UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 8, 2018 at 10:00 a.m.

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1. 18-90106-E-7 AP-2 | **ROBERT/JULIET ALVAGI** | **Jessica Dorn** | **MOTION FOR RELIEF FROM AUTOMATIC STAY** | **10-4-18 [88]**

U.S. BANK, N.A. VS.

Final Ruling: No appearance at the November 8, 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 October 4, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 ("Movant") seeks relief from the automatic stay with respect to Robert and Juliet Alvagi's ("Debtor") real property commonly known as 946 Sandy Way, Turlock, California ("Property"). Movant has provided the Declaration of Mary Garcia to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Garcia Declaration states that there are 7 post-petition defaults in the payments on the obligation secured by the Property, with a total of $10,588.03 in post-petition payments past due. The Declaration also provides evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of $8,637.24.

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 $435,854.92 (entirely secured by Movant's first deed of trust), as stated in the Garcia Declaration and Schedule D. The value of the Property is determined to be $318,812.00, as stated in Schedules A and D.

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.

Furthermore, 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 Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

CONCLUSION

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 Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 ("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 Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2007-BC2 , 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 946 Sandy Way, Turlock, 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.

2. **18-90614-E-7** **RAY CRAIG** **MOTION FOR RELIEF FROM**
JCW-1 **Scott Mitchell** **AUTOMATIC STAY**
10-11-18 [14]

HSBC Bank USA, N.A. VS.

Final Ruling: No appearance at the November 8, 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, and Chapter 7 Trustee, on October 11, 2018. By the court's calculation, 28 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.

HSBC Bank USA, National Association as trustee on behalf of the holders of the Opteum Mortgage Acceptance Corporation Asset-Backed Pass-Through Certificates, Series 2006-2 ("Movant") seeks relief from the automatic stay with respect to Ray Craig's ("Debtor") real property commonly known as 5719 Holbrook Drive, Riverbank, California ("Property").

Movant asserts it is entitled to relief from automatic stay because the consensual liens total to more than the home is worth, and this being a Chapter 7 case the Property is not necessary to an effective reorganization.

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 $396,144.00 (including $355,530.00 secured by Movant's first deed of trust), as stated in the Countryman Declaration and Schedule D. The value of the Property is determined to be $380,363.00, as stated in Schedules A and D.

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

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

CONCLUSION

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 HSBC Bank USA, National Association as trustee on behalf of the holders of the Opteum Mortgage Acceptance Corporation Asset-Backed Pass-Through Certificates, Series 2006-2 ("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 HSBC Bank USA, National Association as trustee on behalf of the holders of the Opteum Mortgage Acceptance Corporation Asset-Backed Pass-Through Certificates, Series 2006-2 , 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 5719 Holbrook Drive, Riverbank, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

3. **18-90428-E-11** **RANDHAWA TRUCKING, LLC** **MOTION FOR RELIEF FROM**
JM-1 **Brian Haddix** **AUTOMATIC STAY**
9-24-18 [42]

PG14, LLC 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, Debtor in possession's Attorney, parties requesting special notice, and Office of the United States Trustee on September 24, 2018. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

However, as addressed below, service was not completed on all required parties until November 1, 2018, which does not meet the minimum 28 days requires notice.

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 hearing on the Motion is continued to 10:00 a.m. on November 29, 2018.

PG14, LLC ("Movant") seeks relief from the automatic stay with respect to Randhawa Trucking, LLC's("ΔIP") real property commonly known as 1200 6th Street, Modesto, California ("Property"). Movant has provided the Declaration of Sanjiv Patel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Patel Declaration states that there are 2 post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,533.34 in post-petition payments past due. The Declaration also provides evidence that there are 10 pre-petition payments in default, with a pre-petition arrearage of $32,666.70; however, the Declaration states the entire balance became due on September 1, 2017 pursuant to the note executed by the parties and attached to this Motion.

