UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 23, 2018 at 10:00 a.m.

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1. 18-90029-E-11 JCW-1 | **JEFFERY ARAMBEL** | **Matthew Olson** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** | **6-4-18 [381]**

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 4, 2018. By the court's calculation, 38 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 XXXXXXXXX.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to Jeffery Arambel's ("Debtor") real property commonly known as 49 Echo Court, Patterson, California ("Property"). Movant has provided the Declaration of George Plowden, Jr., to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Motion states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds upon which the particularly stated relief is based:

A. Debtor executed a promissory note that secured by a mortgage or deed of trust (it not being specified which legal document it is in the Motion).

B. The promissory note is either made payable to Movant or has been duly endorsed (Movant apparently not being able to state whether it is the named payee on the note or is asserting rights as the holder of an endorsed note).

C. Movant is either the original mortgagee or beneficiary (apparently unable to identify if the security interest is a mortgage or deed of trust) or an assignee (apparently unable to state if it is the original beneficiary or an assignee) of the mortgage or deed of trust.

D. Movant values the Property securing the claim at $450,000 (providing what is stated to be a "Broker's Price Opinion" as evidentiary support).

E. After payment of Movant's secured claim and 8% for costs of sale, Movant computes there to be a negative equity for the Estate in the Property of ($370,000).

F. Debtor in Possession (Motion states "Debtor," but presumably Movant is referring to Debtor in Possession as the fiduciary of the bankruptcy estate in which all of Debtor's assets are now located) has not made four post-petition payments on the obligation.

G. Relief Requested: Based on the above grounds, Movant requests relief from the automatic stay to conduct a non-judicial foreclosure sale under the Deed of Trust, to apply the proceeds to the secured debt, and for the purchaser to obtain possession of the Property.

Motion, Dckt. 381. Movant also requests in the prayer attorneys' fees in an unspecified amount, with no grounds for such fees stated in the Motion. (Though the Federal Rules of Bankruptcy Procedure do not require a request for attorneys' fees be stated as a separate claim in the Motion and such fees may be allowed by post-judgment/order motion, if clearly stated in the Motion the court may be able to award such fees as part of the order granting relief, especially when no opposition is filed.)

In Movant's properly pleaded separate Points and Authorities, the legal basis for the relief is stated to arise pursuant to 11 U.S.C. § 362(c)(d)(2)—lack of equity for the Estate and not necessary for an effective reorganization. As provided in 11 U.S.C. § 362(g), Movant has the burden of proof on the equity issue, and Debtor in Possession has the burden of proof on the necessary for effective reorganization point.

Steve Ziettlow has provided his Declaration in Support of the Motion as the appraiser providing an expert opinion as to the value of the Property. Dckt. 385. His opinion is that the Property has a value of $450,000.00. Declaration ¶ 4, *Id.*

Though stated in the Motion and the Index to the Exhibits as a Broker's Price Opinion, both the above Declaration and Exhibit 3 filed in support of the Motion make it clear that it is an Appraisal, with the testimony being provided by a licensed real estate appraiser. Declaration ¶ 2, *Id.*

The Appraisal Report states that it is a "Desktop Appraisal" and is a "Restricted Appraisal Report." Exhibit C, Dckt. 383 starting at 38. On page 2 of the Desktop Appraisal, the following definitions and qualifications are provided:

> "PURPOSE:
> The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on a sales comparison analysis solely for the use by the client identified in the report."

The identified client is Wells Fargo Bank, N.A.

> "INTENDED USE:
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> The Intended use of this appraisal report is for internal asset review and/or loan servicing (Including default) by the client. The report is not intended for any other use."
>
> "INTENDED USER:
>
> The intended user of this report is limited solely to the identified client. This is a Restricted Appraisal Report and the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile."

In reaching his opinion as to value, Mr. Ziettlow identified six comparable properties that he used for this Desktop Appraisal. These all are stated to be built in the same time period, are of similar construction and condition (though condition appears to be assumed because this is a "Desktop Appraisal"), and are not REO or shortsale properties.

Mr. Ziettlow provides a map of the comparables and the Property at issue, showing their physical proximity. *Id.* at 42. One difference between the Property and the comparables is that the size of the Property lot is two times that of the comparables: 19,131 square fee compared to 6,750–9,393 square feet.

