

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 28, 2014 at 1:30 p.m.

1. 14-27755-E-13 ANTHONY FURR
TJS-2 Richard Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-25-14 [[65](#)]

PENNYMAC HOLDINGS, LLC VS.

**THE HEARING ON THIS MOTION IS CONTINUED (FOR THE
CONVENIENCE OF THE PARTIES AND COUNSEL) TO
3:00 P.M. ON THE OCTOBER 28, 2014 CALENDAR IN
THIS COURT TO BE HEARD IN CONJUNCTION WITH THE DEBTOR'S
MOTION TO VALUE THE SECURED CLAIM OF THIS CREDITOR**

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 13 Trustee, Non-Filing Co-Debtor, and Office of the United States Trustee on September 25, 2014. By the court's calculation, 33 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

October 28, 2014 at 1:30 p.m.

defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Pennymac Holdings, LLC fka Pennymac Mortgage Investment Trust Holdings I, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2822 H Street, Sacramento, California (the "Property"). Movant seeks: (1) an order granting Movant immediate relief from the automatic stay pursuant to 11 U.S.C. § § 362(d)(1), (d)(2) and (d)(4) to take any and all actions , including but not limited to, foreclosure and sale, to enforce its lien on the Property; (2) Fed. R. Bankr. P. 4001(a)(3) be waived; (3) that the co-Debtor stay pursuant to 11 U.S.C. § 1301 be lifted as to the non-filing Maker Sara K. Stratton; and (4) upon foreclosure, in the event Sara K. Stratton, the Debtor or any successor or assign, fails to deliver up possession of the Property, Movant shall be permitted to proceed with its remedies available in State Court, including that of unlawful detainer. The Movant requests that the relief be granted in rem.

RITA GARCIA DECLARATION

Movant has provided the Declaration of Rita Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. Ms. Garcia states that she is employed as a Bankruptcy Manager at Movant and, in that position, Ms. Garcia has access to the books, records and files for Movant.

Anthony Furr ("Debtor") is the successor in interest to Sara Stratton, the original borrower and Debtor's spouse.

After reviewing the procedural history of the loan and how Movant came to acquire the loan, the Declaration states that Ms. Stratton defaulted under the terms of the Note by failing to make payment on July 1, 2009. The Declaration alleges that Stratton also failed to make all subsequent monthly payments due under the Note. Ms. Garcia states that on November 24, 2010, due to the default, a Notice of Default was recorded against the Property. On or about March 1, 2011, a Notice of Trustee Sale was published with an initial scheduled foreclosure sale date of March 22, 2011.

Ms. Garcia then states that "Movant is informed and believes" that on or about May 27, 2004, prior to executing the Note and Deed of Trust, Stratton executed a Grant Deed transferring the Property to herself and the Debtor. The Grant Deed was not recorded until October 28, 2011 in the Official Records of Sacramento County (Document No. 20110280798), approximately 6 years after executing the Note and Deed of Trust.

The Garcia Declaration states that the "Movant is informed and believes" this current case is but one of four cases filed by Debtor affecting Movant and the Property. The Declaration offers the following time line:

1. First Case:
 - a. Filed February 1, 2012
 - b. Case No. 12-22048
 - c. Dismissed on April 23, 2012 due to unreasonable delays by the

Debtor that were prejudicial to creditors.

2. Second Case:
 - a. Filed: April 27, 2012.
 - b. Case No. 12-28240
 - c. Dismissed on November 9, 2012
3. Third Case:
 - a. Filed March 6, 2014
 - b. Case No. 14-22297. FN. 1.

FN.1. While not in the Declaration, a review of the prior case shows that it was dismissed on July 15, 2014 for failure to make plan payments.

In the third, the Movant filed a Motion for Relief from Stay based upon failure to make post-petition payments, bad faith, and no equity. Debtor and Stratton each filed separate oppositions to the Motion for Relief. On July 22, 2013, the court granted the Movant's Motion for Relief under 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4). The order was recorded on or about August 4, 2014.