DEBTOR IN POSSESSION'S STATEMENT OF SERVICE DEFECT

ΔIP filed an Opposition on October 25, 2018. Dckt. 54. ΔIP asserts Moavnt did not meet Federal Rule of Bankruptcy Procedure 4001(a)(1) requiring service on committees or, if none, those creditors holding the 20 largest unsecured claims. ΔIP argues the Motion is not properly before the court and should be denied. The ΔIP presents no substantive opposition to the grounds asserted in the Motion.

APPLICABLE LAW

For a request for relief from stay, the Federal Rules of Bankruptcy Procedure provide for service of a motion for relief from the stay, stating:

> (1) Motion. A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to §363(e) shall be made in accordance with Rule 9014 and **shall be served on any committee elected pursuant to §705 or appointed pursuant to §1102 of the Code or its authorized agent, or**, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to §1102, **on the creditors included on the list filed pursuant to Rule 1007(d)**, and on such other entities as the court may direct.

Fed. R. Bankr. P. 4001(a)(1)(emphasis added).

DISCUSSION

ΔIP's arguments are well-taken. Movant only provided service to ΔIP, ΔIP's counsel, the U.S. Trustee, and Allen Massey. Cert. of Serv., Dckt. 46. However, on November 2, 2018, an Amended Certificate of Service was filed for Movant. Dckt. 56. In this Certificate of Service, Ellen Bynum, who is identified as an employee of Movant's counsel now states under penalty of perjury that she served the pleadings or notice on the creditors having unsecured claims in this case. The Amended Certificate of Service states that the pleadings were served on November 1, 2018. That was only seven calendar days before this hearing.

This, unfortunately, presents the court with a piecemeal notice, which effectively precludes the creditors holding general unsecured claims from having the opportunity to participate in this Contested Matter. It also results in creating a "reset" for the ΔIP to present an opposition to the Motion.

The court is presented with two alternatives. First, with the consent of the Movant (waiving the provisions of 11 U.S.C. § 362(e) requiring a ruling within thirty-days of the initial hearing on a motion seeking relief from the stay). Second, the court could deny the Motion without prejudice, have it refiled, and everything re-served on everyone.

In considering the alternatives, continuing the hearing, affording the ΔIP and creditors a full opportunity to respond to the substantive issues after having received sufficient notice, and the ability of the

Movant to provide a notice of continued hearing and deadlines for filing opposition, the court elects to continue the hearing rather than require the refiling of the Motion.

This continuance is conditioned on Movant's express consent to the continuance and waiving the provisions of 11 U.S.C. § 362(e).

The hearing on the Motion is continued to 10:00 a.m. on November 29, 2018. Oppositions shall be filed and served on or before November 20, 2018, and Replies, if any, filed on or before noon on November 26, 2018.

Further, on or before 5:00 p.m. on November 13, 2018, Movant shall serve a notice of continued hearing and the deadlines for filing oppositions and replies on all parties required to be provided with notice of this Motion.

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 PG14, LLC ("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 hearing on the Motion for Relief From the Automatic Stay is continued to 10:00 a.m. on November 29, 2018. Oppositions shall be filed and served on or before November 20, 2018, and Replies, if any, filed on or before noon on November 26, 2018. Movant consented to the continuance, waiving the provisions of 11 U.S.C. § 362(e) specifying deadlines for the court concluding hearings on motions for relief that cause the termination of the automatic stay.
>
> **IT IS FURTHER ORDERED** that on or before 5:00 p.m. on November 13, 2018, Movant shall serve a notice of continue hearing and the deadlines for filing oppositions and replies on all parties required to be provided with notice of this Motion.

4. **18-90029-E-11** **JEFFERY ARAMBEL** **CONTINUED MOTION FOR RELIEF**
JCW-1 **Matthew Olson** **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 XXXXXXXXXXXX. .

REVIEW OF MOTION

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the Estate's 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 identified as 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:
>
> 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.

