

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

August 21, 2014 at 10:00 a.m.

1. [14-90903-E-7](#) FRANK MADDALENA MOTION FOR RELIEF FROM
DJD-1 Gary Ray Fraley AUTOMATIC STAY
7-11-14 [[9](#)]
SETERUS, INC. VS.

Final Ruling: No appearance at the August 21, 2014 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 11, 2014. 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). 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.
--

Creditor and movant Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2337 Edgebrook Drive, Modesto, California (the "Property"). Movant has provided the Declaration of Rose Ngi, Bankruptcy Specialist for Movant, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

August 21, 2014 at 10:00 a.m.

- Page 1 of 30 -

The Ngi Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,518.05 in post-petition payments past due. The Declaration also provides evidence that there are 14 pre-petition payments in default, with a pre-petition arrearage of \$21,245.76.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$296,524.22 secured by Movant's first deed of trust, as stated in the Ngi Declaration and Schedule D filed by Frank Maddalena ("Debtor"). The value of the Property is determined to be \$131,694.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 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 Property for either the 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 *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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

Movant has 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 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 Creditor and movant Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association 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 immediately vacated to allow Creditor and movant Seterus, Inc., as the authorized servicer for Federal National Mortgage Association, 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 2337 Edgebrook Drive, Modesto, California.

No other or additional relief is granted.

2. 14-90804-E-7 MORRIS/RENEE YEGOR
DJD-1 Scott D. Mitchell

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-31-14 [13]

SETERUS, INC. 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 Debtors, 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 31, 2014. By the court's calculation, 21 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). 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 -----.

The Motion for Relief From the Automatic Stay is denied.

Creditor and movant Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3116 Silver Oak Court, Turlock, California (the "Property"). Movant has provided the Declaration of Rose Ngi, Bankruptcy Specialist for the Movant, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ngi Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,506.68 in post-petition payments past due. The Declaration also provides evidence that there are five (5) pre-petition payments in default, with a pre-petition arrearage of \$7,533.40.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$245,711.40 secured by Movant's first deed of trust), as stated in the Ngi Declaration and Schedule D filed by Morris and Renee Yegor ("Debtors"). The value of the Property is determined to be \$338,480.00, as stated in Schedules A and D filed by Debtors. FN.1.

FN.1. The court is unsure how Movant asserts that a value of \$338,480.00 is less than a lien of (\$245,711.40). See factual grounds state in Motion, ¶¶ 7,8, and legal grounds that there is "little equity" for the Debtor or Estate, *Id.* ¶ I. The witness, Rose Ngi confirms under penalty of perjury that she is "informed" that the Property has a value of \$338,480.00 and Creditor's lien secures an obligation of only (\$245,711.40). This could be an example of a creditor attempting to actively mislead the court, or more likely an example of non-licensed para-professionals "cost effectively" (read, more inappropriately profitable for counsel) processing legal pleadings by filling in blanks without any knowledge of the law.

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 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). 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, effective October 31, 2014.

Robert and Rony David ("Debtor") commenced this bankruptcy case on June 21, 2014. Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Toyota Tacoma, VIN ending in 2095 (the "Vehicle"). The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ibarra Declaration provides testimony that Debtor has not made one (1) post-petition payments, with a total of \$305.07 in post-petition payments past due. The Declaration also provides evidence that there are seven (7) pre-petition payments in default, with a pre-petition arrearage of \$2, 135.49.

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 \$3,889.69.00, as stated in the Ibarra Declaration.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. 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). Based upon the Kelly Blue Book Valuation Report, the value of the Vehicle is determined to be \$12,575.00.

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).

Furthermore, Debtor states in Schedule B that the Vehicle is currently being repaired by the insurance company because of an electrical fire.

While there is equity (based on Creditor's evidence) in the vehicle, the Debtors disclose that the vehicle has been damaged. While the Creditor has not shown grounds to terminate the stay today as to the Debtor (the Trustee not opposing the motion), the creditor has shown grounds to terminate the stay as of the time when the stay would terminate by operation of law when a discharge

would be entered in the ordinary prosecution of the case. If discharged is delayed due to an objection to discharge complaint or conduct of the Debtors which would delay entry of their discharge, there is not reason to further delay the Creditor in light of Debtors' default in payments. This also affords the Debtors sufficient time to address this creditor's secured claim.