Movant "is further informed and believes" that on or about July 22, 2014, Stratton executed another Grant Deed, transferring all of her interest in the Property to the Debtor. The Grant Deed was recorded on July 25, 2014 in the Official Records of Sacramento Counts (Document No. 201407251061). Dckt68, Exhibit 8. Movant did not authorize this transfer in ownership to the Debtor.

Movant was informed that the Debtor filed the instant case on July 30, 2014. On August 12, 2014, the Debtor filed a Motion to Extend the Automatic Stay which was denied by the court on August 16, 2014.

Ms. Garcia states that as of September 25, 2014, the contractual arrearages exist in the amount of \$223,180.50, representing the July 1, 2009 through September 1, 2014 mortgage payments, and other fees and costs. The last payment received on May 13, 2010, representing the June 1, 2009 contractual payment. The Declaration alleges that the Debtor has failed to commence making the post-petition payments since filing this case.

Ms. Garcia states that she is "informed and believe" that liens encumbering the Property are as follows:

1. A first Deed of Trust in favor of Movant securing an approximate principal obligation of \$850,976.29.
2. The total principal amount due and owing to Movant on the Note as of September 12, 2014 is \$850,976.29.

The Debtor's Schedule D indicates that the approximate value of the Property is \$32,000.00. Dckt. 68, Exhibit 9. However, Movant states that the approximate value is no less than \$425,000.00, based on a Broker's Price Opinion. Dckt. 68, Exhibit 10.

Ms. Garcia states that the Movant is concerned that the four consecutive bankruptcies have effected the Property and that the Debtor's filings have been in bad faith.

Ms. Garcia reiterates that the Movant requests that any relief granted by the court be in rem to avoid certain additional bad faith acts involving the Property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to this Motion on October 14, 2014. Dckt. 77. The Trustee states that the Plan in this case is unconfirmed and that Debtor has paid a total of \$1,582.00 into the Plan to date. The Trustee states that the Debtor is current on plan payments.

DEBTOR'S OPPOSITION

Debtor filed opposition to this Motion on October 15, 2014. Dckt. 83. FN.1. Debtor states that his Plan provides adequate protection for Movant because it proposes to pay Movant through Class 2 of the Plan. Debtor further states that he will file further evidence of the property's valuation on October 15, 2014.

FN.1. The court notes that this written opposition is untimely. The deadline for filing responses and oppositions to this Motion was October 14, 2014. Debtor's opposition was filed only 13 days before the hearing date.

Debtor further alleges that:

1. Movant alleges that no payments on the note have been made for the past four years. Debtor asserts that the four-year statute of limitations for collection on Movant's note has run.
2. Debtor stats that there is a break in Movant's chain of title for its claim to the promissory note on the Property. There is no evidence of the assignment of the deed from United Financial Mortgage Corp. to Countrywide Document Custody Services or from Countrywide Home Loans to MERS.
3. The Property was condemned once in 1996 and the remediation work is ongoing.

DISCUSSION

The court has denied the Debtor's Motion to Impose the Automatic Stay in this case pursuant to 11 U.S.C. § 362(d)(4), the court having ordered in a prior case that no stay go into effect in a subsequent case. Order Dckt. 64. In denying Motion to Impose the Automatic Stay in this case, the court determined,

"Debtor has not overcome the presumption that the repeat filing is in bad faith. He has not shown grounds for the court to impose a stay and countermand the order in the prior case issued pursuant

to 11 U.S.C. § 362(d)(4). All Debtor has shown is that he wants to fight with PennyMac Holdings, LLC, that he has no reorganization or rehabilitation to pursue under the Bankruptcy Code, and that he wants to use the automatic stay as a free, indefinite injunction.

While Debtor prefers to argue his issues in the bankruptcy court, the Bankruptcy Code and federal court jurisdiction pursuant to 28 U.S.C. § 1334 were not created as a sham device to take cases away from the state court of general jurisdiction or when proper, non-bankruptcy federal court jurisdiction exists for the district courts.