JULY 12, 2018, HEARING

At the July 12, 2018, hearing, the court continued the hearing to August 23, 2018, at the joint request of the Parties. Civil Minutes, Dckt. 504.

August 23, 2018 Hearing

At the hearing August 23, 2018, Debtor in Possession and Movant advised the court that they have agreed to terms for an adequate protection stipulation, which will be reduced to writing and presented to the court. Under the terms of the Stipulation, the Debtor in Possession will make adequate protection payments of $6,036.87.

The amount of the adequate protection payment raised consternation from several creditors, but in the context of whether Debtor in Possession was working for a liquidation of assets to pay creditors, or merely maintaining a standard of living based on impractical financial "beliefs."

The court continued the hearing on the Motion to November 8, 2018 at 1:30 p.m. to provide time for the filing of a settlement and any supplemental pleadings.

SEPTEMBER 24, 2018 STIPULATION

On September 24, 2018 Movant and Debtor filed an Adequate Protection Stipulation and Request to Continue the Motion For Relief From Automatic Stay. Dckt. 643. The Stipulation provides the following:

1. Commencing August 1, 2018, Debtor shall make regular monthly post-petition payments under the Note and Deed of Trust to Movant to be paid towards contractual arrears on the loan. These payments shall be applied contractually to the loan.

2. The current PITI is $6,036.87 ($5,399.45 plus $637.42 in taxes). The loan is an adjustable rate mortgage and payment amounts are subject to change.

3. Payments shall be made directly to Wells Fargo Bank, NA , P.O. Box 14507, Des Moines IA 50306.

4. Debtor shall timely perform all of their obligations under Movant's loan documents as they become due, including the payment of real estate taxes and maintaining insurance coverage.

5. Debtor shall continue to make timely post-petition payments until claim treatment can be determined via the Chapter 11 Plan and/or a Stipulation for Claim Treatment.

6. Movant shall notify Debtor and counsel, in writing, if Debtor defaults or untimely performs any obligations under the stipulation. Debtor has 10 calendar days from the date of the written notification to cure the default.

OCTOBER 9, 2018, STATUS REPORT

Movant and Debtor filed a Status Report on October 9, 2018. Dckt. 674. The Status Report Debtor shall continue regular monthly post-petition payments (pursuant to the aforementioned Stipulation) until claim treatment can be determined via the Chapter 11 Plan. The parties anticipate a Chapter 11 Plan will be filed by the end of October, 2018, and will provide for arrears to be cured. It is also anticipated that the parties will extend the Stipulation pending plan confirmation.

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXXXXX**.

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, 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 that **XXXXXXXXXXXXXXXXXXX**.

5. **18-90339-E-7** **KIMBERLY SOLARIO** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
NEU-2 **Pro Se** **10-2-18 [41]**

CRAIG DE JONG VS.

Final Ruling: No appearance at the November 8, 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 (*pro se*), Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on October 2, 2018. By the court's calculation, 37 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.

Craig De Jong ("Movant") seeks relief from the automatic stay to allow state court litigation in the Superior Court of California, County of San Joaquin, *De Jong v. Beach et al*, case no. 39-2014-00314863-CU-OR-STK /STK-CV-URP-2014-0008188, and on appeal in the California Court of Appeal for the Third Appellate District, case nos. C085462 and C086926. ("State Court Judgement"). Presuming Movant prevails on the appellate portion of the State Court Judgement, Movant argues that decision would then have preclusive effect on the Adversary Proceeding in this case, no. 18-094014.

The Declaration of Michael Tener, counsel in the State Court Judgement has been filed to support the motion, and generally describes the claims and status of the State Court Judgement. Dckt. 44.

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).

Here, Movant requests relief from stay as to the specific issue of appeal in the State Court Judgement. The possibility of prejudice to the Debtor and Estate is low given it is the Debtor's own appeal. Furthermore, Movant argues and it may be that resolution of the State Court Judgement could result in a quicker resolution of the Adversary Proceeding in this case.