The court shall issue an order terminating and vacating the automatic stay, effective October 31, 2014, to allow Toyota Motor Credit Corporation, 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 pleaded adequate facts and presented sufficient evidence, in light of the court making the order effective on October 31, 2014, 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 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 Toyota Motor Credit Corporation ("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, effective October 31, 2014, 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 2006 Toyota Tacoma, VIN ending in 2095 ("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.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived.

No other or additional relief is granted.

4. [14-90409-E-7](#) LAURENCE SPEER
APN-1 James D. Pitner

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-21-14 [[37](#)]

TOYOTA MOTOR CREDIT
CORPORATION VS.

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct 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 21, 2014. 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). 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). 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.
--

Laurence Speer ("Debtor") commenced this bankruptcy case on March 21, 2014. Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Toyota Tundra, VIN ending in 2093 (the "Vehicle"). The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ibarra Declaration provides testimony that Debtor has not made 3 (three) post-petition payments, with a total of \$2,138.22 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 \$27,666.72, as stated in the Ibarra Declaration.

Movant has also provided a copy of the Kelly Blue Book Valuation Report for the Vehicle. 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). Based upon the Kelly Blue Book Valuation Report, the value of the Vehicle is determined to be \$23,373.00.

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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on June 18, 2014. 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). 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 Toyota Motor Credit Corporation, 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 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 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 Toyota Motor Credit Corporation ("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 2012 Toyota Tundra, VIN ending in 2093 ("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.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Laurence Speer ("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 (14) day stay of enforcement provided in Rule 4001(a) (3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

5. [11-94410](#)-E-11 **SAWTANTRA/ARUNA CHOPRA** **MOTION FOR RELIEF FROM**
RDW-1 **Robert M. Yaspan** **Robert M. YaspanAUTOMATIC STAY**
7-18-14 [898]
JOHN MILLER, ET AL. VS.

Tentative Ruling: 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).

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.

Local Rule 9014-1(f) (1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Michael LaPlante and Elizabeth La Plante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory Smith and Amanda Smith, Trustees of the Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust, John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; John A. and C. Jeanie Miller, Trustees of the Miller Family Trust dated November 1, 2000; and George H. Lehman, Trustee of the George H. Lehman Family Trust, its assignees and/or successors ("Movant") seeks relief from the automatic stay with respect to two (2) real properties commonly known as 1907 East F Street, Oakdale, California, APN 064-019-008 ("Parcel 08, Oakdale Property") and APN 078-015-007 ("Parcel 07, Modesto Property"). FN.1.

FN.1. Creditor is secured by three properties:

1. Parcel 08, Oakdale Property (described above);
2. Parcel 07, Modesto Property (described above); and
3. Lot B of 4754 Dale Road, Modesto, California, APN 078-015-029 ("Parcel 29, Dale Road Property").

However, it appears Movant is only seeking relief from the automatic stay in regard to the first two properties and NOT Parcel 29, Dale Road Property.

The motion is brought pursuant to 11 U.S.C. § 362(d)(1) for "cause" due to the failure of Debtors to make the required payments, failure to pay the real property taxes on the security for the loan, and the lack of equity on the properties. Furthermore, Movant moves pursuant to 11 U.S.C. § 362(d)(2) as Debtors do not have any realistic hope for a reorganization and that there is insufficient equity present in the properties to justify the continuance of the automatic stay.

Movant has provided the Declaration of Don Akins, Vice President and Manager of Mid Valley Services, Inc., servicer for the loan for Movant, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Evidence as to Parcel 08, Oakdale Property

Movant states that Parcel 08, Oakdale Property is encumbered by Creditor's lien in the amount of \$983,595.62. The Chapter 11 Trustee was proposing selling the Parcel 08, Oakdale Property for \$399,950 and the Debtors have provided an appraisal that provides for a value of either \$865,000 or \$228,254.

