

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

April 3, 2025 at 10:00 a.m.

1. [25-90105-E-7](#)
[AFS-1](#)

AMBER STONE
David Foyil

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-6-25 [19]**

TERRILYNN WATKINS VS. AMBER STONE AND DOES 1-50

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, creditors, and Office of the United States Trustee on March 6, 2025. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Creditor Terrilynn Watkins ("Movant") seeks relief from the automatic stay to allow *Terrilynn Watkins v. Amber Stone and Does 1-50*, Superior Court of the State of California County of Calaveras, Case No. 24CV47717 (the "State Court Litigation") to be concluded. Movant has provided the Declaration of Elise L. Bonine to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Amber Lorraine Stone ("Debtor"). Decl., Docket 22.

Movant filed a Complaint against Amber Lorraine Stone ("Debtor") on November 8, 2024 in state court alleging the following causes of action: (1) Involuntary Dissolution; (2) Breach of Fiduciary Duty;

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(3) Accounting; and (4) Intentional Interference with Prospective Economic Advantage. Exhibit A, Docket 23.

After a series of motions, the state court issued an Interim Court Order prohibiting either party from deleting, destroying, editing, or otherwise altering any documents. Exhibit C, Docket 23. But according to Movant, Debtor disobeyed the order by declining to give Movant administrative privileges over the documents. Decl. 3:1-3, Docket 22. As a result the state court scheduled a hearing on Movant's order to Show Cause on February 14, 2024. Decl. 3:22-23, Docket 23. But just one day before the hearing, Debtor filed a voluntary Chapter 7 petition. *Id.* The state court, despite preparing a ruling on the matter, stayed the proceeding upon being notified of Debtor's bankruptcy filing. Decl. 3:24-27, Docket 23.

Movant argues that relief from the automatic stay is necessary for the limited purpose of liquidating Movant's claims to judgment. Motion 3:9-10, Dckt. 19.

DEBTOR'S NON-OPPOSITION

Debtor filed a Limited Non-Opposition on March 20, 2025. Dckt. 26. Debtor does not oppose the Motion for Relief from Automatic Stay to the extent that the order limits any relief granted to non-monetary remedies in the State Court Action, and, absent further order by the court, any relief granted does not authorize the enforcement of any monetary judgement or collection against Debtor or the bankruptcy estate. Opp'n 1:23-26, Docket 26.

MOVANT'S REPLY

Movant filed a Reply to the limited Non-Opposition on March 27, 2025. Docket 28. Movant states:

Movant seeks relief from the automatic stay for the limited purpose of liquidating her claims in the State Court Action to judgment. For the avoidance of doubt, Movant will not seek to collect or enforce any such award or judgment against the Debtor or the bankruptcy estate, absent a further court order.

Reply 2:14-17.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8-9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson*

Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear ready to advance for discovery and trial. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is modified with respect to enforcement of the judgment limiting any relief granted to non-monetary remedies in the State Court action, and confirming that any relief granted does not authorize the enforcement of any monetary judgement or collection against Debtor, Lorris L. Bakken (“the Chapter 7 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Creditor Terrilynn Watkins (“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 granted and the automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Amber Lorraine Stone (“Debtor”) to allow Movant, its agents, representatives and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in *Terrilynn Watkins v. Amber Stone and Does 1-50*, Superior Court of the State of California County of Calaveras, Case No. 24CV47717.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Lorris L. Bakken (“the Chapter 7 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

2. [25-90131-E-7](#)
[KTS-1](#)

CHRIS CUEVAS AND LOIS
MORTON
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-7-25 [\[15\]](#)

CSCDA COMMUNITY IMPROVEMENT
AUTHORITY 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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 6, 2025. By the court's calculation, 28 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 7 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.

CSCDA Community Improvement Authority ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1725 West Katella Avenue #311, Orange, California 92867 ("Property"). The moving party has provided the Declaration of James Gauthier to introduce evidence as a basis for Movant's contention that Chris Cuevas and Lois Morton ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 17.

Movant presents evidence that it is the owner of the Property. *See* Lease Agreement, Ex. 1, Docket 18. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Orange, on October 4, 2024. Exhibit 3, Dckt. 20.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se*

not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Annulment: Retroactive Relief

Movant seeks to have the stay annulled to the date the petition was filed on February 24, 2025. Movant states that trial in the related unlawful detainer case was held on February 25, 2025, a day after his bankruptcy was filed. Mot. 2:14-15. However, Movant provides evidence it was not aware of the bankruptcy petition until it received via mail the notice of bankruptcy. Decl. ¶ 11, Docket 17. Movant therefore requests retroactive relief to the date the petition was filed.