Civil Minutes, Dckt. 62.

The Debtor and this creditor are locked in a battle over the value of the property that Creditor asserts is its collateral in this Motion. Debtor's appraiser now testifies that the property has a value of \$100,000.00. Declaration, Dckt. 87. Creditor's appraiser testifies that the value of the Property is \$475,000. Declaration, Dckt. 80.

The court has denied confirmation of the Debtor's plan. Order, Dckt. 75. The Plan did not provide for paying Creditor on a \$100,000 secured claim, but only \$32,000.00 secured claim. Plan, Dckt 11. The Debtor has computed having only \$730.00 a month, which was exhausted in funding the \$32,000 claim plan.

It is undisputed that the Debtor's wife, or ex-wife, held title to the property and has transferred that title to Debtor for the filing of this bankruptcy case. The Debtor's wife, or ex-wife, had not availed herself of the opportunity to file bankruptcy and seek relief thereunder. The court refers to Ms. Stratton as the "Debtor's wife, or ex-wife" in light of how she has been presented to the court in the Debtor's multiple bankruptcy cases. In the current case, in response to Question 16 of the Statement of Financial Affairs the Debtor states under penalty of perjury that Sara Stratton is his "current Spouse." Dckt. 38, filed August 28, 2014. Debtor also lists Sara Stratton's community income for 2012, 2013, 2014. Question 1, Statement of Financial Affairs, *Id.*

However, in the immediately preceding bankruptcy case filed by the Debtor, 14-22297 (his third case since February 3, 2012, which was filed on March 6, 2014 and dismissed July 15, 2014) he states under penalty of perjury that for income in 2010, 2011, and 2013 there was "None." No purported community income is listed. 14-22297, Statement of Financial Affairs Questions 1 and 2, Dckt. 21. In response to Question 16, the identity of the Debtor's spouse, Debtor states under penalty of perjury "None." He further states that his former spouse was Sara Stratton. *Id.* However, on Schedule I Debtor lists income for a non-filing spouse. *Id.*

On Schedule G Debtor refers to a "Property Settlement Agreement" with Sara Stratton which resolves community property and future duties. *Id.*

In Debtor's second prior bankruptcy case (12-28240 which was filed on April 27, 2012, and dismissed on November 9, 2012) he states in response to Questions 1 and 2 of the Amended Statement of Financial Affairs "None" as to any income in 2012, 2011, and 2010. No community income is listed. 12-28240, Dckt. 59 at 28. He does list \$13,260.00 in Social Security Income and a

"contribution from Sara Stratton \$26,400). *Id.* at 29.

In response to Question 10 (Transfers), Debtor states that there was a "Community property forced waiver on 1473 Wentworth Ave" by which in April 2006 Debtor "transferred his C/P (½) interest claim to house at 1473 under duress to Sara Stratton." *Id.* at 34. In response to Question 16, Debtor lists Sara Stratton and Mabel Furr as former spouses. *Id.* at 36.

On Amended Schedule I in the second prior case no income is listed for "spouse." *Id.* at 24-25. On Amended Schedule G Debtor states that there is a written Agreement, "inter-spousal contract," to execute certain deeds. *Id.* at 22.

On the Originals Statement of Financial Affairs filed in the second prior case the Debtor stated under penalty of perjury "None" as to any income in 2012, 2011, and 2010 in response to Questions 1 and 2. *Id.*, Dckt. 13 at 18-19. In response to Question 16, Debtor did not state "None" as to having a spouse or former spouse, and lists Sara Stratton. *Id.* at 23. Debtor did affirmatively state "None" in response to Question 16, "Nature, location and name of business" for any current or former business. *Id.* 24-25. This is inconsistent with the businesses listed on subsequent amended Schedules in the second prior bankruptcy case and listed in the third prior bankruptcy case and current fourth bankruptcy case.