The living area for the Property is 3,829 square feet (5 bedroom, 4 bath), while the comparables ranged from 2814 (4 bedroom 2 ½ bath) to 3825 (5 bedroom, 3 ½ bath) square feet.

For the comparable properties, five have sales closing dates range from July 7, 2017 through March 18, 2018 (with only one sale being in 2018). The closing for the sale of the sixth comparable has not closed, with a listing price of $440,000 shown for a 3,835 square foot home (5 bedrooms, 3 ½ bath) on a 6,750 square foot lot (approximately 35% the size of the lot for the property at issue).

The sales prices for the five comparables for which escrow has closed are (in order of comparable identification number): $451,000 (3,777 sq. ft. home), $450,000 (2,939 sq. ft. home), $439,000 (2,884 sq. ft. home), $438,000 (2,885 sq. ft. home), and $419,000 (2,814 sq. ft. home).

For the sixth comparable property, the listing price is $440,000 (3,835 sq. ft., with an "inferior view").

Using the five actual sales, it appears that the value per square foot of the home is $150.00. For the Property, with a 3,829 square foot home, that would equal $574,350.

In looking at the Desktop Appraisal the court could not find where Mr. Ziettlow made adjustments for differences in the value for things such as "inferior views" or "superior garages" or of the property lot being almost three times size of the comparables.

Thus, it appears from looking just at Movant's expert testimony, the value of the Property would be in excess of $600,000 (which is 133% of the value opined by Movant's expert).

Other than the Property being larger than the comparables and the house generally larger, the only identified difference appears to be that for two of the sales Mr. Ziettlow found that those two homes had "superior" garages.

Movant also provides the Plowden Declaration, which states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of $25,192.60 in post-petition payments past due. The Declaration also provides evidence that there are pre-petition defaults, with a pre-petition arrearage of $2,405.49.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 28, 2018. Dckt. 447. Debtor in Possession asserts that it has obtained its own broker's price opinion reflecting that the Property has a value of at least $925,000.00. Debtor in Possession argues that this matter should be set for an evidentiary hearing to determine the Property's value and whether there is sufficient equity to afford Movant adequate protection and whether the Property is necessary for an effective reorganization.

Debtor in Possession provides the Declaration of George MacMaster, a licensed real estate broker, to provide his opinion as to the value of the Property. Dckt. 448. While testifying that he is licensed real estate broker, he purports to have "appraised" the Property and concluded that it is worth $925,000. *Id.*, ¶ 4. He then continues to state that his "Residential Broker Price Opinion" is filed as Exhibits A in opposition to the Motion. *Id.*, ¶ 5. Presumably, his use of the "appraisal" work was a slip of the tongue and not intended to represent that he is a licensed appraiser, as is Movant's expert.

Mr. MacMaster's Broker Price Opinion is filed as Exhibit A, Dckt. 449, starting at 3. He too identifies six comparables, with the homes ranging from 3,215 square feet to 4,045 square feet. *Id.* at 3–4.

For lot size, he identifies the Property as being 0.4392 acres, with the comparables ranging from 0.23 to 0.5168 acres.

Most of the comparables used by Mr. MacMaster have a pool, which the Property at issue does not.

The sales dates for Mr. MacMaster's comparables range from June 1, 2018 to 22, 2018, for which only three sales are provided. The other three comparables only provide the listing price. Though Mr. Ziettlow identified additional actual sales within the past year, Mr. MacMaster only provided three.

For the three actual sales, the prices per square foot of the residence range from $224 to $3,282. For the last one, Comparable 3, with a $3,282 per square foot allocation of the sales price, it appears to be a gross outlier and not a reliable comparable. The court also notes that this home was built in 1992, a decade prior to the Property at issue and the other comparables, and may be a substantially different type of property.

For the three comparables that have not sold, the listing prices range from $797,000 to $1,395.000.

From the two comparable sales, for which the properties appear to be similar to the Property at issue, based on the testimony of Mr. MacMaster, a per square foot price of $210 could be found. That would equate to a value around $800,000.