The Akins Declaration states that Parcel 08, Oakdale Property has a tax delinquency in the amount of \$4,123.26.

The Akins Declaration states that no payments have been made during the two years and five months that this bankruptcy has been pending.

Evidence as to Parcel 07, Modesto Property

Movant states that Parcel 07, Modesto Property is encumbered by delinquent liens senior to Creditor's lien in the amount of \$918,549.99. Creditor has a lien in the amount of \$9,83,595.62 also encumbering the property for a total lien amount of \$1,902,145.61. At the time this bankruptcy was filed, the Debtors were delinquent to the senior lienholder in the amount of \$49,843.89. Movant states that Debtor's allege that Parcel 07, Modesto Property is worth \$3,331,422.00.

The Akins Declaration states that Parcel 07, Modesto Property has a tax delinquency in the amount of \$29,720.44.

The Akins Declaration states that no payments have been made during the two years and five months that this bankruptcy has been pending.

Movant argues that Debtors have failed to confirm a plan or make any payments to Movant since this case was filed on December 30, 2011. Movant states that Debtors have proposed a plan, but that it abandons Parcel 08, Oakdale Property for full satisfaction of its claims, which violates Federal Rule of Bankruptcy Procedure 4001. Movant argues that Debtors have had ample time to confirm a plan of reorganization, sell the properties or make payments to the creditors but that the Debtors have not taken the required steps. Movant argues that Creditors have been deprived of payment for a substantial period of time.

DEBTORS' OPPOSITION

Opposition has been filed by Sawtantra and Aruna Chopra, Debtors, stating they do not oppose relief from stay as to the "F Street" property or to the property referred to as "Lot B" but oppose the relief sought as against the "Dale Road 007 Property (APN 078-015-029) ("007") which appears to be the "Parcel 29, Dale Road Property," Lot B of 4754 Dale Road, Modesto, California, APN 078-015-029.

It appears that there is some confusion regarding the three properties, because from a review of the Motion and the prayer in the motion, Movant is not seeking relief from the stay as to the Parcel 29, Dale Road Property to which Debtor objects. Therefore, it appears that Debtors do not object to the relief sought.

Furthermore, on September 26, 2013, Joann Irene Bledsoe, et. al. "Bledsoe Creditors", filed a Motion for Relief From the Automatic Stay seeking relief from the automatic stay with respect to the Properties, so that the Bledsoe Creditors can exercise their rights under state law, including foreclosure of the Properties. Dckt. 597. On December 4, 2013, Lucille E. Arterburn, et. al. "Mid Valley Assignees", filed a Motion for Relief From the Automatic Stay seeking relief from the automatic stay with respect to the Properties so that the Mid Valley Assignees could exercise their rights under state law, including foreclosure of the Properties. Dckt. 684. At a hearing held July 24, 2014, the Court granted the Bledsoe Motion for Relief and the Mid Valley Motion for Relief, and ordered that the automatic stay shall terminate as to the 029 Parcel and the 030 Parcel, **effective August 21, 2014**. Dckts. 915

and 914. The orders grant relief for any persons who have a deed of trust against such properties to also assert their non-judicial foreclosure rights.

Therefore, the automatic stay as to the 29 Property is no longer in effect as of the date of this hearing.

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, including defaults in post-petition payments which have come due. 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 Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

Movant has plead 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 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 Michael LaPlante and Elizabeth La Plante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory Smith and Amanda Smith, Trustees of the Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust, John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; John A. and C. Jeanie Miller, Trustees of the Miller Family Trust dated November 1, 2000; and George H. Lehman, Trustee of the George H. Lehman Family Trust, its assignees and/or successors ("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 immediately 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 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 properties commonly known as 1907 East F Street, Oakdale, California, APN 064-019-008 ("Parcel 08, Oakdale Property") and APN 078-015-007 ("Parcel 07, Modesto Property").

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

6. [14-90616](#)-E-7 JEFFREY BUCHANAN
PD-1 Michael R. Germain

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-30-14 [[13](#)]

KANSAS ASSET TRUST, NULEVEL
PARTNERS, INC. VS.