Debtor's first prior bankruptcy case, 12-22048, was filed on February 1, 2012 and dismissed on April 23, 2012. In response to Questions 1 and 2 Debtor stated under penalty of perjury "None" as to any income in 2012, 2011, and 2010. 12-22048, Dckt. 17 at 1-2. In response to Question 16, Spouses and Former Spouses, Debtor lists "Sara Stratton. *Id.* at 7. In response to Question 18 Debtor states under penalty of perjury that he had a "Solar Farm Development" business which operated from June 2006 - January 2012. *Id.* at 8.

Debtor Seeks to Use Co-Debtor Stay To Protect Himself, Not Co-Debtor, in Absence of Automatic Stay in Current Bankruptcy Case

The court does not know what interest, if any, Sara Stratton, has in these bankruptcy proceedings. She has not appeared and not opposed the termination of the co-debtor stay. She was served with the Motion and supporting pleadings. Certificate of Service, Dckt. 70. On Schedule I Debtor lists Sara Stratton being employed as a "Supervisor, Human Services."

No opposition having been filed by Sara Stratton, her default is entered by the court.

Debtor's Opposition is clear that it is not an opposition by Sara Stratton to protect her interests and rights, but by the Debtor to fill in the gap caused by the Debtor and estate not having an automatic stay in this case. It discusses his disputes with the Movant, why he seeks to fight the Movant, and why he intends to prevail against the Movant.

Debtor's Opposition also admits that title was transferred into the Debtor to try and "cram down" a valuation under 11 U.S.C. § 506(a) of Movant's secured claim. As he discusses, Debtor only had a 50% interest in the property and could not accomplish the § 506(a) valuation of his and Sara Stratton's interests in the Property. So, now he was transferred Sara Stratton's 50%

interest so the Debtor can "cram down" the value on the Movant.

This is wrong on several levels. First, if Sara Stratton wants to avail herself of the benefits of a § 506(a) valuation for a bankruptcy plan she wants to prosecute, she may exercise her rights to file bankruptcy and prosecute a plan in good faith. However, based on the evidence presented, the court could well conclude that she is attempting to use the Debtor as her pawn to improperly manipulate the bankruptcy laws to give Sara Stratton all of the benefits of bankruptcy and none of the obligations. That is improper.

Alternatively, Ms. Stratton may have no involvement with what is going on, and think that she is completing her divorce by severing this continuing tie with the Debtor. The attempted 11 U.S.C. § 506(a) valuation raises a significant possible negative financial consequence for Ms. Stratton. If Debtor were to reduce the value of the "secured claim" and be able to pay a substantially reduced amount through a plan, it may well be that Movant then has a very large unsecured claim which it can then prosecute against Ms. Stratton.

It may well be that Ms. Stratton is not opposing this Motion because she wants Movant to conduct a non-judicial foreclosure sale and bring this financial relationship to an end (taking advantage of the anti-deficiency provisions of California Code of Civil Procedure § 580(d)). Movant has provided expert witness testimony in connection with the Motion to Value its secured claim that this property has a value of \$475,000.00. Ms. Statton's interests and Movant's interests may well coincide with respect to a foreclosure on the Property - notwithstanding the interest of Debtor in retaining the property for sentimental reasons and to prosecute claims against Movant.

Ms. Stratton is being used solely as a non-bankruptcy party Trojan Horse to house the stay-terminated Debtor as he advances his litigation theories against Movant.

**Debtor's Cannot Provide for a
\$100,000 Secured Claim of Movant**

In support of the Motion to Value Movant's secured claim Debtor has presented expert witness testimony that the value of the collateral is \$100,000. In the Chapter 13 Plan filed in this case Debtor proposed to fund it with \$730.00 a month. Dckt. 10. This \$730.00 is what Debtor computes his Net Monthly Income to be on Schedule J. Dckt. 37 at 11-12. On Schedule I Debtor states under penalty of perjury that he has only \$1,159.00 a month in Social Security Income. To achieve the \$730.00 Net Monthly Income the Debtor includes \$10,500.00 a month of income for Sara Stratton on Schedule I. *Id.* at 9-10.

