

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**December 7, 2017, at 10:00 a.m.**

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1. **16-27854-E-11**      **GARY STEINGROOT**      **MOTION FOR RELIEF FROM**  
**ASW-1**      **Stephan Brown**      **AUTOMATIC STAY**  
                **11-10-17 [[123](#)]**  
**CITIZENS 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession’s Attorney, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on November 10, 2017. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
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<b>The Motion for Relief from the Automatic Stay is granted.</b>
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Citizens Bank, N.A. FKA RBS Citizens (“Movant”) seeks relief from the automatic stay with respect to Gary Steingroot’s (“Debtor in Possession”) real property commonly known as 1055 Hutley Way, Granite Bay, California (“Property”). FN.1. Movant has provided the Declaration of Shaundra Hunt

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(illegible) to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN.1. While the Motion states grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) that there is cause to grant relief because Debtor in Possession has defaulted on thirty-five payments, the Motion does not cite the court to a single section of the Bankruptcy Code. The Memorandum of Points and Authorities cites to 11 U.S.C. § 362(d)(1) primarily, though. The court determines that not citing a Code section in the Motion is an error, but that error is not fatal to this Motion because of the references in the Memorandum of Points and Authorities.

The Hunt Declaration states that there are a total of thirty-five payments in default totaling \$104,446.47. Dckt. 127 at 3:18–19. Of those missed payments, twenty-four are pre-petition, and eleven are post-petition.

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 \$483,692.74 (including \$478,089.74 secured by Movant's first deed of trust), as stated in the Hunt Declaration and Schedule D. The value of the Property is determined to be \$750,000.00, 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.

## **Pending Chapter 11 Plan**

The court has set the hearing on the Motion to Confirm Debtor's Chapter 11 Plan on December 19, 2017. Under that Plan, the Plan Administrator/Debtor is to sell the property securing this claim within six months of confirmation of the Plan. The bankruptcy case was filed on November 29, 2016, the proposed Chapter 11 Plan was filed on September 14, 2017, and the confirmation hearing is being conducted twelve months after the case was filed. On June 2, 2017, Debtor in Possession obtained authorization to employ Better Homes & Gardens Real Estate R.P. as the broker to market the Property for sale.

At that hearing on this Motion, Debtor in Possession reported **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

## **Ruling**

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.

## **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, 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. 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 Citizens Bank, N.A. FKA RBS Citizens ("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 pursuant to 11 U.S.C. § 362(d)(1) to allow Citizens Bank, N.A. FKA RBS Citizens, 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 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 real property commonly known as 1055 Hutley Way, Granite Bay, California.

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

No other or additional relief is granted.