UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 3, 2015 at 10:00 a.m.

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1. 15-90811-E-7 JLB-1 | **ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS Peter G, Macaluso** | **MOTION FOR RELIEF FROM AUTOMATIC STAY 11-19-15 [44]**

CAROL MANLY VS.

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 19, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion for Relief From the Automatic Stay is denied.

Carol Manly ("Movant") seeks relief from the automatic stay with respect to the real properties commonly known as:

1. Lot 2 - 145 Jasper Way, San Andreas, California
2. Lot 6 - 64 Gold Strike Way, San Andreas, California
3. Lot 7 - 72 Gold Strike Way, San Andreas, California
4. Lot 14 - 123 Gold Strike Way, San Andreas, California
5. Lot 15 - 109 Gold Strike Way, San Andreas, California
6. Lot 16 - 91 Gold Strike Way, San Andreas, California
7. Lot 17 - 79 Gold Strike Way, San Andreas, California
8. Lot 18 - 29 Gold Strike Way, San Andreas, California
9. Lot 20 - 41 Gold Strike Way, San Andreas, California
10. Lot 21 - 98 Jasper Way, San Andreas, California
11. Lot 22 - 90 Jasper Way, San Andreas, California
12. Lot 25 - 49 Trout Drive, San Andreas, California
13. Lot 28 - 19 Trout Drive, San Andreas, California
14. Lot 31 - 37 Jasper Way, San Andreas, California
15. Lot 34 - 3 Jasper Way, San Andreas, California
16. Lot 36 - 8 Jasper Way, San Andreas, California
17. Lot 41 - 54 Jasper Way, San Andreas, California
18. Lot 44 - 124 Jasper Way, San Andreas, California
19. Lot 45 - 132 Jasper Way, San Andreas, California
20. Lot 46 - 6 Gold Strike Way, San Andreas, California
21. Lot 47 - 12 Gold Strike Way, San Andreas, California (the "Properties").

Movant has provided the Declaration of Mark Weiner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Mr. Weiner is the "Managing Member" of Indian Village Estates, LLC, an unsecured creditor in the instant case. Mr. Weiner states that:

> The facts stated herein are of my own direct personal knowledge. As such, I am intimately familiar with the facts stated herein and, if called to testify herein, I am competent to act as a witness thereto.

Dckt. 46.

Mr. Weiner's declaration does not provide evidence as to how many pre- and post-petition payments were missed. The only statement made as to the amount owed is:

> The present sum owning on the promissory note as secured by the Manly deed of trust is $2,116,538.45. This sum represents approximately $665,000 in outstanding accrued interest. A true and correct copy of the accounting applicable to this debt is attached as Exhibit "B" to Creditor's Exhibits.

Dckt. 46.

Unfortunately, Mr. Weiner does not state how he has knowledge of the accounting. The Motion seems to be premised on the fact that Indian Village Estates, LLC filed a lawsuit in state court alleging the wrongful foreclosure by the Debtor in 2014 that resulted in the loss of 31 lots owned by Indian Village. Allegedly, 21 of those lots are subject to a first deed of trust held by Movant.

The Motion is premised on the court "filling in the blanks" for the Movant as to how Mr. Weiner, the managing member of the owner of the alleged lots, can declare under penalty of perjury as to the Movant's security interest and knowledge of the banking.

The Motion merely requests that the court grant relief from the automatic stay so she can enforce her "security interest." Later she states in the motion that a delinquent sum is owed on "her first deed of trust." The Motion does not state with particularity (or allege) any outstanding obligation owing to Movant, and does not state the existence of any mortgages or deeds of trust.

Mark Weiner states that he is a creditor with a general unsecured claim. He then discusses a law suit having been filed by Indian Village Estates, LLC alleging an unlawful foreclosure.

Then, he seeks to testify that Movant holds a deed of trust encumbering 21 lots and Mr. Weiner then seeks to provide testimony authenticating the deed of trust. Declaration, ¶ 4, Dckt. 46. Mr. Weiner then proceeds to provide testimony purporting to state the obligation owed that is purported to be secured by the deed of trust. Mr. Weiner provides no basis for having the requisite personal knowledge to provide testimony in this contested matter. Fed. R. Evid. 602.

The use of Mr. Weiner to provide the testimony he has is very concerning to the court. It appears that Carol Manly, the purported trustee of the trust, who is the Movant, is unable to provide testimony. Mr. Weiner states that he

has “discussed” with Ms. Manly a potential use of the property and she agrees with him.

Given such serious defects in the evidence presented and the absence of testimony from Ms. Manly, the court has grave reservations as to whether Ms. Manly is actually involved in these proceedings.

While there may be a perfectly legal and logical reason for Mr. Weiner to make such declarations under the penalty of perjury, such justification has not been stated in the Motion nor the Declaration.