Under the Debtor's proposed Plan the \$730.00 plan payment is exhausted in paying Movant on what the Debtor asserted was a \$32,000.00 secured claim (as reduced pursuant to 11 U.S.C. § 506(a)), repaid over six years at 5% interest. The \$32,000 amount was based on Debtor's opinion of the value of the Property. Now, Debtor's expert testifies that the value is \$100,000.00. (Creditor asserts that it is worth substantially more.)

Using the Microsoft Excel loan calculator program, the court computes

that a \$100,000.00 debt, repaid over 60 months with 5% interest, requires a monthly payment for just that claim of \$1,887.12. This is more than double Debtor's Net Monthly Income. In addition, Debtor has to provide for the other claims and the Chapter 13 Trustee's fees.

Debtor does not have the ability to fund a Chapter 13 Plan to fund the secured claim as computed by his own expert.

**Termination of the Co-Debtor Stay is Proper
in this Case**

The determination of whether the co-debtor stay should be modified, terminated, vacated, or annulled begins with 11 U.S.C. § 1301(c), which provides,

"(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim;
or

(3) such creditor's interest would be irreparably harmed by continuation of such stay."

In going through these elements,

(1) the monies borrower were provided to Sara Stratton. See Note filed as Exhibit 1, Dckt. 68. Sara Stratton is the only borrower and payor obligated on the note for the monies borrowed. The Deed of Trust identifies Sara Stratton, as a married woman, and as her sole and separate property, giving the lender a deed of trust against her Property to secure the obligation which Movant is seeking to enforce against the Property.

(2) based on Schedule J and Debtor's expert witness' testimony as to the value of the property securing Movant's secured claim, the proposed plan did not provide for payment of at least a \$100,000.00 secured claim, and Debtor does not have sufficient Net Monthly Income to fund such a plan.

(3) Movant has been pressed through four bankruptcy cases, with the court ordering pursuant to 11 U.S.C. § 362(d)(4) in Debtor's third prior case that no automatic stay would go into effect in any subsequent case filed by the Debtor within two years of July 25, 2014. 14-22297; Order, Dckt. 71. Continuation of the co-debtor stay, to be used by the Debtor when there is no automatic stay in this case, under these facts, would cause "irreparable harm" to Movant.

Sara Stratton borrowed the money from the original lender (obtained the consideration) and gave the lender a lien against her property to secure the

obligation. Debtor has worked his way into owning the property apparently first by asserting that it was the subject of a community property interest in a dissolution of the marital relationship with Sara Stratton and then by having title transferred to him for purposes of this fourth bankruptcy case. Debtor was not a party to the original loan transaction.

The Debtor has not proposed a plan which will pay what Debtor asserts is the lower § 506(a) value of Movant's secured claim. Additionally, based on Schedules I and J, Debtor cannot fund such a plan.

Sara Stratton has not opposed this Motion and does not seek to have Movant stayed from foreclosing on the Property. It may be that she wants to close this financial chapter for this loan. It may be that she concurs with Movant's expert that the Property has a value of \$475,000.00 and knows that a nonjudicial foreclosure will free her of any potential deficiency obligation. She may also have calculated that if the Debtor were to reduce the value of the secured claim, she may well be saddled with a substantial unsecured claim which Movant might well seek to enforce against her.

The Motion asserts a \$850,976.29, which is substantially greater than the \$100,000.00 value of the collateral testified by Debtor's expert and the \$475,000.00 value testified to by Movant's expert.

Finally, the continued effect of a co-debtor stay, when there is no debtor stay, works an irreparable harm on Movant. Debtor, based on the financial information provided under penalty of perjury can never pay Movant on the debt. By everyone's calculations the Property is worth less than the amount of the debt it secures. Movant is looking at never recovering the shortfall. Movant has been delayed since February 1, 2012 filing of the Debtor's first prior bankruptcy case. After thirty-two months, no good faith, bona fide bankruptcy law basis exists for continuing to delay a creditor from foreclosing on the property. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 378, (1988), (Debtor's burden to show that there is an effective reorganization is prospect to warrant continuation of automatic stay for an unsecured creditor.)

