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

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

**August 12, 2021 at 10:00 a.m.**

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**1. 21-21153-E-11 KL-2** | **REHANA HARBORTH** | **Marc Voisenat** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **7-12-21 [75]**

**WILMINGTON SAVINGS FUND SOCIETY, FSB 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.

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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, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on July 12, 2021. By the court's calculation, 31 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 xxxxx.**

WILMINGTON SAVINGS FUND SOCIETY, FSB, AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT OPPORTUNITIES TRUST VI-A ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 3535 Las Pasas Way, Sacramento, California ("Property"). Movant has provided the Declaration of Ron McMahan 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 four post-petition payments, with a total of $8,749.60 in post-petition payments past due. Declaration, Dckt. 78. Movant also provides evidence that there are 8.5 years worth of pre-petition payments in default, with a pre-petition arrearage of $292,957.78. *Id*.

Movant provides evidence, which is properly authenticated, that the borrower under the Note dated April 25, 2003 is Debtor's ex-husband Robert Harborth, not the Debtor. Exhibit A, Dckt. 80.

**DEBTOR'S OPPOSITION**

Debtor in Possession filed an Opposition on July 29, 2021. Dckt. 96. Debtor in Possession asserts that Movant is adequately protected because there is an equity cushion where the value stated by Debtor in Possession in Schedule C is no longer applicable because the Property is now valued at $700,000. Debtor in Possession asserts that Movant has not offered any evidence to the decline in value of the Property. Debtor in Possession further argues that Debtor in Possession has commenced making payments to Movant and Movant will receive the benefits of the increase in value.

Debtor in Possession alleges that the Property is necessary for an effective reorganization and that there is a reasonable possibility of a successful reorganization within a reasonable time because Debtor in Possession is now making the mortgage payments and will propose a plan to continue making payments. Moreover, Debtor in Possession argues that in proposing a plan Debtor in Possession does not have to rely on one source of income or asset but that with the current disposable income of $4,512, the Debtor in Possession can propose a repayment plan to cure the arrears over an extended period of time. In addition, Debtor in Possession has other properties/assets that can be liquidated to cure the default and sufficient liquid assets with equity that would allow her to propose a confirmable plan.

Finally, Debtor in Possession argues that if relief were granted, the estate would lose the rental income produced by the Property and Debtor would have to incur further costs of renting another place which would reduce her disposable income to pay other creditors.

Debtor in Possession filed her Declaration in support of the Opposition testifying, under penalty of perjury, to the following:

1. After reviewing property valuesestimates from Redfin and Trulia, Debtor now values the Property at $700,000.00.

2. Debtor in Possessiontestified at the Meeting of Creditors that she had an agreement with her ex-husband whereby she agreed to waive spousal support and in return, her ex-husband agreed to keep making the mortgage payments.

3. After learning that her ex-husband was not making payments and that the loan went into default, Debtor contacted Movant to address the default but Movant refused to speak to her because she was not the borrower.

4. AMIP (former holder of the mortgage) began communicating with her in 2020 but she was unable to reach an agreement on cure of the arrears and had to file the current bankruptcy to avoid a foreclosure sale.

5. Debtor in Possession began making mortgage payment to Wilmington Savings Fund Society in July 2021 and will continue to make the monthly contractual payment pending confirmation of a chapter 11 plan.

6. Debtor in Possession testified at her Meeting of Creditors that once the COVID moratorium was lifted, she would increase the rents on the rental properties to further increase her monthly income.

7. Debtor in Possession intends to go back to the family law court to recover the unpaid mortgage payments from her husband.

8. Debtor in Possession also plans to liquidate what she will receive from the DaValle Trust which she estimates at $20,000; and if necessary, will liquidate her retirement accounts which total approximately $70,000.

9. Debtor in Possession's real property located at 5707 Ivytown Lane, West Sacramento, California has approximately $125,000 in equity that could be used to fund a plan if necessary. Debtor in Possession's real property located at 2888 Azevedo Dr has a lot of equity, and her share is approximately $140,000 that could be used to fund a plan if necessary.

Declaration, Dckt. 97.

**MOVANT'S REPLY**

Movant filed a Reply on August 5, 2021. Dckt. 99. Movant asserts that Debtor in Possession amended her schedules in an attempt to "make the numbers work" so that relief from the automatic stay would not be granted. Debtor in Possession cannot show that she will be able to cure the pre-petition default. Movant restates that relief should be granted because:

A. Debtor failed to make monthly mortgage payments on Movant's loan for over eight (8) years. Debtor in Possession blames her former husband for failure to pay and fails to explain what efforts if any she took to get her former husband to pay the mortgage.

