

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Modesto, California**

**August 6, 2020 at 10:00 a.m.**

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1. [20-90049-E-11](#)      **SUN-ONE LLC**  
[EJR-1](#)                **David Johnston**  
**ADOLFO CABELLO, ET AL. VS.**

**CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
4-6-20 [40]**

**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).**

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Local Rule 9014-1(f)(2) Motion—Final Hearing

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, Lien Holder, parties requesting special notice, and Office of the United States Trustee on April 6, 2020. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The court continued the hearing for briefing by the Parties.

<b>The Motion for Relief from the Automatic Stay is <span style="color:red">xxxxx</span>.</b>
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Adolfo and Antoinette Cabello, Jerry and Soo Jung Hong, George and Lynn Gallegos, and Glenn Thompson ("Movants") seek relief from the automatic stay with respect to Sun-One LLC's ("Debtor in Possession") real property commonly known as Sims Road, Chinese Camp, Tuolumne County, California APN 064-081-038-000 ("Property"). Movant has provided the Declarations of Roxana L. Stobaugh and Adolfo Cabello to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor in Possession has not made two (2) post-petition payments, with a total of \$12,500.00 in post-petition payments past due. Declaration, Dckt. 45. Movant also provides

evidence that there are ten (10) pre-petition payments in default, with a pre-petition arrearage of \$62,500.00. *Id.*

## **DISCUSSION**

On Schedule A/B Debtor states that Property has a value of \$4,390,000.00.

Movant provides a properly authenticated Land Appraisal Report prepared by Roxana L. Stobaugh. Exhibit 1. Dckt. 44. Based on the evaluation and analysis she conducted, the appraiser values the Property as of March 1, 2020 at \$290,000.00. Dckt. 43. This is significantly less than Debtor's valuation.

### **May 5, 2020 Opposition Filed by the DIP**

In its Opposition DIP points out that this Chapter 11 case is a single asset real estate case, consisting of the Property at issue in this motion. Opposition at ¶ 1. Further, DIP argues that a \$6,250.00 payment was made to the secured loan at the contract rate of interest within 90 days after the order for relief, and thus satisfying 11 U.S.C. § 362(d)(3). *Id.* at ¶¶ 2-3. DIP states that the 90th day after the order for relief was April 20, 2020 with the payment being made on April 9, 2020. *Id.* at ¶ 2.

An additional payment of \$6,250.00 was made 19 days later on April 28, 2020. *Id.* at ¶ 3. DIP provides the Declaration of Joe Machado, husband of Kathryn Machado, Debtor's Managing Member. Dckt. 53. Mr. Machado testifies that he personally handled and mailed the payments to Superior Loan Servicing, who is in charge of the loan. *Id.* at ¶ 1. He further testifies that he will continue to make such payments until the plan of reorganization is finalized. *Id.* at ¶ 6.

DIP asserts that it had expected to file a plan of reorganization within the 90 days. Opposition at ¶ 4. However, due to current COVID-19 crisis, the joint venture project, which is the key to the plan, has not been finalized. *Id.* Mr. Machado asserts that details related to the joint venture are close to completion and a plan of reorganization will be filed which will fully pay the Moving Parties. Declaration at ¶ 2.

DIP adds that if the Property is in fact worth only \$290,000 then the monthly interest of \$6,250.090 is actually generating a return of 25.8% for Movant. Thus, the payments are more than adequate protection. *Id.* at ¶ 6.

Further, that the DIP making monthly payments of \$6,250.00 provide more than sufficient adequate protection payments to protect Movant's interests, especially if the Property has a value of only \$290,000.00.

The Property being the only asset of the estate, DIP requests the Motion be denied as the Property is necessary to an effective organization. *Id.* at ¶¶ 7-8.

## **Decision**

The Movant has filed a Reply, stridently arguing for relief from the automatic stay so that it can foreclose on the Property worth only \$290,000.00, forgoing monthly payments of \$6,250.00 so that it can take a (\$400,000) loss (66.6% loss) on its claim. Movant demands that since it is "clear" the DIP

cannot have a successful reorganization, it is Movant's right to take a 66.6% loss.

Thus, relief is requested pursuant to 11 U.S.C. § 362(d)(1) [lack of adequate protection] and § 362(d)(2) [no equity and not necessary for an effective reorganization].

The Debtor in Possession is and will continue, as part of an adequate protection order, to make \$6,250.00 a month adequate protection payments to Movant that shall be applied to its secured claim. (See 11 U.S.C. § 506(a) for Bankruptcy Code definition of secured claim.)

