

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

September 25, 2014 at 9:30 a.m.

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1. [14-24645](#)-E-13 ANDREW/KATHLEEN REED MOTION FOR RELIEF FROM  
MBB-1 Mitchell L. Abdallah AUTOMATIC STAY  
8-7-14 [[66](#)]  
BANK OF AMERICA, N.A. VS.

**Final Ruling:** No appearance at the September 25, 2014 hearing is required.  
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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 Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 49 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.**

Andrew and Kathleen Reed ("Debtors") commenced this bankruptcy case on May 1, 2014. Bank of America, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2001 Country Coach Intrigue, VIN ending in 2056 (the "Vehicle"). The moving party has provided the Declaration of Tara Evans to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Evans Declaration provides testimony that Debtors have not made two (2) post-petition payments, with a total of \$1,530.60 in post-petition payments past due. The Declaration also provides evidence that another post-petition payment will come due on July 10, 2014 in the amount of \$765.30.

From the evidence provided to the court, and only for purposes of this

September 25, 2014 at 9:30 a.m.

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Motion for Relief, the debt secured by this asset is determined to be \$84,684.40, as stated in the Evans Declaration, while the value of the Vehicle is determined to be \$71,600.00, as stated in Schedules B and D filed by Debtors. FN.1.

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FN.1. The court notes that Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has not been properly authenticated or even addressed in the Evans Declaration (Dckt. 68). It cannot be used as a basis for determining the value of the Vehicle. Fed. R. Evid. 901(a). Even so, the claim amount exceeds the Debtors' valuation, leaving no equity in the Vehicle.  
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#### **OPPOSITION TO MOTION**

Debtor has not filed an opposition to this motion.

#### **TRUSTEE'S RESPONSE**

David Cusick, the Chapter 13 Trustee, filed a non-opposition to this motion on August 11, 2014.

#### **RULING**

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). 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 the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Bank of America, N.A., 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 Bank of America, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the 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 2001 Country Coach Intrigue ("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 for cause.

No other or additional relief is granted.

2. [14-21964-E-7](#) DAVE/MICHELLE SMITH  
PJR-1 James V. Phelps

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
8-15-14 [[125](#)]

TRI COUNTIES BANK VS.

**Final Ruling: No appearance at the September 25, 2014 hearing is required.**

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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 Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 18, 2014. 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). 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.**

Tri Counties Bank ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4530 Lake Shastina Drive, Weed, California (the "Property"). Movant has provided the Declaration of Jerry Johnson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Johnson Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$871.37 in post-petition payments past due on the first deed of trust on the Property, serviced by Movant. FN.1.

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FN.1. The court notes that Movant is the servicer for a first deed of trust on the Property, held by Freddie Mac in the amount of \$219,140.69. Freddie Mac has not filed a claim in this case. Movant also holds a second deed of trust on the Property. The Movant thus has standing to bring this motion.  
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**OPPOSITION**

Neither the Debtors nor the Trustee have filed opposition to this motion.

In fact, the Debtors filed a statement of intention to surrender this Property. Dckt. 116.

#### **RULING**

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 \$290,090.98 (including \$70,950.29 secured by Movant's second deed of trust), as stated in the Johnson Declaration and Schedule D filed by Dave and Michelle Smith ("Debtors"). The value of the Property is determined to be \$235,000.00, as stated in Schedules A and D filed by Debtor.

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 Tri Counties 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** that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Tri Counties Bank, 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 4530 Lake Shastina Drive, Weed, 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 not waived.

No other or additional relief is granted.