CONCLUSION

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, the opposition of the Debtor, 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 13 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.

Furthermore, 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of three (3) bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

Section 1301 provides that a creditor may not act or commence or continue any civil action to collect 11 or any party of a consumer debt of the debtor from any individual that is liable on such debt with the debtor or that secured such debt. 11 U.S.C. § 1301(a). However, pursuant to 11 U.S.C. § 1301(c),

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that-

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

As discussed supra, the court finds that proper grounds exist for issuing an order granting relief from Sara K. Statton's stay. The court finding that the present petition being part of a scheme to delay, hinder, or defraud the Movant, the Movant's interest would be further harmed if Ms. Stratton's stay under 11 U.S.C. § 1301 remained in effect

Movant has pleaded adequate facts and presented sufficient evidence to support the court waving 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 PennyMac Holdings, LLC fka PennyMac Mortgage Investment Trust Holdings, I, LLC 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 PennyMac Holdings, LLC fka PennyMac Mortgage Investment Trust Holdings, I, LLC, 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 2822 H Street, Sacramento, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 1301(a) are immediately vacated as to Sara K. Statton to allow PennyMac Holdings, LLC fka PennyMac Mortgage Investment Trust Holdings, I, LLC, 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 2822 H Street, Sacramento, 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.

2. [14-29697](#)-E-13 ZOYA KOSOVSKA
DJD-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-13-14 [[11](#)]

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 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 (pro se), Chapter 13 Trustee, and Office of the United States Trustee on October 13, 2014. By the court's calculation, 15 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.
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Seterus, Inc. ("Movant"), as the authorized subservicer for Federal National Mortgage Association (Fannie Mae), seeks relief from the automatic stay with respect to the real property commonly known as 3811 Northhaven Drive, Rocklin, California (the "Property"). Movant has provided the Declaration of Kerry Robinson as evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Robinson Declaration states that there is one (1) post-petition default in the payments on the obligation secured by the Property, with a total of \$1,634.80 in post-petition payments past due. The Declaration also provides evidence that there are 33 pre-petition payments in default, with a pre-

petition arrearage of \$53,948.40. The Robinson Declaration further states that this is the seventh bankruptcy case filed by Zoya Kosovska ("Debtor") or Debtor's spouse affecting this 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 \$453,588.16 (secured by Movant's first deed of trust), as stated in Exhibit D filed by Movant. Dckt. 14. FN.1. Neither Movant nor Debtor have alleged a value for the Property.

FN.1. Movant's Motion and the Robinson Declaration both remain silent on the total debt secured by the Property. Movant provided a trustee's deed of sale from October 1, 2014 that does provide this debt amount. The court has used this figure for the purposes of ruling on the instant Motion, also because Debtor has failed to file any Schedules stating the Debtor's opinion of the debt owed on the Property or its value.

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). Insufficient evidence has been provided by both Movant and Debtor to establish the value of the Property. Without this crucial piece of information, the court cannot determine whether there is equity in the Property for Debtor or the estate. The court cannot grant relief based on this theory.

Additionally, 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

This is now the seventh bankruptcy case since February 2, 2011, involving this Property. Exh. E, Dckt. 14, Civil Minutes in Case No. 14-25893 discussing cases filed by Debtor and her husband, Ivan Kosovski. Debtor, nor her husband, has not been able to prosecute successfully five of the prior six cases. Debtor has failed, in this case, to properly complete their bankruptcy petition by filing the necessary schedules. Debtor has not, and is not prosecuting these bankruptcy cases in a good faith effort to rehabilitate her finances. Rather, she has repeatedly filed them to hinder and delay the Movant.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject Property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by the filing of multiple bankruptcy cases.

