

1  
2  
3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
6  
7

8 In re: )  
9 ) Case No. 06-22435-B-13J  
10 JAMES GILL, )  
11 Debtor. ) Docket Control No. FWK-1  
12 ) Date: September 6, 2006  
Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued  
14 the following ruling. The official record of the ruling is  
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of  
16 the court's decision under the E-Government Act of 2002 (the  
17 "Act"), a copy of the ruling is hereby posted on the court's  
Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
18 format, as required by the Act. However, this posting does not  
constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This motion for relief from the automatic stay has been filed  
21 pursuant to LBR 4001-1 and 9014-1(f)(1). The failure of the debtor,  
22 the trustee, and all other parties in interest to file timely written  
23 opposition as required by this local rule may be considered consent to  
24 the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup>  
25 Cir. 1995). However, because the debtor is pro se, the court will  
26 issue a tentative ruling.

27 The motion is granted in part and denied in part to the extent  
28 set forth herein. As it pertains to movant's interest in the subject

1 real property located at 50 Silverhorn Court, Roseville California  
2 95678 (APN 363-310-012), the automatic stay is modified as against the  
3 estate only pursuant to 11 U.S.C. § 362(d)(1) in order to permit the  
4 movant to foreclose and to obtain possession of the subject real  
5 property following the sale, all in accordance with applicable non-  
6 bankruptcy law. The debtor's proposed plan fails to provide for  
7 movant's secured claim. In fact, the proposed plan is largely blank,  
8 listing no claims in Classes 1 through 6 and no dividend to general  
9 unsecured claims. It is unconfirmable in its present form. Movant  
10 alleges without dispute that the subject note matured by its terms in  
11 December 2005. It is entirely due and payable. The failure to  
12 provide any treatment for this claim in the plan filed with the court  
13 constitutes cause for relief from the automatic stay.

14 Prospective relief is denied as moot as to the debtor. The  
15 automatic stay terminated as to the debtor only by operation of law on  
16 August 6, 2006. 11 U.S.C. § 362(c)(3)(A). This is the debtor's third  
17 bankruptcy case in less than a year. The first case was filed jointly  
18 with debtor's spouse on September 20, 2005 (05-32041-B-7). Debtors  
19 received a discharge in that case on January 3, 2006 and the case  
20 closed February 15, 2006. Because it was not dismissed it is not  
21 included in the 362(c) analysis. Debtor's second case (06-20144-D-13)  
22 was filed January 24, 2006. Debtor confirmed a plan on March 22,  
23 2006. The second case was dismissed June 12, 2006 on the trustee's  
24 (Loheit's) motion. This third case was filed by debtor *in pro per* on  
25 July 7, 2006. The automatic stay terminated under Section  
26 362(c)(3)(A) as to the debtor on August 6, 2006. No motion under 11  
27 U.S.C. § 362(c)(3)(B) to extend the deadline was filed and the time to  
28

1 do so has passed.

2 Movant's request to annul the stay is denied without prejudice.  
3 Movant has failed to cite any authority on the issue or address the  
4 standard for such relief. As a general matter, such relief may be  
5 granted when (1) a creditor has no knowledge of the bankruptcy filing  
6 and (2) cause existed for relief from the stay at the time the post-  
7 petition act occurred. The court has no evidence before it that  
8 creditor was not aware of the stay when the third notice of sale was  
9 published. The declaration of Richard Caporaso is silent on that  
10 issue. For this reason, the request to annul the stay is denied.

11 The court also notes that termination of the automatic stay is  
12 inappropriate under 11 U.S.C. § 362(d)(2) because the value of the  
13 subject real property exceeds the total of the liens. There is equity  
14 (approximately \$25,604) as defined in Stewart v. Gurley, 745 F.2d  
15 1194, 1195 (9<sup>th</sup> Cir. 1984). Movant has improperly included costs of  
16 sale in its equity calculation. Costs of sale are not "liens" as that  
17 term is used in Stewart v. Gurley. Movant has therefore failed to  
18 meet its burden of proving a lack of equity.

19 Movant shall serve a copy of the order granting relief on the  
20 holders of all junior liens, if any.

21 Because the value of the collateral exceeds movant's claim,  
22 movant is awarded attorneys fees equal to the lesser of \$675 or the  
23 amount actually billed plus costs of \$150. These fees and costs may  
24 be enforced only against the movant's collateral.

25 The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not  
26 waived.

27 Except as so ordered, the motion is denied.

1           The court will issue a minute order.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28