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct 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 June 30, 2014. By the court's calculation, 52 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). 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.
--

Kansas Asset Trust, NuLevel Partners, Inc. as Trustee ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 42620 Kansas Street, Palm Desert, California (the "Property"). Movant has provided the Declaration of Codrin Mihai to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mihai Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$571.72 in post-petition payments past due. The Declaration also provides evidence that there are 63 pre-petition payments in default, with a pre-petition arrearage of \$36,015.16.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$252,262.51 (including \$163,710.51 secured by Movant's first deed of trust), as stated in the Mihai Declaration and Schedule D filed by Jeffrey Buchanan ("Debtor"). The value of the Property is determined to be \$156,000, as stated in Schedules A and D filed by Debtor.

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).

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 Property for either the 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 *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The moving party's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including the provisions of the deed of trust and any other contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what "non-bankruptcy law" is being asserted as the basis for attorney fees. Though the points and authorities makes reference to the deed of trust, the movant was unable to direct the court to any specific provision. Further, no information is given as to the amount of legal fees requested, the legal fees counsel is actually being paid for the motion, or how the court could determine if the fees were reasonable. As such, the request for attorney fees is denied.
FN.1

FN.1. Notwithstanding denying the request for attorneys' fees in this contested matter, this creditor and counsel have presented a plausible basis for the court awarding reasonable attorneys' fees in connection with a motion for relief which a creditor could include as part of its bid or payoff demand in connection with a non-judicial foreclosure. While not part of the secured claim to be paid through bankruptcy, 11 U.S.C. § 506(b), and not knowing whether there is an unsecured claim, California Code of Civil Procedure §§ 580b and 580d anti-deficiency issues, such may well not be an impediment to the awarding of reasonable attorneys fees, actually incurred and paid or to be paid, for the legal services rendered.

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 Kansas Asset Trust, NuLevel Partners, Inc. As Trustee ("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 immediately vacated to allow Kansas Asset Trust, NuLevel Partners, Inc. As Trustee, 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 42620 Kansas Street, Palm Desert, California.

IT IS FURTHER ORDERED that Movant's request for attorneys' fees is denied.

No other or additional relief is granted.

7. [14-90916-E-7](#) KATHLEEN BOTTS
PD-1 Luong Lechau

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-21-14 [[11](#)]

MUFG UNION BANK, N.A. VS.

Final Ruling: No appearance at the August 21, 2014 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 7 Trustee, and Office of the United States Trustee on July 21, 2014. 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). 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.
--

MUFG Union Bank, N.A., f.k.a. Union Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3100 North American Street, Stockton, California (the "Property"). Movant has provided the Declaration of Geraline Calica to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Calica Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$519.20 in post-petition payments past due. The Declaration also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$2,076.80.

Notice of Non-Opposition has been filed by Kathleen Botts ("Debtor") asserting that the Debtor is surrendering the Property.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$109,693.08 (including \$79,595.08 secured by Movant's first deed of trust), as stated in the Calica Declaration and Schedule D filed by Debtor. The value of

the Property is determined to be \$85,000.00, as stated in Schedules A and D filed by Debtor.

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).

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 Property for either the 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 *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The moving party's request for attorney fees is denied, as the Motion fails to state with particularity the grounds for relief, including the provisions of the deed of trust and any other contractual provisions from which relief can be granted. See Fed. R. Bankr. P. 9013. The court cannot determine what "non-bankruptcy law" is being asserted as the basis for attorney fees. Though the points and authorities makes reference to the deed of trust, the movant was unable to direct the court to any specific provision. Further, no information is given as to the amount of legal fees requested, the legal fees counsel is actually being paid for the motion, or how the court could determine if the fees were reasonable. As such, the request for attorney fees is denied. FN.1

FN.1. Notwithstanding denying the request for attorneys' fees in this contested matter, this creditor and counsel have presented a plausible basis for the court awarding reasonable attorneys' fees in connection with a motion for relief which a creditor could include as part of its bid or payoff demand in connection with a non-judicial foreclosure. While not part of the secured claim to be paid through bankruptcy, 11 U.S.C. § 506(b), and not knowing whether there is an unsecured claim, California Code of Civil Procedure §§ 580b and 580d anti-deficiency issues, such may well not be an impediment to the awarding of reasonable attorneys fees, actually incurred and paid or to be paid, for the legal services rendered.