With respect to whether or not there is equity, the court begins with Movant's expert witness, Roxana Stobaugh. Declaration, Dckt. 43; Appraisal Report, Dckt. 44. Ms. Stobaugh has identified the sales of four properties of 46 acres to 215 acres in 2019 and two properties of 20 and 120 acres in contract in 2020 as comparables. The sales prices range from \$190,000 to \$280,000, and the two contract prices are \$179,000 and \$299,000. All significantly less than the \$4,390,000.00 stated by Debtor. Ms. Stobaugh values the Property at the upper end of her comparables.

In considering the value of the Property, the court considers the loan made by Movant. A copy of the Note attached is dated February 26, 2018. Exhibit 2, Dckt. 46. The loan is for \$600,000, with interest at the rate of 12.5% per annum, payable in monthly installments of \$6,250.00 - interest only monthly payments.

The interest rate of 12.5% is striking - much higher than interest rates, at least for loans on which the lender expected to be paid by the borrower, as opposed to a "loan" that the lender plans as a delayed sale by which the "lender" will acquire the property through foreclosure from the desperate borrower when the loan comes due. Here, Movant was to receive two years of interest only payments (which would equal 25% of the original principal amount "loaned"), and then the \$600,000 principle balance would become due.

In apparent anticipation of defaults in the interest only payments, the Note includes a compounding of interest provisions, by which the 12.5% interest itself would accrue 12.5% interest if not paid, in addition to late charges of 10% and other amounts due.

The evidence presented, as we now go into the fourth month of this new born bankruptcy case, indicates that Movant believes that Property has a value greater than the \$299,000 opined by their expert.

Further, the DIP providing a \$6,250.00 a month in adequate protection payment, funded by the principals of the Debtor, indicate that they believe in the nascent stage of this case that the Property has significantly greater value than the \$299,000.

The court notes that with respect to an effective reorganization, reference is made to managing member Kathryn Machado having a "serious medical condition" and her husband, Joe Machado had been responsible for getting the \$6,250 a month post-petition checks to Movant. Declaration, Dckt. 53.

Mr. Machado provides additional testimony, including his legal opinion about this being a "single asset" bankruptcy case and the legal effects thereof. Such "legal opinions" cause the court to question the credibility of any of Mr. Machado's testimony and wonder whether he merely provides his

signature to whatever document the DIP's attorney puts in front of him.

Mr. Machado provides testimony about a "joint venture project" being completed by the DIP. It is unclear how Mr. Machado, who is not a managing member, is involved in the structuring of a joint venture for the Debtor. Additionally, if Kathryn Machado is suffering from a serious medical condition, who is representing the Debtor in fulfilling its fiduciary duties as the debtor in possession?

While questionable, Kathryn and Joe Machado are providing the contributions of \$6,250.00 a month for adequate protection payments while the DIP diligently prosecutes this case. They are going to suffer a very substantial loss if there is not an effective reorganization that can be reasonably completed.

### **May 14, 2020 Hearing**

The court grants relief in the form of required monthly adequate protection payments to be paid by the 5<sup>th</sup> day of each month, with payments having been made for the months of April and May, 2020 as of the date of this hearing.

The court continues this hearing, the motion for which has been filed pursuant to Local Bankruptcy Rule 9014-1(f)(2) and waving the provisions of 11 U.S.C. § 362(e). The court continues the hearing to allow Movant to keep the issue before the court, rather than denying the motion without prejudice and then requiring Movant to file a new motion (incurring further costs and filing fees) in the event that there is a default in adequate protection payments or the other grounds upon which relief is requested may be established with the passage of time.

### **May 17, 2020 Order**

On May 17, 2020, the court ordered the Debtor in Possession to make monthly adequate protection payments in the amount of \$6,250.00, which shall be in the form of a cashier's check, money order, or other certified funds, on or before the 5th day of the month, and continuing monthly thereafter, with the first adequate protection payment pursuant to this order to be made by June 5, 2020 (the Debtor in Possession having made payments for April and May, 2020 as of the May 14, 2020 hearing on this Motion).

The court also ordered that Supplemental Pleadings, if any, were to be filed and served by Movant on or before July 23, 2020, and Replies, if any, by July 30, 2020.

### **August 6, 2020 Hearing**

No Supplemental Pleadings have been filed as of the date this pre-hearing disposition was prepared.

At the hearing, **xxxxxx**

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 Adolfo and Antoinette Cabello, Jerry and Soo Jung Hong, George and Lynn Gallegos, and Glenn Thompson 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  
**XXXXXXX.**

**NO APPEARANCE OF  
COUNSEL FOR MOVANT OR THE DEBTOR IN POSSESSION REQUIRED**

**COURT POSTED AS A TENTATIVE TO AFFORD THE PARTIES  
THE OPPORTUNITY TO ADDRESS WITH THE COURT ANY  
QUESTIONS CONCERNING THE *EX PARTE* RELIEF PROCEDURE  
IN THE COURT’S ORDER**

**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).**

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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, Debtor’s Attorney, Chapter 11 Trustee, and Office of the United States Trustee on July 6, 2020. By the court’s calculation, 31 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.