B. Debtor in Possession failed to include the Property in her Chapter 13 Plan (prior to this case being converted to Chapter 11) despite knowing that no mortgage payments had been paid for more than eight (8) years.

C. Debtor in Possession's statements at the Meeting of Creditors indicate that Debtor does not believe she should make payments. If Debtor in Possession was interested in keeping the Property, she would have made the post-petition payments. Debtor's new attitude regarding the loan comes "too little too late" taking into account the hundreds of thousands of dollars owed by Debtor.

D. Debtor in Possession does not have equity in the Property. Movant relied on Debtor's valuation of $600,000 which she again testified to under

penalty of perjury at the Meeting of Creditors. Debtor in Possession did not indicate that said value was incorrect. Yet within weeks of the Meeting, Debtor in Possession filed amended Schedules now showing a value of $700,000. Debtor in Possession has failed to explain why she only valued the subject property at $600,000.00 four (4) months prior but when faced with the Motion, is increasing that valuation by 16%, or $100,000.00.

E. Even using Debtor in Possession's new valuation of $700,000.00, there is no adequate protection for Movant. Assuming the costs of sale of 8.00% (which Debtor fails to account-for in her Opposition) or $56,000.00, and Movant's claim totaling $554,177.42, there is only an equity cushion of 8.71% ($610,177.42/$700,000.00). Movant arguing that courts have held an equity cushion below 12% is rarely adequate and pointing the court to various cases. *In re LeMay*, 18 B.R. 659 (Bankr. D. Mass. 1982) (7% equity cushion is not adequate); *Ukrainian Sav. And Loan Ass'n v. Trident Corp*., 22 B.R. 491 (Bankr. D.D. Pa., 1982) (8.3% equity cushion is insufficient); *In re Jung End in the Berkshires, Inc.*, 46 B.R. 892, 900 (Bankr. D. Mass. 1985) (8.5% is insufficient); *Suntrust Bank v. Den-Mark Const., Inc.*, 406 B.R. 683, 700-701 (E.D. N.C. 2009) (11% equity cushion inadequate due to other financial factors, including a $12,000 monthly interest payment.).

F. The Property is burdensome and not necessary for an effective reorganization where Debtor in Possession shows a loss of $1,913.00 from the Property each month. Debtor's amended Schedules I and J show that while Debtor in Possession generates only $1,700.00 in monthly income from the Property (by renting the subject property to her niece), Debtor in Possession's monthly expenses related to the Property are more than double, amounting to $3,613.00 – a difference of $1,913.00 (not including any arrearage payments). Moreover, Debtor did not list maintenance-related expenses for the Property.

G. Debtor in Possession's schedules show that she suffers a loss in the total of $1,943.00 each month from all three (3) of her properties combined. Debtor in Possession alleges that her disposable income is $4,512.00, but once the monthly loss of $1,943.00 from Debtor's real properties is accounted for, Debtor in Possession's disposable income is actually $2,569.00. At this amount, even if Debtor in Possession were to use the entire disposable income to pay Movant, it would take Debtor in Possession 114 months to cure the pre-petition arrearage. This is not a reasonable amount of time to cure Movant's pre-petition arrearage.

H. Debtor in Possession alludes to equity from other properties to fund the Plan yet fails to explain what exactly she intends to do, whether it is a sale or refinance.

I. Debtor in Possession is unable to show that she will be able to successfully propose a plan given her inadequate disposable income.

Dckt. 99.

**DISCUSSION**

The court reviews the prosecution of this Bankruptcy Case by this Debtor in Possession and as the Chapter 13 Debtor prior to conversion. This Bankruptcy Case was filed on March 30, 2021 by Debtor. Debtor's counsel filed a proposed Chapter 13 Plan on April 12, 2021. Dckt. 9. That Chapter 13 Plan did not provide for this secured claim.

Debtor then sought to convert the case to Chapter 11, asserting that she could not fund a Chapter 13 Plan to address her creditor's claims in the limited time period of a Chapter 13 case. Civ. Min., Dckt. 37. In discussing some of the creative financial information provided by Debtor under penalty of perjury, the court noted that Debtor stated having more than $100,000 of income for which Debtor did not have to pay any taxes. *Id*.