The parties have already litigated to trial the underlying issues. The bankruptcy process is not one in which a losing party at trial gets to "retry" the dispute in federal court. The federal courts respect, and are required by statute, to give effect to state court judgments. This is consistent with concepts of judicial economy, avoiding duplicative expenditure of judicial and party resources.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Judgement. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Michael D. McGranahan ("the Chapter 7 Trustee"), 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 Craig De Jong ("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 Kimberly Rose Solario ("Debtor") to allow Craig De Jong ("Movant"), its agents, representatives, and successors to proceed with

litigation in the Superior Court of California, County of San Joaquin, *De Jong v. Beach et al*, case no. 39-2014-00314863-CU-OR-STK/STK-CV-URP, ("State Court Judgment") and on appeal in the California Court of Appeal for the Third Appellate District, case nos. C085462 and C086926, and any further appeals thereof for establishing the finality of the State Court Judgment.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Michael D. McGranahan ("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.

6.	**18-90149-E-11** **AP-1**	**SOUZA PROPERTIES, INC.** **David Johnston**	**MOTION FOR RELIEF FROM AUTOMATIC STAY** **10-9-18 [97]**

U.S. BANK, N.A. VS.

Posted as a Tentative Ruling To Allow Movant's Counsel the Opportunity to Address Any Questions Concerning the Ruling or Form of Order With the Court

If Counsel Accepts the Ruling and Form of the Order, No Appearance is Required

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—No Opposition Filed.

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, interested parties, and Office of the United States Trustee on October 9, 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 the RMAC Trust, Series 2016-CTT ("Movant") seeks relief from the automatic stay with respect to Souza Properties, Inc's ("Debtor in possession") real property commonly known as 24833 Peachland Avenue, Santa Clarita, California ("Property").

Movant seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1), (2), and (4).

SUPPORTING EVIDENCE

Movant has provided the Declaration of Michael P. Ruiz, an employee at Rushmore Loan Management Services with personal knowledge of the records pertaining to this case, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Ruiz Declaration provides a factual overview as follows:

1. On October 27, 2006, Leah Paul executed a promissory note in the principal sum of $445,000.00, which was made payable to ING Bank, FSB. The Note is secured by a recorded deed of trust encumbering the Property. *See* Exhibits 1 and 2, Dckt. 102.

2. On November 14, 2006, a quitclaim deed was executed and subsequently recorded on May 10, 2007, whereby the borrower, Leah Paul, transferred as a gift her interest in the Property to herself, John Tesi, and Nathan Rollins all as tenants in common. *See* Exhibit 4, Dckt. 102.

3. On January 21, 2011, a grant deed was executed and subsequently recorded on December 30, 2011, whereby John Tesi, transferred his interest in the Property to Leah Paul and Nathan Rollins as tenants in common (again as a gift). *See* Exhibit 5, Dckt. 102.

4. On March 10, 2016, a deed of trust with assignment of rents was executed providing for Debtor in Possession Souza Properties, Inc, as beneficiary in the Amount of $85,000.00. *See* Exhibit 8, Dckt. 102. Movant asserts that document was recorded June 13, 2018.

5. After defaulting on the Note, a notice of default was recorded against the Property on October 16, 2017. *See* Exhibit 6, Dckt. 102.

6. On December 12, 2017, the deed of trust was assigned to Movant. *See* Exhibit 3, Dckt. 102.

7. On May 16, 2018, a Notice of Sale was recorded against the Property whereby interested parties were put on notice that the Property would be sold at a public auction on June 14, 2018. *See* Exhibit 7, Dckt. 102.

8. On March 8, 2018, Souza Properties, Inc. commenced the instant case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code

The Ruiz Declaration states that there are 5 post-petition defaults in the payments on the obligation secured by the Property, with a total of $15,435.50 in post-petition payments past due. The Declaration also provides evidence that there are 15 pre-petition payments in default, with a pre-petition arrearage of $58,528.50.

