

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

August 11, 2015 at 1:30 P.M.

1. [15-22707](#)-C-13 SCOTT WEIR MOTION FOR RELIEF FROM
MKO-2 Scott Sagaria AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-16-15 [[27](#)]

LORIE ARKLEY VS.

Tentative Ruling: 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). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 16, 2015. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion for Relief From the Automatic Stay is granted.

Lorie and William Arkley seek relief from the automatic stay with respect

to the real property commonly known as 10965 Old Pond Lane, Grass Valley, California. The moving party has provided the Declaration of Sharon Perry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Perry Declaration states that the Debtor has not made any post-petition payments, with a total of \$1,875 in post-petition payments past due. Movants' note was all due and payable on January 1, 2015, pre-petition. Debtor filed his Bankruptcy petition on April 2, 2015 and continues to occupy real property without making any payments to movants. Movants have not received a payment from Debtor since September 2014.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$69,122.79 (including \$69,122.79 secured by movants' first trust deed), as stated in the Perry Declaration, while the value of the property is determined to be \$175,000, as stated in Schedules A and D filed by Debtor.

Trustee's Response

The Chapter 13 Trustee states that the Debtor is current under the plan proposed 4/2/15. The creditors' objection to confirmation was sustained 6/10/15. A plan is not pending in this case. The Debtor has paid a total of \$2,710 to date.

Discussion

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

From the evidence provided to the court, it appears that Debtor has not been diligent in carrying out his duties in the bankruptcy case, has not made required payments, and is using bankruptcy as a means to delay payment or foreclosure. Thus, the court shall issue a minute order terminating and vacating the automatic stay.

No other or additional relief is granted by the court.

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 the creditor 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 Lorie and William Arkley, their 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 10965 Old Pond Lane, Grass Valley, California.

No other or additional relief is granted.

2. [15-24610](#)-C-13 PAMELA PENA
EAT-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-7-15 [[18](#)]

HSBC BANK USA, N.A. VS.
DEBTOR DISMISSED: 07/20/2015

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 7, 2015. Twenty-eight 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). 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 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.

HSBC Bank USA, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 5644 Bluffs Dr., Rocklin, California. The moving party has provided the Declaration of Edward Trader to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Trader Declaration states that the Movant acquired the subject property at a pre-petition foreclosure sale held on October 17, 2014. Thus, the Debtor has no ownership or possessory interest in the subject property and has filed this bankruptcy proceeding for the improper purpose of delaying the enforcement of a state court judgement for possession for the subject property.

Discussion

The Debtor was dismissed on July 20, 2015. Therefore, this motion is moot as to the Debtor. The Debtor's case, however, remains open. Thus, the subject property remains property of the estate protected by the automatic stay.

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The evidence suggests that Debtor is using the bankruptcy as a means to delay the enforcement of a foreclosure sale.

The court shall issue a minute order terminating and vacating the automatic stay to allow HSBC Bank USA, N.A., 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 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 the creditor 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 HSBC Bank USA, N.A., 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 pursue an unlawful detainer action for the real property commonly known as 5644 Bluffs Dr., Rocklin, California.

No other or additional relief is granted.

3. [15-23933](#)-C-13 ROBIN WARD
DVW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-24-15 [[25](#)]

U.S. BANK, N.A. VS.

Tentative Ruling: 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). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 24, 2015. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion for Relief from the Automatic stay is granted.

U.S. Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 520 Bonita Court, Vallejo, California. The moving party has provided the Declaration of Raymond Valderrama to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Debtor has not made 2 post-petition payments, with a total of over \$2,000 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$229,564 (including \$184,564 secured by movants' first trust deed), as stated in the Declaration, while the value of the property is determined to be \$136,000, as stated in Schedules A and D filed by Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

From the evidence provided to the court, it appears that Debtor has not made required payments and is using bankruptcy as a means to delay payment or foreclosure. Thus, the court shall issue a minute order terminating and vacating the automatic stay.

No other or additional relief is granted by the court.

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 the creditor 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 U.S. Bank, N.A., 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 520 Bonita Court, Vallejo, California.

No other or additional relief is granted.

4. [15-24048](#)-C-13 ROTONDA LLOPIS
EAT-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-6-15 [[28](#)]

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 6, 2015. 28 days' notice is required. This requirement was met.

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). 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 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 denied as moot as to Debtor and granted as to the Estate.

U.S. Bank, N.A. as trustee for Citigroup Mortgage Loan Trust, Inc., 2006-NC1, asset-backed pass through certificates, series 2006-NC1 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 701 Raven Drive, Vacaville, California (the "Property"). The moving party has provided the Declaration of Edward A. Trader to introduce evidence as a basis for Movant's contention that Rotonda R. Llopis ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property in a non-judicial foreclosure sale on January 31, 2011, and perfected title by Trustee's Deed Upon Sale recorded February 7, 2011.