**The Motion for Relief from the Automatic Stay is granted, with the court granting adequate protection relief as stipulated (Dckt. 67) by the Parties.**

Sumitomo Mitsui Finance and Leasing Company, Ltd. (“Movant”) seeks relief from the automatic stay with respect to assets identified as:

- a. Two 2016 Western Star Model 5700 XE SLP truck tractors, VIN ending

in 9069 and VIN ending in 1606,

- b. Two 2018 Great Dane SS refrigerated trailer, VIN ending in 5802 and VIN ending in 5803 (collectively “Vehicles”).

The moving party has provided the Declaration of Miki Sashimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by R. Millennium Transport, Inc. (“Debtor”).

Movant provides evidence that there are ten (10) pre-petition payments in default, with a pre-petition arrearage of \$103,533.90. Declaration, Dckt. 42. Declarant Sashimura also testifies that despite the requirement for proof of insurance by the Debtor, there has been no such proof and without such documentable proof of coverage, Movant can only assume that there is no insurance as required by the Agreement. *Id.* at ¶ d.

## 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 \$246,240.91 (Declaration, Dckt. 42), while the value of the Vehicles is determined to be \$210,000.00 as stated in Schedules A/B and D filed by Debtor.

### 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 relief.

### 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 no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

## STIPULATION FOR ADEQUATE PROTECTION<sup>FN. 1</sup>

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FN. 1. The Stipulation purports to be between Movant and R. Millennium Transport, just as the “Debtor.” The court presumes that it is intended to also include the Debtor in Possession as the fiduciary of the bankruptcy estate (in light of “debtor” being a statutorily defined term to mean the pre-petition entity that filed bankruptcy).  
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Movant and the Debtor in Possession have filed a Stipulation for Adequate Protection. Dckt. 67. The terms of the Stipulation are:

- A. Beginning on or before July 25, 2020, and continuing by the 25<sup>th</sup> day of each month thereafter, the Debtor in Possession and Debtor shall make monthly adequate protection payments of \$4,151.67, which shall continue until confirmation of Debtor’s chapter 11 plan.
- B. In the event of a default, with said terms stated in the Stipulation, written notice of the default will be given to the Debtor and Debtor in Possession, and counsel for the Debtor in Possession by First Class Mail. The Debtor and Debtor in Possession shall have five days after transmission of the notice of default to cure the default.
- C. If the Debtor or Debtor in Possession do not timely cure the default, Movant will be entitled to *ex parte* relief from the stay and the waiving of the 14-day stay of enforcement arising under Federal Rule of Bankruptcy Procedure 4001(a)(3).

The court grants relief pursuant to the Adequate Protection Stipulation

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 Sumitomo Mitsui Finance and Leasing Company, Ltd. (“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 court orders adequate protection as provided in the Stipulation filed on August 3, 2020 (Dckt. 67), which requires and provides, in addition to compliance with the loan and security documents, the following terms:

- A. Beginning on or before July 25, 2020, and continuing by the 25<sup>th</sup> day of each month thereafter, the Debtor in Possession and Debtor shall make monthly adequate protection payments of \$4,151.67, which shall continue until confirmation of Debtor’s chapter 11 plan.



- B. In the event of a default, with said terms stated in the Stipulation, written notice of the default will be given to the Debtor and Debtor in Possession, and counsel for the Debtor in Possession by First Class Mail. The Debtor and Debtor in Possession shall have five days after transmission of the notice of default to cure the default.
- C. If the Debtor or Debtor in Possession do not timely cure the default, Movant will be entitled to *ex parte* relief from the stay and the waiving of the 14-day stay of enforcement arising under Federal Rule of Bankruptcy Procedure 4001(a)(3).

**IT IS FURTHER ORDERED** that in the event of a default that is untimely cured, such relief shall be requested by *ex parte* motion for supplemental relief filed in this Contested Matter (using DCN: RAP-1), for which no additional filing fee will be required), supported by evidence of the default and failure to cure, with such *ex parte* motion served on the Debtor, Debtor in Possession, and counsel for the Debtor in Possession by First Class Mail.

If the Debtor and Debtor in Possession dispute the assertion of a default in the adequate protection payments for which there was not a timely cure, within five (5) *court* days of the mailing of the *ex parte* motion and supporting pleadings, the Debtor and/or the Debtor in Possession shall file an opposition and evidence of the assertion that there was no default or the default was timely cured, and set a hearing on an opposition to the *ex parte* motion on this court's regular law and motion calendar for the first available regularly scheduled Modesto Division Law and Motion calendar that is at least fourteen (14) *calendar* days after the mailing of the *ex parte* motion. The only issue for the opposition to the *ex parte* motion shall be whether there was a properly noticed default, and if so, whether it was timely cured.

