UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 25, 2016 at 9:30 a.m.

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1. 15-28108-E-11 WILLARD BLANKENSHIP
KES-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-22-16 [46]

MIKE KLETCHKO 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2015. By the court's calculation, 71 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 denied.

Michael Kletchko and Pat Ruedin ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1304 Aspen Place, Davis, California (the "Property"). FN.1. Movant has provided the Declaration of Michael Kletchko to introduce evidence to authenticate the documents upon

which it bases the claim and the obligation secured by the Property.

FN.1. The moving party filed the Motion, Proof of Service, and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankruptcy Rule 9004(a) and Revised Guidelines for the Preparation of Documents, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rules 9004(a), 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court. (Some running hundreds of pages.) It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents which can then be used by the court.

The court waives this defect for purposes of the instant Motion. However, the Movant should be aware that such leniency will not be offered in any future matters.

The Kletchko Declaration states that the Movant filed a lawsuit against the Debtor-in-Possession for fraud, misrepresentation, concealment, breach of contract, and negligence in 2010, in connection with the alleged false representations made by the Debtor-in-Possession as to the condition of Debtor-in-Possession's property located at 41301 Holly, Laguna Beach, California. The Movant states that the Debtor-in-Possession was served but never made an appearance. A default judgment was entered. However, the Debtor-in-Possession claimed he had not been served the complaint and the Superior Court vacated the default judgment.

The Movant testifies that a second lawsuit was filed. On March 18, 2015, the Orange County Superior Court issued a judgment in favor of Movant after finding that the Debtor-in-Possession had concealed material defects and intentionally misstated material facts about the condition of the home in Laguna Beach. Case No. 30-2010-00399196. After a jury trial, the court entered a judgment on March 18, 2015, against the Debtor-in-Possession in the aggregate amount $664,000.00 with an additional $175,000.00 in attorneys fees. The Debtor-in-Possession states that they held an aggregated judgment in the amount of $1,164,360.00 against the Debtor-in-Possession.

The Movant states that an abstract of judgment was filed on July 22, 2015 in the official records of the Yolo County Recorder's Office.

The instant bankruptcy was filed on October 17, 2015, less than 90 days from when the abstract of judgment was recorded.

The Movant asserts that the funds used to purchase the Aspen Place

Property were procured by the Debtor-in-Possession's alleged fraudulent sale of the Holly House to the Movant. Movant asserts that is tracing the fraudulently obtained funds from the Holly Drive House through the sale of the Aspen Place Property.

The Movant asserts that there are sufficient grounds for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). The Movant asserts the following grounds:

1. Lack of Adequate Protection: The Debtor-in-Possession's income and expense statements show that his total income is about $2,500.00 per month as opposed to total claims of more than $1,164,360.00. Debtor-in-Possession lacks the ability to make adequate protection payments nor is the Debtor-in-Possession able to provide additional collateral and for this reason the Movant should be given relief from the automatic stay.

2. Lack of Equity: The Aspen Place Property is encumbered by a first deed of trust of approximately $114,000.00 and it is further encumbered by the Movant's alleged non-dischargeable fraud judgment against the Debtor-in-Possession in the amount of $1,164,360.00. The Movant asserts that the value of the Aspen Place Property is $505,000 and that there is a negative equity of at least $773,000.00.

3. Not Necessary to Reorganization: The Movant asserts that the Aspen Place Property is not necessary to the Debtor-in-Possession's reorganization because there is no equity. Further, the Movant argues that the Debtor-in-Possession's income is low that he cannot repay the claims nor make any reasonable payment to maintain the Aspen Place Property.

4. The Movant also asserts that, pursuant to California law, that the Debtor-in-Possession's homestead exemption is void because the Debtor-in-Possession used allegedly fraudulently obtained funds to purchase the homestead.

DEBTOR-IN-POSSESSION OPPOSITION

The Debtor-in-Possession filed an opposition to the instant Motion on February 11, 2016. Dckt. 58. The Debtor-in-Possession asserts that the Movant's judgment lien, because it was recorded within 90 days of the filing, is subject to avoidance pursuant to 11 U.S.C. § 547(b). Specifically, the Debtor-in-Possession argues that the transfer (in this case the creation of the judgment lien) was made for the benefit of the Movant on account of an antecedent debt (the judgment) while the Debtor-in-Possession was insolvent.

As to the homestead exemption, the Debtor-in-Possession asserts that the Movant failed to object to the homestead exemption within thirty days after the first meeting of creditors – the thirtieth day being December 18, 2015.

Lastly, the Debtor-in-Possession argues that there is a reorganization possible, in which the Debtor-in-Possession intends to file a Plan of Reorganization that will use a reverse mortgage to extract equity from his residence to pay the allowed claims against his estate.

MOVANT'S REPLY

The Movant filed a reply on February 18, 2016. Dckt. 61.

First, as to the assertion that the lien is avoidable pursuant to 11 U.S.C. § 547, the Movant argues that the Debtor-in-Possession is unable to establish the requisite elements for a court to find that there was a preferential transfer.