In concluding that the case should be converted to Chapter 11, rather than dismissed, the court noted:

> At the hearing, the court considered the arguments of the various parties. Debtor can only proceed under Chapter 11. Rather than subjecting all of the parties in interest to denial of this Motion, further delay, dismissal, and then a filing of a second Chapter 11 case, it is in the best interests of the bankruptcy estate and creditors to convert this case now.

*Id*. at 8.

The court's order converting this case was entered on May 26, 2021. No Chapter 11 plan has been filed by Debtor.

As discussed above, Debtor in Possession now values the Property at $700,000. Dckt. 95 at 1. In her declaration Debtor in Possession indicates that she testifies to it having this value based upon what she read (heard) what Trulia and Redfin had written (said) on their websites for valuations of the Property she now states the property has a value of $700,000. Declaration, ¶ 3; Dckt. 97. Whether this is her opinion or just repeating what she heard Trulia and Redfin say is not clear.

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 $537,492.30 (Declaration, Dckt. 78), while the value of the Property may be north of $600,000.00.

Movant cites to its secured claim being more than eight years in default. While Movant cites to this as showing great harm, Movant does not address why a creditor, with the power to conduct a nonjudicial foreclosure sale, sits for eight years of defaults and fails to act. It could well appear that the owner of the note during the eight years of defaults did not find them significant.

**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).

Movant has filed the Declaration of Lior Katz, attorney of record for Movant, who attended the Meeting of Creditors. Mr. Katz testifies under penalty of perjury that at the Meeting of Creditors, Debtor testified that despite living at the Property Debtor had not made any payments on the approximately eight (8) years for three reasons: 1) financial difficulties, 2) Movant's loan was not her debt, and 3) she experienced issues with her divorce. Declaration, Dckt. 79. Moreover, Mr. Katz testifies that Debtor in Possession continued to assert that the loan held by Movant is not her debt. Additionally, Mr. Katz alleges that Debtor in Possession testified that she did not make property tax payments for over eight (8) years and indicated that she had made a payment of approximately $3,000 but that said payment did not clear. *Id.*

Movant argues that it is not adequately protected and thus there is cause for relief from the stay where Debtor in Possession has failed to make mortgage payments for over eight years. At the time that Debtor in Possession filed the instant bankruptcy case as a chapter 13 case, Debtor in Possession failed to list Movant as a creditor. Movant further argues that given Debtor's income and the substantial amount of arrears owed to Movant, it is unlikely that Debtor in Possession will be able to propose a feasible chapter 11 Plan.

Movant has also point out that the Property being Debtor in Possession's principal residence, Debtor in Possession cannot modify the claim and will be required to pay Movant's claim in full within a reasonable time.

Debtor in Possession filed a Declaration explaining that four months after filing her petition she now values the Property at $700,000 and that she has begun making the mortgage payments. This substantial increase appears questionable. Either Debtor provided her original opinion without knowledge of the value, or may be stating the higher value without knowledge of the value.

The court not having a plan and Debtor in Possession providing how she will provide for this claim, the court is at a loss as to whether there is a possibility of an effective reorganization, or whether Debtor is merely seeking to "pay rent" on property with eight and one-half years of defaults.

In the Opposition, Debtor in Possession reports having $4,512 in projected disposable income. Opposition, p. 5:23, 6:1; Dckt. 96. It is not clear what the Debtor in Possession proposes as an adequate protection payment to Creditor. It appears that it is just what the normal mortgage payment would be if the loan was not in default. This provides a substantial fund each month to make a substantial adequate protection payment, which is effectively the Debtor in Possession paying the Bankruptcy Estate to increase the equity in the Property. It would also serve as a strong incentive for the Debtor in Possession to diligently prosecute a plan, enforce the rights against Debtor's ex-husband in state court, and prosecute this case in good faith.

Merely stating that there is value in the property so the Debtor in Possession, after eight and one-half years of no payments, can just stay in there and Movant can run the risk of the historically low interest rates and extraordinarily elevated real estate value bubble bursting is not sufficient.