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 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 Seterus, Inc. ("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 Seterus, Inc., 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 3811 Northhaven Drive, Rocklin, California.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect the real property commonly known as 3811 Northhaven Drive, Rocklin, California filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

No other or additional relief is granted.

October 28, 2014 at 1:30 p.m.
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Garcia, filed the instant Motion to Authorize the Debtor-in-Possession to Sell Real Property and Contents on October 9, 2014.

OCTOBER 23, 2014 HEARING

At the October 23, 2014 hearing, the court continued the hearing to 1:30 p.m. on October 28, 2014 to allow the Debtor to file and serve an itemized list of personal property to be sold with the residence, and list the proposed value of each item.

Furthermore, the court granted an oral motion for shortening time, allowing the motion to be heard on 15 days notice

SUPPLEMENTAL DECLARATION

Mimi Nassif, the authorized agent of sale of the property, filed a declaration on October 25, 2014. Dckt. 66. The Declaration states that:

1. The sale price for the property is \$2,600,000.00 and the additional sale price for the furnishings, contents, decoration, and accouterments related to that property is \$250,000.00.
2. The offer totals for \$2,900,000.00 for a fully furnished and decorated home, with contents and accouterments associated with a golf community home

Additionally, Nassif Declaration provides a breakdown of the furnishings part of the sale by room and value.

Room	Items	Value
Entry Room	Chair; table; mirror; chandelier; plants; other decorative pieces	\$23,000.00
Formal Dining Room	Wood table with eight chairs; two side chairs; curtains; chandelier; mirror; plants and other decorative pieces	\$35,000.00
Office #1	Office desk; office chair; two side chairs with table in the middle, horse painting; four jerseys on the wall, chandelier; curtains; plants and other decorative pieces	\$30,000.00

Office #2	Chair; lamp; built in cabinets; plants; chandelier; curtains and other decorative pieces	\$15,000.00
Kitchen	Dinning table with seven chairs; chandelier; eight bar stool; decorative pieces; three light fixtures; rug; everything inside the pantry and kitchen cabinet is staying	\$14,000.00
Casual Living Room	Sectional sofa; coffee table; TV; decorative pieces	\$4,000.00
Entertainment room	Three TVs; leather sofa; two leather chairs; pool table; over ten signed sports helmets; side tables; some other decorative pieces	\$10,000.00
Master Bedroom with sitting area next to it	Bed with bedding; two leather chairs; wall painting; two lamps; chandelier; plants and other decorative pieces	\$7,000.00
Gym	Gym equipments; mirrors; clock; plants	\$700.00
Upstairs Bedroom #1	Bed with bedding; night stand and two built in cabinet are included	\$2,000.00
Downstairs Bedroom #1	Two night stands; tables; lamp; bed with bedding; plant; mirror; TV; TV stand; curtains; chandelier	\$2,000.00
Downstairs Bedroom #2	Desk; chair; and other decorative stuff	\$500.00
Outside Furniture	Four chair lounges; five bar stool; two umbrellas; BBQ; little fridge; warmer and other outside kitchen equipment	\$10,000.00

Outside Guest Suite		\$1,200.00
Misc.	Hallway items; golf cart; other decorative pieces	\$15,000.00

DISCUSSION

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. 201 Rua Esperanza, Lincoln, California.
- B. Furnishing, including all furniture for a 10,000 square foot home. A list is being prepared.
- C. Decorations, including all artwork, draping, collectibles, books, and assorted three dimensional pieces (statutes, vases, sconces, etc.) A list is being prepared.
- D. Contents, including dishes, flatware, pots, pans, baking ware, appliances, towels, rugs, and recreational items (TVs, Electronics, Pool Table, etc.). A list is being prepared.
- E. Accouterments, including lawn and yard equipment, golf cart, and garage tools associated with a property of this size (1.03 acres). A list is being prepared.