Without competent evidence, the court cannot grant the Motion. Therefore, the Motion is denied. If and when Ms. Manly, or her successor, is able to participate in these proceedings, the trustee of the trust and its counsel can seek relief from this order denying the Motion and then can seek to file and prosecute a motion which: (1) Complies with Fed. R. Bankr. P. 9013; (2) complies with L.R.B. 9004-1 and the Revised Guidelines for Preparation of Documents; (3) presents properly authenticated documents (Fed. R. Evid. 901 et seq.); and (4) provides credible, personal knowledge testimony (Fed. R. Evid. 601 et seq.).

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 Carol Manly (“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 Motion is denied.

2. 12-93049-E-11 MARK/ANGELA GARCIA **MOTION FOR RELIEF FROM**
AP-1 Mark J. Hannon **AUTOMATIC STAY**
10-30-15 [684]

DEUTSCHE BANK TRUST COMPANY
AMERICAS VS.

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously continued the Motion for Relief from the Automatic Stay to 10:00 a.m. on January 14, 2016 (Dckt. 703), **the Motion for Relief from the Automatic Stay is removed from the calendar.**

3. 15-90952-E-7 RANJAN/JENNIFER KANTHI **MOTION FOR RELIEF FROM**
APN-1 Pro Se **AUTOMATIC STAY**
10-21-15 [17]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the December 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on October 21, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Ranjan Kanthi and Jennifer Violet Marie Kanthi ("Debtor") commenced this bankruptcy case on October 6, 2015. Santander Consumer USA Inc. ("Movant")

seeks relief from the automatic stay with respect to an asset identified as a 2013 Smart ForTwo, VIN ending in 3394 (the "Vehicle"). The moving party has provided the Declaration of Marianne Favors to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Favors Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $380.90 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of $1,639.76.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $15,284.25, as stated in the Favors Declaration.

Movant has also provided a copy of the [Kelly Blue Book/NADA] Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The value of the Vehicle is determined to be $8,575.00

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form

holding that:

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

The Motion for Relief From the Automatic Stay filed by Santander Consumer USA 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Smart ForTwo ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

4. 15-90358-E-11 LAWRENCE/JUDITH SOUZA
RDW-1 David M. Meegan

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-5-15 [169]

PROVIDENT CREDIT UNION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 97 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of $3,574.38 in post-petition payments past due.

OPPOSITION

Opposition has been filed by Lawrence James Souza and Judith Louise Souza ("Debtors") on November 19, 2015. Dckt. 187.

The Debtor first notes that the Debtor has entered into a contract to sell the Property to Halferty Development Corporation for $250,000.00. The sale escrow is open and the Debtor will seek court approval of the sale when it becomes clearer that Halferty will close on the adjacent property known as 87 W. Canal Drive.

The Debtor notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the Debtor argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The Debtor argues that, using the sale price of $250,000.00, there is substantial equity of $170,000.00 after deducting the $79,641.28 first priority secured claim of the Movant. The Debtor additionally argues that even using the Movant's lower valuation of $165,000.00, there is still sufficient equity to adequately protect the Movant.

Additionally, the Debtor argues that the property taxes and payments for insurance on the Property are current. Lastly, the Debtor argues that they have obtained a new tenant for the Property. While the Debtor admits that the tenant is only being charged a nominal rent of $1.00 per month, the tenant has agreed to pay the property taxes, insurance, and utilities for the Property moving forward. The Debtor asserts that the occupancy by the tenant deters vandalism on the Property.

As to the 11 U.S.C. § 362(d)(2) ground, the Debtor argues that the relief is not proper because the Property is necessary for the Debtor's reorganization. The Debtor is a Chapter 11 debtor and attempting to liquidate the Debtor's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The Debtor argues that allowing the Debtor to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The Debtor also notes that the Movant improperly states that there is a second deed of trust on the Property. The Debtor states that the Movant and the Internal Revenue Service via a tax lien have an interest in the Property.

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 $78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least $165,000.00, as stated by Movant.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). While the Movant does provide evidence that the Debtor is delinquent in post-petition payments, the existence of equity in

the Property in correlation with the goal of the Debtor in the Chapter 11 counterbalances the Debtor's delinquency.

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 equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, the Movant cannot meet the burden of lack of equity. However, assuming, *argendo*, that there was no equity, the Debtor has sufficiently rebutted, showing that the Property and the anticipated sale of the Property is in the best interest of the estate, Debtor, creditors, and other parties in interest.

Therefore, the Motion is denied without prejudice.

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 Provident Credit Union ("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 Motion is denied without prejudice.

5. 15-90358-E-11 LAWRENCE/JUDITH SOUZA
RDW-2 David M. Meegan

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
11-5-15 [176]

PROVIDENT CREDIT UNION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Provident Credit Union ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 87 West Canal Drive, Turlock, California (the "Property"). Movant has provided the Declaration of Rick Newson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Newson Declaration states that there are 6 post-petition defaults in the payments on the obligation secured by the Property, with a total of $3,229.26 in post-petition payments past due.