The Ninth Circuit recognizes the bankruptcy court’s wide discretion in granting relief from the automatic stay, including granting “retroactive relief from the stay.” *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1053 (9th Cir. 1997). Annulment of the automatic stay, retroactive relief, should be granted in considering, “(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor.” *Id.* at 1055. The court should engage in balancing the equities when considering retroactive relief. *Id.*

Here, the court finds that annulment of the stay is warranted. Movant was not aware of the instant case when the unlawful detainer trial was held on February 25, 2025. Therefore, the stay is annulled through and up to April 16, 2024, when the foreclosure sale occurred.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3) 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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 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 CSCDA Community Improvement Authority (“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 Motion is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1725 West Katella Avenue #311, Orange, California 92867.

IT IS FURTHER ORDERED that the automatic stay is annulled and the relief is granted retroactively to the date this petition was filed on February 24, 2025, with respect to California Superior Court for Orange County, CSCDA Community Improvement Authority v [Name of Defendants redacted] , Case No. 30-22024-01437240-CL-UD-CJC, all proceedings relating thereto, including entry of judgment therein and enforcement of such judgment. The court annuls the automatic stay, having found that Movant was unaware of the instant bankruptcy case when the unlawful detainer trial was held on February 25, 2025.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

PARK NEWPORT LP 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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on March 11, 2024. 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). Debtor, creditors, the Chapter 7 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, -----

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<p>The Motion for Relief from the Automatic Stay is granted.</p>

Park Newport LP ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4230 Park Newport Drive #308, Newport Beach, California 92660 ("Property"). The moving party has provided the Declaration of Emma Lovett to introduce evidence as a basis for Movant's contention that Carl Anderson and Elana Anderson ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 22.

Movant presents evidence that it is the owner of the Property. *See Lease Agreement*, Ex. 1, Docket 19. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Orange on November 25, 2024, based on Debtor's failure to pay rent. Exhibit 3, Dckt. 21.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

**Federal Rule of Bankruptcy Procedure 4001(a)(3)
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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 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 Park Newport LP (“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 granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4230 Park Newport Drive #308, Newport Beach, California 92660.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

FINAL RULINGS

4. [24-90628-E-7](#)
[JCW-1](#)

VINCENT JONES
Jennifer Reichhoff

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-28-25 [\[22\]](#)

WILMINGTON SAVINGS FUND
SOCIETY. FSB VS.

Final Ruling: No appearance at the April 3, 2025 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 28, 2025. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Wilmington Savings Fund Society, FSB not in its individual capacity but solely as Owner Trustee for the FLIC Residential Mortgage Loan Trust I, by and through its servicing agent Fay Servicing, LLC, as its attorney in fact ("Movant") seeks relief from the automatic stay with respect to Vincent Tyrone Jones' ("Debtor") real property commonly known as 3412 Kodiak Drive, Modesto, California 95355-9758 ("Property"). Movant has provided the Declaration of Kimberly N. Wright to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl., Docket 26.

Movant argues Debtor has not made four post-petition payments, with a total of \$21,137.80 in post-petition payments past due. Relief From Stay Info. Sheet, Dckt. 24; Decl. 3:24-27, Docket 26. Movant also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of \$26,355.34. *Id.*

DEBTOR'S OPPOSITION

Debtor has not filed an Opposition to date as of March 26, 2025.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$492,912.86 (Decl. 3:21-23, Docket 26), while the value of the Property is determined to be \$550,000.00, as stated in Schedules A/B filed by Debtor. Schedule A/B at 11, Docket 1.

11 U.S.C. § 362(d)(1): Grant Relief 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 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.

Here, Debtor is delinquent on nine payments in the amount of \$48,901.24. Motion, 2:13, Docket 22. Four of which are post-petition payments. As such, the court finds that there is cause to terminate the automatic stay under 11 U.S.C. § 362(d)(1), because Debtor has defaulted on post-petition payments, which indicates that there was a lack of diligence in carrying out his duties in the bankruptcy case. *See In re J E Livestock, Inc.*, 375 B.R. at 897; *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

Based upon the evidence submitted, the court determines that there is little equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Debtor values the property at \$550,000.00 but the total liens to Movant totals \$492,912.86. Coupled with the Cost of Sale at less than 8 percent totaling \$44,000.00, Debtor’s equity come to \$13,087.14. The Ninth Circuit has held that a 20% equity cushion is sufficient to provide a secured creditor with adequate protection. *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Here, there is not equity to provide a 20% equity cushion. The Secured Creditor is thus not adequately protected as they are not receiving regular monthly payments. Further, this being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re*

Preuss), 15 B.R. 896 (B.A.P. 9th Cir. 1981). Accordingly, the court finds that under 11 U.S.C. § 362(d)(2) relief should be 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 Wilmington Savings Fund Society, FSB not in its individual capacity but solely as Owner Trustee for the FLIC Residential Mortgage Loan Trust I (“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 granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 3412 Kodiak Drive, Modesto, California 95355-9758 (“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.

No other or additional relief is granted.