Fax Transmission

Movant filed a short form deed of trust and assignment of rents as Exhibit 8 (Dckt. 102 at p. 41). Movant uses this Exhibit to show an asserted deed of trust was given to the Debtor in Possession Souza Properties, Inc. on March 16, 2016 and that the transfer was recorded June 13, 2018.

A review of the document demonstrates it is a faxed document. The document has the following sending information in the header at the top of the page:

> From: E & O Home Solution Fax: (888) 429-5428
>
> To:
>
> Fax: (949) 752-7245
>
> Page 4 of 5 06/13/2018 11:35 AM

Exhibit 8, Dckt. 102 at 41.

No recording information appears on the Exhibit, leaving it unclear whether this purported deed of trust was actually recorded at all. The June 13, 2018 date referenced by Movant appears to be the date of the fax transmission.

A initial internet search for "E & O Home Solution" turns up no webpages with that name. However, it does disclose a link to a Facebook page for E&O Home Solutions. That Facebook page contained no information other than the name "E&O Home Solutions Real Estate Agent." FN.1.

FN.1. https://www.facebook.com/pages/EO-Home-Solutions/1673250179561652.

There also is reported a Yellow Pages return for E & O Home Solutions, LLC, with the address of 18375 Ventura Blvd Suite 241, Tarzana, CA. FN.2. The "services/products" identified on the Yellow Page is "Home Modifications." A link is provided to "Http://enohomesolutions.com," which is to a nonexistent webpage.

FN. 2. https://www.yellowpages.com/tarzana-ca/mip/e-o-home-solutions-llc-470095036

An internet search of the (888) 429-5428 generates several returns. One is to Buzzfile, which shows an E & O Home Solutions, LLC located at 18375 Ventura Blvd, Tarzana, California. FN.3. The description of the business on the Buzzfile website is: Business Description E & O Home Solutions is located in Tarzana, California. This organization primarily operates in the Real Estate Agents and Managers business / industry within the Real Estate sector. This organization has been operating for approximately 6 years. E & O Home Solutions is estimated to generate $250,191 in annual revenues, and employs approximately 3 people at this single location. The industry designation is "Real Estate Agents and Managers."

FN.3. http://www.buzzfile.com/business/E.And.O-Home-Solutions,-LLC-888-429-5428.

A check on the California Secretary of State Website reports that E & O Home Solutions, LLC status is reported as "SOS/FTB Suspended." FN. 4.

FN. 4. https://businesssearch.sos.ca.gov/CBS/Detail.

Case History

This is not the first contested matter in this bankruptcy case involving E & O Home Solutions faxing a short form deed of trust and assignment of rents in an attempt to stop a foreclosure sale. On October 18, 2018, the court heard another motion for relief filed by Cenlar FSB (Dckt. 82) in order to proceed with foreclosure on property commonly known as 4148 Alderwood Place, Lake Elsinore, California. The court found there that the attempted/actual transfer of property interest was a part of a scheme to hinder/delay creditor's from exercising their rights. Dckt. 106. The court granted relief finding that Debtor had no interest in the property, and to the extent Debtor did have an interest that there was cause for relief and prospective relief from future stays. Order, Dckt. 107.

The Contested Matter here is slightly different, as the faxed short form deed of trust in that case contained information indicating the deed was recorded.

Another motion for relief/annulment from stay has been filed October 26, 2018 in this case by creditor CIT Bank, N.A. Dckt. 109. That motion asserts similar facts, including that (1) creditor held a note secured by real property; (2) the promissor on the note defaulted; (3) creditor recorded a notice of default; (4) creditor foreclosed on the property; (5) creditor received documents indicating Debtor Souza Properties, Inc., acquired an interest in that property by short form deed of trust and assignment of rents, and (6) despite the short form deed of trust, Debtor's Schedules and filing do not claim an interest in the property.

