

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

July 18, 2024 at 10:00 a.m.

1. [22-90415](#)-E-7
[AP-1](#)

JOHN MENDOZA
Peter Macaluso

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-8-24 [\[327\]](#)**

**THE BANK OF NEW YORK MELLON
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, and Office of the United States Trustee on May 8, 2024. 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). 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, effective January 21, 2024.

The Bank of New York Mellon f/k/a the Bank of New York as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2007-J1, Mortgage Pass-Through Certificates, Series 2007-J1 ("Movant") seeks relief from the automatic stay with respect to John Pierre Mendoza's ("Debtor") real property commonly known as 23955 Cedar Hill Ln, Twain Harte, CA 95383-9828 ("Property"). Movant has provided the Declarations of Georgia Ramirez and Sirima Chantalakwong to introduce evidence to

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authenticate the documents upon which it bases the claim and the obligation secured by the Property. Decl. Dockets 329, 330.

Movant argues Debtor has not made two post-petition payments, with a total of \$8,929.55 in post-petition payments past due. Declaration ¶ 12, Dckt. 329. Movant also provides evidence that the minimum outstanding obligation owed on the debt is \$720,118.32. *Id.* at ¶ 10.

CHAPTER 7 TRUSTEE’S STIPULATION

Creditor and Gary Farrar, the Chapter 7 Trustee (“Trustee”) filed a Stipulation with the court on July 3, 2024. Docket 389. The Stipulation provides:

1. If the Property is not sold by the Trustee and Movant’s claim paid in full within 180 days from the date of entry of an order approving this Stipulation, the automatic stay of 11 U.S.C. § 362(a) shall terminate without further order of the Court to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property. Stipulation 2:26-3:2, Docket 389.
2. The foregoing shall be binding only during the pendency of this Bankruptcy case. If at any time the stay is terminated with respect to the Property by court order or operation of law, the foregoing terms shall cease to be binding and Movant (and any successors or assigns) may proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property. *Id.* at 3:3-7.

The signatories of the Stipulation include counsel for Creditor, Trustee, and counsel for judgment creditor WVJP 2021-4, LP.

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 \$720,118.32. (Declaration ¶ 10, Dckt. 329), while the value of the Property is determined to be in the range of \$800,000 to \$1,370,000, as stated on Movant’s Broker’s Price Opinion. Ex. 5 at 30, Docket 331. Movant states in its Motion that the Property is valued at \$1,003,000. Mot. 3:1, Docket 327.

Movant also contends Debtor has no equity in the Property when considering Movant’s claim and judgment creditor WVJP 2021-4, LP’s claim in the amount of \$2,222,246.31. POC 2-1.

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.

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); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). 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).

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.

The court shall also order that in the event that the automatic stay is terminated as to the Property by other order of the court or operation of law, Movant may by ex parte application seek a supplemental order making the relief from stay effective prior to January 21, 2024.

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 The Bank of New York Mellon f/k/a the Bank of New York as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2007-J1, Mortgage Pass-Through Certificates, Series 2007-J1 (“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 effective on January 21, 2025, 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 23955 Cedar Hill Ln, Twain Harte, California 95383-9828 (“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 if the automatic stay is terminated as to the Property by other order of the court or operation of Law, Movant may seek a supplemental order of this court, filed under this Docket Control Number, terminating the stay prior to January 21, 2024, by ex parte motion, the only issue being whether the stay has been terminated as to the Property by other order of the court or operation of law.

- A. The *ex parte* motion shall be filed and served on the Debtor; Gary Farrar, the Chapter 7 Trustee; the U.S. Trustee, and their respective counsel.
- B. Opposition to the *ex parte* motion shall be filed within ten (10) days of the service of the *ex parte* motion, with the only issue being whether the automatic stay has been terminated by other order of the court or operation of law.
- C. The opposing party shall, in addition to filing the opposition, shall set and notice a hearing on the ex parte motion for the first available law and motion date in the Modesto Division that is at least fourteen (14) days after the timely filing of the opposition.