For adequate protection, the Debtor in Possession proposed at the hearing, **xxxxxxx**

~~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. Movant has shown Movant is not adequately protected. Debtor has not tendered payment for over years. Debtor has also not made any efforts to make post-petition payments to Movant. Additionally, Movant has provided testimony stating that Debtor has not paid property taxes in eight years. Debtor does not make herself responsible for the debt and thus it seems likely that she will continue to not make payments for this mortgage loan.~~

**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).

Movant asserts that there is no equity and that Debtor in Possession does not generate sufficient income to keep the Property, and that the subject property is burdensome and is not necessary to effect a reorganization of this Debtor in Possession.

In the Declaration, Mr. Katz states that Debtor in Possession testified at the Meeting of Creditor she is generating approximately $1,700 per month in rental income from her niece renting the Property. Declaration, Dckt. 79. Movant argues this is suspicious as the niece is an insider and no proof has been provided to support this rental income.

The debt owed to Movant is $537,492.30, where Debtor in Possession originally valued the Property at $600,000. According to Movant, the cost of sale using Debtor's value of $600,000.00 is $48,000.00. Thus, there is no equity in the Property. As stated by Movant, even when taking into account the new valuation of $700,000.00, there is no sufficient equity in the Property. Accounting for the debt owed and costs of sale of 8% (approximately $56,000), the total would be $610,177.42. This leaves approximately $80,000 in equity.

~~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).~~

~~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.~~

**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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

~~Movant has 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 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, AS OWNER TRUSTEE OF THE RESIDENTIAL CREDIT OPPORTUNITIES TRUST VI-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** 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 3535 Las Pasas Way, Sacramento, 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.~~
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> ~~**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.~~
>
> ~~No other or additional relief is granted.~~

# FINAL RULINGS

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| **2.** | **21-21555-E-7**<br>**RAS-1** | **WILLIAM MANNING**<br>**Patricia Wilson** | **MOTION FOR RELIEF FROM AUTOMATIC STAY**<br>**7-8-21 [14]** |

**U.S. BANK NATIONAL ASSOCIATION VS.**

**Final Ruling:** No appearance at the August 12, 2021 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, and Office of the United States Trustee on July 8, 2021. By the court's calculation, 35 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.**

U.S. Bank National Association, as Trustee for MASTR Asset-Backed Securities Trust 2006-NC2 Mortgage Pass-Through Certificates, Series 2006-NC2 ("Movant") seeks relief from the automatic stay with respect to William Jackson Manning, Jr.'s ("Debtor") real property commonly known as 608 Park Street, Alturas, California ("Property"). Movant has provided the Declaration of Marilyn Solivan 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 payments since February 2019. Motion at 3:15-16.

**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 $98,098.07 (Motion at 4:2). Debtor has valued the Property at

$117,748.00, as stated in Schedules A/B and D. Movant's Broker's Price Opinion values the Property at $68,000. Exhibit 4, Dckt. 18.

Debtor's Statement of Intention provides for the surrender of the Property. Dckt. 1 at 41.

**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).

**Prior Discharge**

Debtor was granted a discharge in this case on August 4, 2021. Dckt. 22. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. §§ 362(c)(2)(C), 524(a)(2). There being no automatic stay, the Motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

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.

**Request for Attorneys' Fees**

In the Motion, Movant requests that it be allowed attorneys' fees. The Motion alleges contractual grounds for such fees, in that under the loan documents Movant is entitled to its costs and expenses in enforcing its interest to the extend not prohibited by applicable law. Specifically, Page 2 Section 6(E) of the Note states:

> If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note, whether or not a lawsuit is brought, to the extent not prohibited by Applicable Law. Those expenses include, for example, reasonable attorneys' fees.

Exhibit 1, Dckt. 18, at p. 5.

Movant is seeking $1,138.00 in attorney's fees as a result of the fees incurred in the filing of this motion. Part of those fees include a $188.00 filing fee while the remaining balance can be attributed to the amount incurred by Movant's attorneys in drafting this Motion.

**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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has 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 granted.

**Request for Prospective Injunctive Relief**

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well

known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

*In re Van Ness*, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 National Association, as Trustee for MASTR Asset-Backed Securities Trust 2006-NC2 Mortgage Pass-Through Certificates, Series 2006-NC2 ("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 608 Park Street, Alturas, 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.

**IT IS FURTHER ORDERED** that to the extent the Motion seeks relief from the automatic stay as to William Jackson Manning ("Debtor"), the discharge having been granted in this case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C) as to Debtor.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

**IT IS FURTHER ORDERED** that Movant having is awarded $1,138.00 in attorney's fees relating to this Motion.

No other or additional relief is granted.