The Movant asserts that the judgment lien is not on an antecedent debt, but rather that it is an involuntary lien. The Movant also contends that the Debtor-in-Possession has failed to present any evidence of such preferential treatment because, other than AmeriHome, Movant is the only other secured creditor.

The Movant also asserts that the Debtor-in-Possession was not "insolvent" at the time the lien was recorded. The Movant asserts that the Debtor-in-Possession has not provided any evidence that the Debtor-in-Possession's debts were greater than his assets. The Movant also asserts that the Movant was ignorant of the fact that the Debtor-in-Possession was insolvent.

Furthermore, the Movant asserts that even if the lien is a preferential payment on its face under § 547, the Movant have the complete New Value defense, pursuant to 11 U.S.C. § 547(c)(4). The Movant argues that it gave new value to the Debtor-in-Possession when the judgment lien was filed in the following ways:

1. Movant filed the subject judgment lien, rather than filing a fraudulent transfer lawsuit.

2. Movant did not seek to attach Debtor-in-Possession's assets nor did they take Debtor-in-Possession's Judgment Debtor-in-Possession Exam, but instead, they recorded the lien in anticipation that once the Debtor-in-Possession moved or refinanced, the Movant would get paid on as much of the judgment as the proceeds would allow.

3. Movant refrained from executing on any liquid bank or investment accounts held by Debtor-in-Possession, on the premise that Debtor-in-Possession would not continue his fraudulent ways to avoid paying on their final judgment.

The Movant asserts that this constitutes new consideration and makes the New Value Defense available.

Second, as to the homestead exemption argument, the Movant contends that the exemption cannot apply because the funds used to procure the property were obtained by fraud. The Movant asserts that the court should apply equitable estoppel as to the state law judgment and that the Debtor-in-Possession fraudulently obtained proceeds.

Lastly, the Movant asserts that the Movant's rights should be considered before any unsecured creditors. The Movant asserts that the absolute priority requirement of 11 U.S.C. § 1129(b)(1) and (2) makes it necessary for the Debtor-in-Possession to pay the Movant ahead on the unsecured claimants. The Movant argues that the proposed plan in the Debtor-in-Possession's opposition

is not viable because the Debtor-in-Possession failed to illustrate how the equity in his residence will be distributed.

APPLICABLE LAW

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 existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay.

Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

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. *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)

DISCUSSION

The court first notes, before discussing the merits of the Motion, that the court restates that it is incumbent upon the judge to correctly apply the law. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

With that foundation in mind, the court now reviews the grounds asserted by the Movant.

First, as to the avoidability of the lien as a preferential treatment, 11 U.S.C. § 547 states:

> (b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property–
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made--
>
> (A) on or within 90 days before the date of the filing of the petition; or
>
> (B) between ninety days and one year before the date of

> the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if--
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

The Movant first asserts that the lien is not on account of an antecedent debt. This is facially incorrect. A judgment, on its face, is "on account of an antecedent debt owed by the debtor before such transfer was made." For instance, courts have found that settlement agreements and compromises in judicial proceedings were each "a transfer on account of an antecedent debt. *See, e.g. Sothmark Corp. V. Schulte Roth & Zabel* (*In re Sothmark Corp*.) 88 F.3d 311, 318 (5th Cir. 1996); *In re Energy Coop., Inc.*, 814 F.2d 1226 (7th Cir.), *cert. denied*, 484 U.S. 928, 108 S. Ct. 294, 98 L. Ed. 2d 254 (1987). If a compromise and settlement of claims is considered an antecedent debt, so must be a judgment lien. The Movant stated it was a judgment, and therefore admits to the nature of the lien being antecedent.

As to the assertions that the Movant was unaware of the Debtor-in-Possession's insolvency and that the Debtor-in-Possession failed to prove that he was insolvent, the Movant has failed to address § 547(f). Section 547(f) states:

> For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

In the instant case, the 90-day window from the time of filing the petition ran from July 20, 2015 through October 17, 2015. The abstract of judgment was recorded on July 22, 2015, within the 90-day window. Therefore, it was presumed that the Debtor-in-Possession was insolvent.

Furthermore, the Movant asserts that, even if the Debtor-in-Possession is able to show that the judgment is a preferential payment, the Movant can assert the new value defense of 11 U.S.C. § 547(c)(4). However, the "new value" the Movant asserts was part of the new consideration was the Movant not exercising methods in which the Movant would be able to enforce the judgment. The three points that the Movant asserts constitutes new consideration is that the Movant decided to file the abstract of judgment, rather than filing a lawsuit or enforcing the lien against liquid accounts. Courts have found that forbearance from exercising pre existing rights does not constitute new value for purposes of the new value defense of § 547(c)(4). *In re ABC Naco, Inc.*, 483 F.3d 740 (7th Cir. 2007).