Movant has 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 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 MUFG Union Bank, N.A., fka Union Bank, N.A. 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 immediately vacated to allow MUFG Union Bank, N.A., fka Union 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 3100 North American Street, Stockton, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

8.	<u>14-90618-E-7</u> ROBERT VAN TUINEN ASW-1 Scott J. Sagaria	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-27-14 [20]
	THE BANK OF NEW YORK MELLON VS.	

Final Ruling: No appearance at the August 21, 2014 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, and Chapter [7/11/12/13] Trustee on June 27, 2014. By the court's calculation, 55 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). 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.

The Bank of New York Mellon f.k.a. the Bank of New York, as Trustee for the certificateholders of the CWABS In., Asset-Backed Certificates, Series 2006-11 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1109 Whittle Court, Modesto, California (the "Property"). Movant has provided the Declaration of Veronica Randolph to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Randolph Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,126.17 in post-petition payments past due. The Declaration also provides evidence that there are nine (9) pre-petition payments in default, with a pre-petition arrearage of \$9,841.13. The Randolph Declaration also states that there has been a partial payment of \$94.80.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$279,087.19, as stated in the Randolph Declaration and Schedule D filed by Robert Van Tuinen ("Debtor"). The value of the Property is determined to be \$100,470.00, as stated in Schedules A and D filed by Debtor.

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).

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 Property for either the 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 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.

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 an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by The Bank of New York Mellon f.k.a. the Bank of New York, as Trustee for the certificateholders of the CWABS In., Asset-Backed Certificates, Series 2006-11 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 immediately vacated to allow The Bank of New York Mellon f.k.a. the Bank of New York, as Trustee for the certificateholders of the CWABS In., Asset-Backed Certificates, Series 2006-11, 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 1109 Whittle Court, Modesto, California.

No other or additional relief is granted.

9. [11-94224-E-11](#) EDWARD/ROSIE ESMAILI
KMR-1 David C. Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-9-14 [[482](#)]

SELECT PORTFOLIO SERVICING,
INC. VS.

Final Ruling: No appearance at the August 21, 2014 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, holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 10, 2014. By the court's calculation, 42 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). 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.
--

Select Portfolio Servicing, Inc., servicing agent for The Bank of New York Mellon, f.k.a. The Bank of New York, as trustee for the Certificateholders of the CWALT, Inc., Alternative Loan Trust 2006-OA19, Mortgage Pass-Through Certificates, Series 2006-OA19 in interest ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1504 Wild Tree Lane, Turlock, California, Assessor Parcel Number 072-002-022 (the "Property"). Movant has provided the Declaration of Pamela Nguyen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Nguyen Declaration states that there are 30 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$125,422.66 in post-petition payments past due. The Declaration also provides evidence that there are 15 pre-petition payments in default, with a pre-petition arrearage of \$61,751.53.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$786,334.15 (including \$744,600.15 secured by Movant's first deed of trust), as stated in the Nguyen Declaration and Schedule D filed by Edward and Rosie

Esmaili ("Debtor"). The value of the Property is determined to be \$320,000.00, as stated in Schedules A and D filed by Debtor.

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). Here, the Debtor has not made any pre- or post- petition payments on the Property for 60 months. Debtor, in their most recently filed Monthly Operating Report, shows that the Debtor has had \$10,777,369.00 in gross sales case to date. Dckt. 494. Even with this seemingly high gross sales in the past two-and-a-half years, Debtor have failed to make any pre- or post-petition payments in the past 60 months. Essentially, the Debtor has been living rent and mortgage free for the past 60 months with no indication of why, given the fact the Debtor has a large income from gross sales. The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made **30** 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 Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

As for the necessity of the property for reorganization, there does not appear to be any basis for the Debtor's residential property to be necessary for effective reorganization.

