuant to the Stipulation, upon the entry of the order waiving the discharge for Tim Brown, the Complaint in the Adversary Proceeding was dismissed.

In his current Chapter 7 case, the trustee has filed a motion to abandon the personal property located at the 17480 High School Road Property, but not abandon such property. 18-90679; Motion to Abandoned (filed November 26, 2018), Dckt. 33. The Chapter 7 Trustee in the Tim Brown case has employed a real estate broker to market and sell the 17480 High School Road Property. *Id.*; Order, Dckt. 29. In the Motion to employ the broker, the Chapter 7 Trustee in the Tim Brown case asserts that the broker believes the real property has a value well in excess of the \$225,000.00 set forth in Schedule A/B filed by Tim Brown.

No motion for relief from the automatic stay has been filed by Creditor in the current Tim Brown Chapter 7 case.

Movant seeks relief from the stay as if the debtor in this case, Tina Brown, was the owner of the Property. On Schedule A Debtor states that she is the Trustee of a revocable living trust - the Brown Revocable Trust, describing her interest as "joint." Dckt. 1 at 8.

However the Trustee in the Tina Brown bankruptcy case has not treated the Property as being one in which Tina Brown had an interest, which became property of the bankruptcy estate and sold pursuant to 11 U.S.C. § 362, but property of Tim Brown.

The Deed of Trust provided as Exhibit 2 to the present Motion states that the borrower is "Tina Brown, a married woman as her sole and separate property." Dckt. 205 at 6. The Deed of Trust was executed and recorded in August of 2003. Seven years later the present bankruptcy case was filed.

The Chapter 7 Trustee in the Tina Brown case has filed a copy of a Preliminary Title report as part of his opposition. This is “authenticated” by the Chapter 7 trustee, not someone from the title company issuing the report. Declaration ¶ 4, Dckt. 208.

While this court is not determining the state of the title or how title was obtained, the general information in the Preliminary Report causes one to need to look further.

Item 2 of the Report states that Tim Brown, as Trustee of the 2012 Timothy M. Brown 2012 Revocable Trust dated February 16, 2012, deeded to “them” from Tim Brown a single man, subject to an order for relief in the Matter of the Estate of Timothy M. Brown and Tina Brow, Debtor, in the U.S. District Court for the Northern District, No. 14-91569. This appears to be a typographical error, with the reference being to the 2014 Tim Brown bankruptcy case in the Eastern District of California Bankruptcy Court.

The Preliminary Title Report does not have a chain of title showing how Tim Brown can purport to have title to transfer after November 12, 2010 when Tina Brown filed bankruptcy. If there was a purported transfer of Tina Brown’s rights or interests after November 12, 2010, such would be ineffective as any such rights and interests were property of the bankruptcy estate in this case and not transferrable by either Tina Brown or Tim Brown.

Here, neither Movant or the Trustee address what appears to be a dispute over the ownership of the Property. Movant’s Motion presumes Debtor holds title. The Deed of Trust recorded August 13, 2003, lists only Debtor and the Property as her sole separate property. Exhibit 2, Dckt. 205 at p. 6.

Thus, it appears that the two trustees may well have to sit down and figure out the respective rights of their bankruptcy estates.

The claim held by Bank of America has already been satisfied. Exhibit B, Dckt. 209. The sole claims encumbering the Property are Movant’s Deed of Trust amounting \$132,748.80 and Trustee’s judgement lien amounting to \$80,499.34 (together totaling \$213,248,14).

Movant’s reliance on the value stated by Tim Brown on his Schedules is of questionable credibility. Tim Brown has been sanctioned by this court on multiple occasions for failing to comply with orders of this court. Tim Brown lost his right to a discharge in his prior bankruptcy case due to not merely failing to cooperate with the Chapter 7 trustee, but for failure to accurately disclose assets and state information under penalty of perjury (true, Tim Brown stipulated to waive his discharge without admitting such allegations by the U.S. Trustee in the Adversary Proceeding, but such allegations were based on factual events in the first Tim Brown bankruptcy case).

That the Property is worth only \$225,000 when Tim Brown filed bankruptcy in September 2018 is highly suspect given that Tim Brown said the same Property was worth \$225,000 when he filed bankruptcy in 2014. 14-91596; Schedule A, Dckt. 24 at 3.

If one were to assume that the Property has a value of only \$246,000 (the value stated in the Motion and Points and Authorities), then the equity cushion as alleged by Movant is computed to be:

Movant's Alleged FMV.....\$246,000
Movant's Asserted Secured Claim.....(\$132,748)

Movant's Stated Equity Cushion.....\$113,252

By Movant's calculations it has an equity cushion of 85.3% in the amount of \$113,252.

If the Trustee in the Tina Brown bankruptcy case is correct and the value of the property has grown since it was stated to be \$225,000 by Tina Brown in 2010 or by Tim Brown in 2014 and it is around \$350,000, then the equity cushion has grown to \$238,252, or 175% equity cushion. True, while the court does not take into account costs of sale, there is no contention that the Property is declining in value. *See United Savings Assn of Texas v. Timbers of Inwood Forest Assoc, Ltd*, 484 U.S. 365 (1988).

Based on the evidence presented, there appears to be equity for the bankruptcy estate in this case, whether the Tina Brown bankruptcy estate owns the Property or is a judgment lien creditor of the Tim Brown bankruptcy estate, Movant has not carried its burden of proof on this point. 11 U.S.C. § 362(g).

As to cause, Movant's interests are more than adequately protected by a 100%+ equity cushion. Additionally, Movant appears to ignore that the Tim Brown bankruptcy estate purports to be the owner of the property (based on Tim Brown's statements under penalty of perjury on his Schedules) and that the Trustee in the Tim Brown case is pursuing a sale of the Property.

Based on the evidence provided to the court, good cause does not exist for terminating the automatic stay. The Motion is denied without prejudice.

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 for Relief From the Automatic Stay is denied without prejudice.