If no opposition is timely filed, Movant may lodge with the court a proposed order granting the supplemental relief pursuant to the *ex parte* motion.

## FINAL RULINGS

3. [20-90112-E-7](#) SATI SEN  
[RPZ-1](#) Mark Hannon  
WILMINGTON TRUST, NA VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-26-20 [\[20\]](#)

**Final Ruling:** No appearance at the August 6, 2020 hearing is required.

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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, Interested Party, and Office of the United States Trustee on June 26, 2020. By the court's calculation, 41 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 Trust, NA, successor trustee to Citibank, N.A., as Trustee, for the benefit of registered holders of Structured Asset Mortgage Investments II Trust 2007-AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 ("Movant") seeks relief from the automatic stay with respect to Sati Santoshi Sen's ("Debtor") real property commonly known as 1833 Darby Lane, Ceres, California ("Property"). Movant has provided the Declaration of Kenneth B. Hampton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made two (2) post-petition payments, with a total of \$2,276.14 in post-petition payments past due. Declaration, Dckt. 23. Movant also provides evidence that there are eight (8) pre-petition payments in default, with a pre-petition arrearage of \$9,073.12. *Id.*

## DISCUSSION

Debtor does not list the Property on Schedule A/B. However, Movant is listed as a creditor with a secured claim on Schedule D. On the Statement of Financial Affairs Debtor lists that two creditors foreclosed on the Property on January 22, 2020. Statement of Financial Affairs Question 10; Dckt. 1 at 31.

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 \$208,710.22 (Declaration, Dckt. 23), while the value of the Property is determined to be \$346,000.00, as stated in Schedule and D filed by Debtor.

### 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). 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.

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 Trust, NA, successor trustee to Citibank, N.A., as Trustee, for the benefit of registered holders of Structured Asset Mortgage Investments II Trust 2007-AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 (“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 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 1833 Darby Lane, Ceres, 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.

No other or additional relief is granted.

**Final Ruling: No appearance at the August 6, 2020 Hearing is required.**

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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 11 Trustee, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 8, 2020. By the court’s calculation, 29 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 hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on August 27, 2020, pursuant to the Stipulation (Dckt. 65) of the Parties.**

BMO Harris Bank, N.A. (“Movant”) seeks relief from the automatic stay, or in the alternative, for monthly adequate protection payments to Movant, with respect to assets identified as:

- a. Three 2018 Great Dane Refrigerated Vans: VIN ending in 5256, VIN ending in 5257, and VIN ending in 5126,
- b. Three Thermo King S-600 Trailer Refrigeration Units: Serial Nos. ending in 0571, 0573, and 0561,
- c. Four 2013 Utility Refrigerated Vans 53': VIN ending in 2908, VIN ending in 6113, VIN ending in 6451, and VIN ending in 6904,
- d. Four Thermo King SB230 Trailer Refrigeration Units: Serial Nos. ending in 5156, 8395, 9966 and 5091,
- e. 2018 Freightliner Cascadia Tractor VIN ending in 4655 (collectively “Vehicles”).

The moving party has provided the Declaration of Kimberly Mundt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by R. Millennium Transport, Inc. (“Debtor-in-Possession / DIP”).

Movant argues Debtor has not made payments on the three (3) separate purchase agreements for the Vehicles, with a total of \$210,496.58 in payments past due. Declaration, Dckt. 53.

Movant has also provided a copy of the Black Book Valuation Report for the Vehicles. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).  
FN. 1

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FN. 1. Movant provides declaration testimony concerning the Black Book Valuation Report and the use of such reports in the industry.  
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## **DEBTOR IN POSSESSION’S OPPOSITION**

DIP filed an Opposition on July 23, 2020. Dckt. 63. DIP asserts that although three agreements concerning eight (8) vehicles are mentioned in the Motion, only one of the vehicles, 2018 Freightliner Cascadia Tractor, has any pre-petition arrearage, and the DIP does not oppose the Motion with respect to that specific vehicle since Debtor has already agreed to its repossession. *Id.* However, the other seven (7) vehicles are necessary to reorganization and have insurance policies. *Id.* Further, DIP asserts having proposed a lump sum payment and adequate protection payments.

## **STIPULATION FOR CONTINUANCE**

On July 30, 2020, the Parties filed a Stipulation to continue the hearing to August 27, 2020, with the deadline for Movant to file a Reply to the Opposition to August 20, 2020.

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 BMO Harris 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** the hearing on the Motion for Relief from the Stay is continued to 10:00 a.m. on August 27, 2020, pursuant to the Stipulation (Dckt. 65) of the Parties (constituting a waiver of the provisions of 11 U.S.C. § 362(e)).

A Reply, if any, shall be filed by Movant on or before August 20, 2020.