Since the filing of this case on December 12, 2011, the Debtor has been unable to get a plan confirmed. On May 27, 2014, the court issued an order denying the confirmation of the Amended Chapter 11 Plan (Dckt. 447). Dckt. 472. The Debtor has yet to file a supplemental amended plan for confirmation.

Additionally, the Debtor has not filed any response or opposition for this instant motion for relief from automatic stay. According the Debtor's Schedule A, the Property is the Debtor's primary residence. Dckt. 18. There is no indication that the Debtor's primary residence is necessary for the Chapter 11 bankruptcy reorganization nor does the Debtor provide any evidence or justification for how the Property is necessary for reorganization.

The Debtor's lack of commitment to file any amended plans for confirmation nor to file any response to the instant motion, the Property is not necessary for reorganization. Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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.

Because Movant has established that there is no equity in the property for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

Movant has 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 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 Select Portfolio Servicing, Inc., servicing agent for The Bank of New York Mellon, f.k.a. The Bank of New York, as trustee for the Certificateholders of the CWALT, Inc., Alternative Loan Trust 2006-OA19, Mortgage Pass-Through Certificates, Series 2006-OA19 in interest 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 immediately vacated to allow Select Portfolio Servicing, Inc., servicing agent for The Bank of New York Mellon, f.k.a. The Bank of New York, as trustee for the Certificateholders of the CWALT, Inc., Alternative Loan Trust 2006-OA19, Mortgage Pass-Through Certificates, Series 2006-OA19 in interest, 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 1504 Wild Tree Lane, Turlock, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

BANK OF AMERICA, N.A. VS.

Final Ruling: No appearance at the August 21, 2014 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 7 Trustee, and Office of the United States Trustee on July 23, 2014. 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). 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.

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

Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2613 Sharondell Drive, Modesto, California (the "Property"). Movant has provided the Declaration of Marie Keys to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Keys Declaration states that there are one (1) post-petition defaults in the payments on the obligation secured by the Property, with a total of \$1,125.03 in post-petition payments past due. The Declaration also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of \$4,500.00. The Keys Declaration also states that there has been a partial payment of \$14.61.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$182,292.51, as stated in the Keys Declaration and Schedule D filed by Oscar Rey and Selena Lopez-Rey ("Debtor"). The value of the Property is determined to be \$165,000.00, as stated in Schedules A and D filed by Debtor.

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).

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 Property for either the 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 *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 Bank of America, N.A. 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 immediately vacated to allow Bank of America, 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 2613 Sharondell Drive, Modesto, California.

No other or additional relief is granted.

11.	<u>14-90789-E-7</u>	JOSE/ADRIANA VASQUEZ	MOTION FOR RELIEF FROM
	SW-1	Ashley R. Amerio	AUTOMATIC STAY

WELLS FARGO 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 7 Trustee, and Office of the United States Trustee on July 31, 2014. By the court's calculation, 21 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). 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 -----.

The Motion for Relief From the Automatic Stay is granted.
--

Jose and Adriana Vasquez ("Debtor") commenced this bankruptcy case on May 30, 2014. Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services and Wells Fargo Auto Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Toyota Camry, VIN ending in 3141 (the "Vehicle"). The moving party has provided the Declaration of Marquita Braswell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Braswell Declaration provides testimony that Debtor has not made two (2) post-petition payments, with a total of \$716.78 in post-petition payments

past due. The Declaration also provides evidence that there are one (1) pre-petition payments in default, with a pre-petition arrearage of \$142.43.

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 \$17,397.64, as stated in the Braswell Declaration, while the value of the Vehicle is determined to be \$14,277.00, as stated in Schedules B and D filed by Debtor.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. 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). According to the NADA Valuation Report, the value of the Vehicle is determined to be \$12,200.00.

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).

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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. See *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 Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services and Wells Fargo Auto 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 Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services and Wells Fargo Auto 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 2012 Toyota Camry, VIN ending in 3141 ("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.