Movant commenced an unlawful detainer action in California Superior Court, County of Solano on June 3, 2011. Trial was set for the unlawful detainer action on September 27, 2011. Prior to the trial, Debtor filed the first bankruptcy action on September 26, 2011, Case No. 11-43106-A-13. On October 18, 2011, the first bankruptcy action was dismissed.

Movant resumed the unlawful detainer action and trial was rescheduled for November 22, 2011. On November 11, 2011, Debtor filed a second chapter 13 bankruptcy case, Case No. 11-47297-B-13. The second bankruptcy action was dismissed on December 28, 2011.

Movant resumed the unlawful detainer action and Debtor employed various delay tactics including four failed attempts to remove the actoin to federal court. Trial was rescheduled for April 8, 2014. On April 7, 2014, Debtor filed a third chapter 13 bankruptcy case, Case No. 14-23562-C-13. Movant filed Motion for Relief form the Automatic Stay in the third case, granted by minute order on July 1, 2014. The third bankruptcy case was dismissed on July 14, 2014.

Movant resumed the unlawful detainer action on July 2, 2014, and trial was scheduled for May 21, 2015. On May 19, 2015, Debtor filed the instant and fourth chapter 13 bankruptcy case.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee, David Cusick, filed a statement of non-opposition on July 17, 2015.

DISCUSSION

The motion is denied as moot as to Debtor, and granted as to the bankruptcy estate.

First, Debtor filed a chapter 13 bankruptcy case on April 7, 2014, Case No. 14-23562, which was dismissed on July 14, 2014. Less than one year later on May 19, 2015, Debtor filed the instant chapter 13 bankruptcy case. Pursuant to 11 U.S.C. § 362(c)(3)(A), when an individual debtor files a chapter 13 case where a case of the debtor was pending within the preceding 1 year period but was dismissed, the provisions of the automatic stay end as to the debtor thirty days after filing of the latter petition.

The stay may be extended beyond the thirty days, but only on motion of a party in interest applying for the continuation of the automatic stay, after notice and hearing, before the expiration of the thirty day period. 11 U.S.C. § 362(c)(3)(B).

Here, the docket reflects that Debtor did not apply to the court to extend the automatic stay beyond the thirty-day expiration. The case was filed on May 19, 2015. The stay expired as to Debtor thirty days after that date. There is no stay currently in effect.

Second, as to the bankruptcy estate's interest, Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the property for the Estate. 11 U.S.C. § 362(d)(2). The court shall issue an order terminating and vacating the automatic stay to allow U.S. Bank, N.A. as trustee for Citigroup Mortgage Loan Trust, Inc., 2006-NC1, asset-backed pass through certificates, series 2006-NC1, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 701 Raven Drive, Vacaville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 U.S. Bank, N.A. as trustee for Citigroup Mortgage Loan Trust, Inc., 2006-NC1, asset-backed pass through certificates, series 2006-NC1 ("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 U.S. Bank, N.A. as trustee for Citigroup Mortgage Loan Trust, Inc., 2006-NC1, asset-backed pass through certificates, series 2006-NC1 and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 701 Raven Drive, Vacaville, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Rotonda R. Llopis ("Debtor"), the automatic stay provisions of 11 U.S.C. § 362(a) expired after thirty days of filing the instant case pursuant to 11 U.S.C. § 362(c) (3) (A), the Motion is denied as moot.

No other or additional relief is granted.

5. [15-22465](#)-C-13 DARWIN PRICE
APN-2 Eric Gravel

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-1-15 [[51](#)]

GATEWAY ONE LENDING &
FINANCE VS.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 1, 2015. Twenty-eight days' notice is required. This requirement was met.

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). 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 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.

Darwin Price ("Debtor") commenced this bankruptcy case on March 27, 2015. Gateway One Lending & Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Mitsubishi Galant, VIN ending in 4771 (the "Vehicle"). The moving party has provided the Declaration of Diana Verdin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Verdin Declaration provides testimony that Debtor has not made three post-petition payments, with a total of \$1,131.90 in post-petition payments past due.

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 \$10,062.19, as stated in the Verdin Declaration, while the value of the Vehicle is determined to be \$9,522.00, as stated in Schedules B and D filed by Debtor.

CHAPTER 13 TRUSTEE

Chapter 13 Trustee filed a statement of non-opposition to the instant motion on July 28, 2015.

DISCUSSION

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 since the debtor and the estate have not made post-petition payments. 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Gateway One Lending & Finance, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 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 Gateway One Lending & Finance ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Mitsubishi Galant, VIN ending in 4771 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.