The proposed purchaser of the Property is Randy Renfro and the terms of the sale are:

- 1. Sale Price: \$2,900,000.00.
- 2. Includes Furnishing, Decorations, Contents, and Accouterments.
- 3. Real estate commissions are estimated to total \$130,000.00.
- 4. Closing costs are estimated to total at \$6,000.00.
- 5. Randy Renfro may receive credit toward repairs that are estimated to be \$10,000.00 at the maximum.
- 6. The note held by William and Stacy Lackey in the amount of approximately \$1,550,000.00 as of the date of filing would be paid from the sale price.
- 7. The note held by the Bleeker Trust in the amount of approximately \$200,000.00 as of the date of filing would be paid from the sale price.
- 8. The Home Owners Association dues which are believed to be less than \$10,000.00 would be paid from the sales price.

October 28, 2014 at 1:30 p.m.

According to the Debtor-in-Possession, the remaining amount would be approximately \$994,000.00.

The Debtor-in-Possession requests permission to use \$50,000.00 of the net proceeds after distribution for renovating and furnishing the home on 9285 Pinehurst Drive, Roseville, California. The Debtor-in-Possession alleges that the home has been left dilapidated and unfurnished by the recent removal of a nonpaying renter and that in order for Debtor-in-Possession to move into and live in that home furniture and repairs will be necessary.

For this Motion, the Movant has established that it is in the best interest of the estate to sell the Property. The proposed sale price is fair, which includes the property, the furnishings, the decorations, the contents, and the accouterments. The court agrees that in light of the circumstances surrounding this case and the Property, it is in the best interest of the estate, the Debtor-in-Possession, and the creditors to approve this sale. With the Debtor-in-Possession providing the supplemental declaration outlining the items and values of each that are to be included in the sale, the court is satisfied that the sale is in the best interest of the estate.

As to the request to use \$50,000.00 of the net proceeds, the court will deny that request and have the Debtor-in-Possession file a supplemental motion requesting such relief.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 to Sell Property filed by Charles Mills, the Debtor-in-Possession, 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 Charles Mills, the Debtor-in-Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Randy Renfro or nominee ("Buyer"), the Property commonly known as:

- A. 201 Rua Esperanza, Lincoln, California.
- B. The following Furnishing, Decorations, Contents, and Accouterments:

Room	Items
Entry Room	Chair; table; mirror; chandelier; plants; other decorative pieces

Formal Dining Room	Wood table with eight chairs; two side chairs; curtains; chandelier; mirror; plants and other decorative pieces
Office #1	Office desk; office chair; two side chairs with table in the middle, horse painting; four jerseys on the wall, chandelier; curtains; plants and other decorative pieces
Office #2	Chair; lamp; built in cabinets; plants; chandelier; curtains and other decorative pieces
Kitchen	Dinning table with seven chairs; chandelier; eight bar stool; decorative pieces; three light fixtures; rug; everything inside the pantry and kitchen cabinet is staying
Casual Living Room	Sectional sofa; coffee table; TV; decorative pieces
Entertainment room	Three TVs; leather sofa; two leather chairs; pool table; over ten signed sports helmets; side tables; some other decorative pieces
Master Bedroom with sitting area next to it	Bed with bedding; two leather chairs; wall painting; two lamps; chandelier; plants and other decorative pieces
Gym	Gym equipments; mirrors; clock; plants
Upstairs Bedroom #1	Bed with bedding; night stand and two built in cabinet are included
Downstairs Bedroom #1	Two night stands; tables; lamp; bed with bedding; plant; mirror; TV; TV stand; curtains; chandelier
Downstairs Bedroom #2	Desk; chair; and other decorative stuff
Outside Furniture	Four chair lounges; five bar stool; two umbrellas; BBQ; little fridge; warmer and other outside kitchen equipment
Outside Guest Suite	
Misc.	Hallway items; golf cart; other decorative pieces

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$2,900,00.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 44, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that all of the net sales proceeds shall be deposited into a segregated bank account from which no funds may be withdrawn without further order of this court.

IT IS FURTHER ORDERED that the request for authorization to use \$50,000.00 of the sale proceeds is denied without prejudice.