Debtor in Possession then argues that the Property does have sufficient equity above Movant's lien and that it is necessary for an effective reorganization because it will be retained as Debtor's home.

DISCUSSION

Movant has not presented any evidence about the current amount owed to it; Movant filed Proof of Claim 4-1 with a claimed secured amount of $763,332.74. Additionally, there is a dispute about the Property's value.

With a secured claim in the amount of $763,000, there could possibly be some (modest) equity for the Estate or for Debtor at the end of the day. It appears that the only claim secured by the Property is Movant's.

On the point of necessary to an effective reorganization, Debtor in Possession argues that it is his intention to retain his home, with the plan being funded through a refinance of his debt and the sale of other properties (for which the court has already approved some sales). He contends that in light of there being some equity and that it is homestead, it is "reasonably necessary" for him to use it as part of his restructured, post-plan completion, fresher financial start.

JULY 12, 2018, HEARING

At the July 12, 2018, hearing, the court continued the hearing to August 23, 2018. Dckt. 504.

AUGUST 23, 2018, HEARING

At the hearing, XXXXXXXXXXXXXXXXXXX

2. **18-90539-E-7 SBM-1** **KEMP LAND COMPANY David Johnston** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION 8-7-18 [14]**

WELLS FARGO BANK, NATIONAL ASSOCIATION 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Amended 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 August 7, 2018. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Relief from the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay to permit Movant to pursue a motion filed in San Juaqion Superior Court Action No. STK-CV-URP-2017-0012321 ("State Court Litigation"), which, if granted by the State Court, would allow a final accounting by appointed receiver of Debtor's property, including payment of administrative costs, exoneration of posted bonds, and ultimately discharge of the receiver. Movant has provided the Declaration of Steven B. Mains to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Kemp Land Company ("Debtor").

The Steven B. Mains Declaration states that State Court Litigation was initiated on December 5, 2017 against Kemp Land Company and Mayra S. Cuevas for judicial foreclosure and related regarding

a loan of $317,000.000 made from Movant to Kemp Land Company. Dckt. 17 at ¶ 2. Movant's loan is secured by a First deed of trust on property commonly known as 1400 &1410 S. California Street, and 504-518 E. Charter Way (now Dr. Martin Luther King Blvd,), Stockton, California (the "Property"). *Id.*, ¶ 3. Mark J. Jen ("Receiver") was appointed upon ex parte application of Movant on December 7, 2017. *Id.*, ¶ 6. Movant filed a motion in the State Court Litigation to approve the Final Account and Report of the Receiver on July 12, 2018, to discharge the Receiver, exonerate the Receiver and Movant's posted bonds, and direct Receiver to disburse funds to Movant after paying Receiver's administration costs. *Id.*, ¶ 8.

Subsequently, Movant purchased the Property at a trustee sale conducted on May 11, 2018 (before this bankruptcy case was filed) as shown in the Trustee's Deed Upon Sale. Exhibit D, Dckt. 18. As noted in the Trustee's Deed Upon Sale, the unpaid debt due the Bank at the time of the sale was $478,609.09 but the amount paid by the Bank through a credit bid was only $475,000.00. *Id.* Accordingly, there remains an indebtedness of $3,609.09. Relief of the stay is therefore needed to terminate the receivership and end the State Court Litigation. Movant asserts the Reciever should be permitted to pursue its Final Account motion which seeks permission of the Superior Court to disburse the remaining funds that he is holding in the sum of $1,913.15 to the Movant. Dckt. 14 at ¶ 7.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The Property has already been sold for an amount less than Movant's claim, and a Final Accounting would permit the Receiver to disburse funds of $1,913.15 held to put towards administrative costs, as well as allowing discharge of the Receiver and exoneration of posted bonds. Therefore, judicial economy dictates that the state court ruling be allowed to continue.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Kemp Land Company, or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 Wells Fargo Bank, National Association ("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 modified as applicable to Kemp Land Company ("Debtor") to allow Wells Fargo 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 to proceed with litigation in WELLS FARGO BANK. A National association v. KEMP LAND COMPANY, A CALIFORNIA CORPORATION AND MAYRA S. CUEVAS, case No. STK-CV-2017-0012321 ("Receivership Proceeding"), to terminate the Receivership, allow the receiver to disburse the remaining monies the receiver is holding, in an amount not to exceed $2,500, to Movant to be applied to the obligation of the Debtor, and conclude the Receivership Proceeding.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Gary Farrar ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

3. **18-90543-E-7** **EDNA STANLEY-FISHER** **MOTION FOR RELIEF FROM**
SW-1 **Mark Nelson** **AUTOMATIC STAY**
8-9-18 [10]

ALLY BANK 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 9, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Relief from the Automatic Stay is granted.