Additionally, there was no "forbearance" by Movant, but merely a strategy decision not to commence further litigation based on the judgment Movant had in hand. Movant's unilateral decision not to incur the cost and expense of attempting to enforce rights is not a contemporaneous exchange or providing

"new value."

The court does recognize that as of the hearing date, the Debtor-in-Possession has not filed an adversary proceeding asserting that the Movant's judgment lien is a preferential payment that can be avoided. However, the fact that the Debtor-in-Possession has failed to do so to date does not allow the Movant to assert baseless grounds for relief.

The Movant also asserts that the Debtor-in-Possession's homestead exemption should be disallowed because the homestead was acquired through the use of fraud. Unfortunately, this argument fails to provide a ground sufficient for the relief requested. The Movant seems to make general allegations as to the inapplicability of the homestead exemption without showing, specifically, that in the instant case such should happen. As the Debtor-in-Possession noted, the Movant failed to file an objection to exemptions within thirty days of the meeting of creditors. Therefore, at first glance, such argument is not proper. However, even beyond that, the Movant does not argue how the equitable estoppel doctrine applies to justify disallowing the exemption after the objection window has run.

The Movant tangentially argues that there is no equity in the property, specifically after disallowing the homestead exemption. However, as discussed supra, the Movant has not sufficiently shown that the homestead exemption should be disallowed nor why the Movant's claim should be given priority over the Debtor-in-Possession's homestead exemption. As such, the Movant has also failed to show how, as a matter of California state law, that the Movant's claim should be given higher priority than other possible secured creditors.

Even more, the Movant does not provide why relief is proper when, if the judgment lien is actually avoidable, there is approximately $400,000.00 in equity in the property after reducing the value by the first deed of trust. There is no evidence that a constructive trust has been created that would give the Movant superior priority in the sale proceeds.

It concerns the court that, in reviewing the docket, that the Debtor-in-Possession has not appeared to prosecute and retrieve potential assets for the bankruptcy estate. Especially since the Debtor-in-Possession has the same fiduciary duties as would a trustee appointed in the case. 11 U.S.C. § 1107. There appears to be an asset (in this case being a preferential payment) which could be applied to the estate.

Therefore, as discussed *supra*, the Movant's 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 Michael Kletchko and Pat Ruedin ("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.

2. 14-28649-E-7 THOMAS/HEIDI CARTER — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
WFM-1 — **1-5-16 [103]**

CITIMORTGAGE, INC. VS.

APPEARANCE OF COUNSEL FOR MOVANT, CITIMORTGAGE, INC. REQUIRED
FAILURE TO APPEAR WILL RESULT IN DENIAL OF MOTION

TELEPHONIC APPEARANCES PERMITTED

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 7 Trustee, and Office of the United States Trustee on January 5, 2016. By the court's calculation, 51 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.

CitiMortgage, Inc. ("Movant") seeks relief from the automatic stay with

respect to the real property commonly known as 26846 Aslan Road, Shingletown, California (the "Property"). Movant has provided the Declaration of Deborah Pogue to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

MOTHORITIES

However, 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. 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.

FAILURE TO COMPLY WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 9013

Taken on its face, the "motion" portion of the Mothorities fails to comply with Federal Rule of Bankruptcy Procedure 9013 which requires that the motion itself state with particularities the grounds upon which relief is based. It does not state that the grounds may be sprinkled among the points and authorities, declarations, and exhibits, for the court to organize for counsel. This requirement is also found in Federal Rule of Civil Procedure 7(b).

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also In re White, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

WAIVER OF DEFECTS IN PLEADING

However, in light of the Chapter 7 Trustee submitting a non-opposition to Movant's motion and Debtor failing to respond, the court is willing to accept the improper motion in this instance. It does strike the court odd, however, that Movant's counsel failed to comply with the Local Rules when the counsel's firm appear frequently in front of the court.

If such pleading which does not comply with the Local Bankruptcy Rule is filed again by counsel or another member of his firm, the court will find it necessary to require an in-person appearance by such counsel and senior partner of the law firm to address the continued failure to prepare pleadings consistent with the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules.

DISCUSSION

The Pogue Declaration states that there are 10 post-petition defaults in

the payments on the obligation secured by the Property, with a total of $23,690.91 in post-petition payments past due.

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 $315,954.58 (including $240,000.00 secured by Movant's promissory note, secured by first deed of trust, as stated in the Pogue Declaration and Schedule D filed by Thomas and Heidi Carter ("Debtor"). The value of the Property is determined to be $240,000.00, as stated in Schedules A and D filed by Debtor.

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).

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. *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). 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). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion. Furthermore, Movant has failed to cite to a provision in state law or the contract to entitle the Movant to attorney's fees.

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 CitiMortgage, Inc. ("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 CitiMortgage, Inc., 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, 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 26846 Aslan Road, Shingletown, 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 not waived.

IT IS FURTHER ORDERED that Movant having established that the value of the Property subject to its lien not having a value greater than the obligation secured, Movant is not awarded attorneys' fees as part of Movant's secured claim in the total amount of $240.000.00 for all matters relating to this Motion.