OPPOSITION

Opposition has been filed by Lawrence James Souza and Judith Louise Souza ("Debtors") on November 19, 2015. Dckt. 187.

The Debtor first notes that the Debtor has entered into a contract to sell the Property to Halferty Development Corporation for $250,000.00. The sale escrow is open and the Debtor has gotten court approval of the sale. Dckt. 156.

The Debtor notes that they are current on property taxes and insurance.

As to the individual grounds of the Motion, the Debtor argues that there is not cause for relief from stay pursuant to 11 U.S.C. § 362(d)(1) because there is equity in the Property to protect the Movant's interest. The Debtor argues that, using the sale price of $250,000.00, there is substantial equity of $170,000.00 after deducting the $72,045.55 first priority secured claim of the Movant. The Debtor additionally argues that even using the Movant's lower valuation of $145,000.00, there is still sufficient equity to adequately protect the Movant. Additionally, the Debtor argues that the property taxes and payments for insurance on the Property are current.

As to the 11 U.S.C. § 362(d)(2) ground, the Debtor argues that the relief is not proper because the Property is necessary for the Debtor's reorganization. The Debtor is a Chapter 11 debtor and attempting to liquidate the Debtor's other real property to pay Movant, the Internal Revenue Service, and, hopefully, other unsecured creditors. The Debtor argues that allowing the Debtor to sell the Property would provide for sufficient funds to provide payment to claims and that the Property is necessary to achieve this goal. The Debtor also notes that while the Movant is correct in saying that there are multiple liens on the Property, the Debtor argues that because the Internal Revenue Service tax lien and the Curtis Family Trust lien are secured by additional property in excess of the Property. The Debtor does state that there is a lack of equity when you total the three liens against the value of the Property. However, the Debtor argues that because the multiple properties securing the lien, it would be improper to impute the entire amount on the single Property.

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 $78,172.18, as stated in the Newson Declaration and Schedule D filed by Lawrence James Souza and Judith Louise Souza ("Debtor"). For purposes of this Motion, the value of the Property is determined to be at least $165,000.00, as stated by Movant.

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). While the Movant does provide evidence that the Debtor is delinquent in post-petition payments, the existence of equity in the Property in correlation with the goal of the Debtor in the Chapter 11 counterbalances the Debtor's delinquency.

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 equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Therefore, the Movant cannot meet the burden of lack of equity. However, assuming, *argendo*, that there was no equity, the Debtor has sufficiently rebutted, showing that the Property and the anticipated sale of the Property is in the best interest of the estate, Debtor, creditors, and other parties in interest.

Therefore, the Motion is denied without prejudice.

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 Provident Credit Union (“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 Motion is denied without prejudice.

6. 15-90167-E-7 BERNADETTE QUILES **MOTION FOR RELIEF FROM**
CJO-1 James D. Pitner **AUTOMATIC STAY**
11-18-15 [81]

CENTRAL MORTGAGE COMPANY VS.

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 18, 2015. 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.

Central Mortgage Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5513 Goldsieve Drive, Riverbank, California (the "Property"). Movant has provided the Declaration of Danette Oakley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Oakley Declaration states that there are 9 post-petition defaults in the payments on the obligation secured by the Property, with a total of $14,764.20 in post-petition payments past due. The Declaration also provides

evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of $1,488.25.

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 $444.766.21 (including $335,087.44 secured by Movant's first deed of trust), as stated in the Oakley Declaration and Schedule D filed by Bernadette Frances Quiles ("Debtor"). The value of the Property is determined to be $317,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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

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 Central Mortgage Company ("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 Central Mortgage Company, 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 5513 Goldsieve Drive, Riverbank, California.
>
> No other or additional relief is granted.

7. 15-90876-E-7 BRADLY/MELISSA TREADWELL
BN-1 George G. Logan

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-15 [12]

THE GOLDEN 1 CREDIT UNION
VS.

Final Ruling: No appearance at the December 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 30,2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Bradly M. Treadwell and Melissa K. Treadwell ("Debtor") commenced this bankruptcy case on September 10, 2015. The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Dodge Journey, VIN ending in 5300 (the "Vehicle"). The moving party has provided the Declaration of Shirley Giroux to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Giroux Declaration provides testimony that Debtor has not made 3 post-petition payments. The Declaration also provides evidence that the Debtor intended to and have surrendered the Vehicle to Movant.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $10,019.43, as stated in the Giroux Declaration, while the value of the Vehicle is determined to be $9,000.00, as stated in Schedules B and D filed by Debtor.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments and the Debtor has surrendered the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow The Golden 1 Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Since the Debtor has surrendered the Vehicle, Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion for Relief From the Automatic Stay filed by The Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2010 Dodge Journey ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

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

No other or additional relief is granted.