Ally Bank ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Dodge Charger, VIN ending in 5149 (the "Vehicle"). The moving party has provided the Declaration of Alexander Copple to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Edna Stanley-Fisher ("Debtor").

The Alexander Copple Declaration provides testimony that Debtor has missed 1 post-petition payment, totaling $409.61 in post-petition payments past due. Dckt. 12. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of $1,638.44. *Id.* The remaining sums on the Contract, including accrued and unpaid charges, total $13,946.95. *Id.*

Debtor does not list the Vehicle as an asset on her Schedules, lists Movant as holding an unsecured debt on Schedule E/F, and states "Automobile Repossessed July 16, 2018 Deficiency Balance if any is Unknown." Dckt. 1 at 20.

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 $13,946.95, as stated in the Copple Declaration. The vehicle is currently in Movant's possession and is not listed on Debtor's Schedule B or D. Dckt. 10.

DISCUSSION

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.

The vehicle is already in Movant's possession, and Debtor does not appear to oppose the Vehicle being sold to satisfy the secured portion of Movant's claim. Dckt. 1 at 20. The asset is depreciating in value and Debtor does not have an opportunity to sell the asset to repay her outstanding charges and accrued fees. Movant is in a position to collect on the asset in question as it depreciates. Therefore, the court finds cause for terminating the automatic stay. 11 U.S.C. § 362(d)(1).

Additionally, 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 rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either 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 Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Vehicle has a clean trade-in value of $12,000.00 (Exhibit C, Dckt. 14) and the outstanding debts on the contract total $13,946.95. Dckt. 12. The value of the vehicle is less than the remainder of the outstanding charges owed on the contract. There is no equity in the Vehicle 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 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.

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 waiver of the fourteen day stay because the Vehicle is already in Movant's possession. While a more detailed argument would be helpful, Movant's argument is well-taken. The Debtor not being in possession of the Vehicle and not opposing its sale, there is cause for waiver of the fourteen day stay.

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), this part of requested relief is also 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 Ally Bank ("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 2013 Dodge Charger ("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-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.

4. **18-90279-E-7** **STEVEN CONTRERAS** **MOTION FOR RELIEF FROM**
MEL-1 **David Foyil** **AUTOMATIC STAY**
7-24-18 [41]

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling: No appearance at the August 23, 2018 hearing is required.

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 24, 2018. By the court's calculation, 30 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-WMC4, Mortgage Pass-Through Certificates, Series 2006-WMC4 ("Movant") seeks relief from the automatic stay with respect to Steven Contreras ("Debtor") real property commonly known as 5219 Old Emigrant Trail East, Mountain Ranch, California ("Property"). Movant has provided the Declaration of Brittany Deppe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Brittany Deppe Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of $3,201.32 in post-petition payments past due. The Declaration also provides evidence that there are 16 pre-petition payments in default, with a pre-petition arrearage of $22,449.52.

DISCUSSION

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 $301,913.93 as stated in the Brittany Deppe Declaration. Dckt. 43. The value of the Property is determined to be $182,000.00, as stated in Schedules A and D. Dckt. 32.

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.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization . 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Having been converted to 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).

After calculating the indebtedness to creditors and the value of the property, the property has a total equity of -$119,913.93. Debtor has not opposed this Motion and no evidence to the contrary shows positive equity in the Property. Based on the evidence provided, the court finds that there is no equity in the Property.

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 U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust 2006-WMV4, Mortgage Pass-Through Certificates, Series 2006 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow U.S. Bank National Association, as Trustee for MASTR Asset Backed Securities Trust 2006-WMV4, Mortgage Pass-Through Certificates, Series 2006, 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 5219 Old Emigrant Trail East, Mountain Ranch, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.