The purported short form deed of trust and assignment of rents in that contested matter, is filed as Exhibit 8. Dckt. 114, at p. 28. That document does not contain the same fax information in the page header. Furthermore, the document does not contain recording information.

DISCUSSION

Debtor in Possession does not claim, and does not appear to have, a legitimate interest in the Property. Debtor in Possession has not listed the Property on its Schedules A/B, does not list Creditor's claim on its Schedule D, and has not filed opposition to this Motion.

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 $498,282.31.

Determination that No Automatic Stay Exists

Based on the evidence presented (and lack thereof, given the faxed transmission here does not indicate it was recorded) and no contrary contention by either the Debtor or Debtor in Possession, the court concludes that there is no Souza Deed of Trust that is property of the bankruptcy estate. There being no such property of the estate, there is no automatic stay that came into existence as to the exercise of the power of sale and foreclosure conducted by Movant and Movant's representative.

Termination of the Automatic Stay, If Any

To the extent that the automatic stay may exist, proper grounds have been provided for terminating the automatic stay with respect to the Movant's, and Movant's representatives, exercising rights under the Note and Deed of Trust.

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).

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by Debtor in Possession or any other party in interest, the court determines that there is no equity in the Property for either Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 11 case.

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

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a 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 the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.*

Relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. The filing of the present case must be part of a scheme, and it must contain improper transfers or multiple cases affecting the same property.

Here, the court must find that: (1) the filing of the current bankruptcy case was part of a scheme to delay, hinder, or defraud creditors which (2) involved a transfer of all or part ownership of the property. The Debtor and now the Debtor in Possession have not asserted any interest in the purported Souza Properties Inc. Deed of Trust. While the court concludes that the Debtor was not part of a scheme utilizing the filing of the bankruptcy case, the evidence shows that third-parties have used the filing of the bankruptcy case as part of a requisite scheme. Further, as shown by the fax filed as Exhibit 8, this scheme is to both delay and to hinder Movant in exercising its rights as creditor. Until the issuance of this ruling and order thereon, it was asserted (by the fax transmission) that Movant was a creditor and that the Debtor's bankruptcy case stayed foreclosure. Thus, when this Motion was filed, Movant still wore the mantel of a putative "creditor" with standing to seek relief pursuant to 11 U.S.C. § 362(d)(4).

The requisite standing and requirements for such relief have been shown. The court grants relief pursuant to 11 U.S.C. § 362(d)(4), which prevents the automatic stay from going into effect in a subsequent bankruptcy case for a two year period, subject to further order from the bankruptcy judge in any such future case.

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.

In the Points and Authorities, which is not the Motion in which the grounds and relief must be stated with particularity, Movant creates a second "prayer" for relief, which asks for more than is stated in the Motion. The additional relief, not stated in the Motion, demanded at the end of the Points and Authorities is, "2. Waiving the 14-day stay prescribed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure;. . ." Points and Authorities, p. 6:20.5-21.5; Dckt. 101. Other than this passing reference, the Points and Authorities does not

cite to any law, state any basis, or provide the court with the grounds for granting such additional demanded relief. (While the Points and Authorities cannot suffice the requirements of Fed. R. Bankr. P. 9013 that requires the grounds to be stated in the Motion, the court notes this to highlight that such demand in the Points and Authorities appears to be an afterthought request.)

Movant has stated failed to state adequate grounds and present sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is 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 U.S. Bank National Association, as trustee for the RMAC Trust, Series 2016-CTT ("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 the RMAC Trust, Series 2016-CTT, its agents, representatives, and successors, and trustee under the trust deed (Doc. 20062469557 recorded in Los Angeles County, California), 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 24833 Peachland Avenue, Santa Clarita, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property..

IT IS FURTHER ORDERED that the above relief is also granted pursuant to 11 U.S.C. § 362(d)(4), which further provides:

> "If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) 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 that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording."

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.