

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 15, 2016, at 10:00 a.m.

1.	<u>16-90751</u> -E-7 KAZ-1	JAN ANDERSON Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-7-16 <u>[28]</u>
NATIONSTAR MORTGAGE, LLC VS.			

Final Ruling: No appearance at the December 15, 2016 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*) and Chapter 7 Trustee on November 7, 2016. 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). 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.
--

Jan Anderson ("Debtor") commenced this bankruptcy case on August 16, 2016. HSBC Bank USA, National Association, as trustee for Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2007-7 in interest ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 302 Cherry Blossom Lane, Patterson, California ("Property"). Movant has provided the Declaration of Raquel Bryan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. (Nationstar Mortgage, LLC, the identified loan servicer, has filed this Motion for its principal, the Movant, properly seeking relief in the

name of the real party in interest seeking the relief from the court and correctly denominating itself as the agent acting for its principal. Fed. R. Civ. P. 17(a)(1); Bankr. R. P. 7014, 9014.)

The Raquel Bryan Declaration states that there are four post-petition defaults in the payments on the obligation secured by the Property, with a total of \$11,912.64 in post-petition payments past due. The Declaration also provides evidence that there are seventy-seven pre-petition payments in default, with a pre-petition arrearage of \$251,180.93.

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 \$622,254.49 (including \$622,254.49 secured by Movant's first deed of trust), as stated in the Raquel Bryan Declaration; Schedule D lists \$621,000.00. Dckt. 15. The value of the Property is determined to be \$315,000.00, as stated in Schedules A and D.

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

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. 11 U.S.C. § 362(g)(2); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, 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 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.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from 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.

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court grant Movant permission to offer and enter into potential forbearance agreements, loan modifications, refinance agreements, and other agreements allowed by state law. Additionally, Movant requests permission to contact Debtor about those agreements and about compliance. Federal Rule of Bankruptcy Procedure 9013 states that a "motion shall state with particularity the grounds" for the requested relief. Movant has not specified any grounds, and the court will not grant relief requested without grounds.

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 Nationstar Mortgage LLC, servicing agent for HSBC Bank USA, National Association, as trustee for Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2007-7 in interest ("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 for Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2007-7 in interest, 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 302 Cherry Blossom Lane, Patterson, 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 for cause.

No other or additional relief is granted.

2. [16-90765](#)-E-7 DONALD/CATHERINE MASON CONTINUED MOTION FOR RELIEF
AP-1 David Foyil FROM AUTOMATIC STAY
10-17-16 [\[10\]](#)

PNC BANK, NATIONAL
ASSOCIATION 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—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 Creditor on October 20, 2016. The Office of the U.S. Trustee was not served. By the court's calculation, 42 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 granted.
--

PNC Bank, National Association, successor by merger to National City Bank, successor by merger to National City Mortgage, a division of National City Bank of Indiana ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6442 Usher Drive, Valley Springs, California ("Property").

DECEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on December 15, 2016, to allow Movant to file supplemental pleadings and to file and serve notice on the U.S. Trustee by December 5, 2016. Civil Minute Order, Dckt. 47.

DISCUSSION

A review of the docket shows that Movant served the U.S. Trustee and provided a declaration in support of the Motion.

Movant has provided the Declaration of Barb Essman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property. The Declaration states that there is one post-petition default in the payments on the obligation secured by the Property, with a total of \$1,845.44 in post-petition payments past due. The Declaration also provides evidence that there are eight pre-petition payments in default, with a pre-petition arrearage of \$14,968.78.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by the Property is determined to be \$421,384.79 (including \$226,000.00 secured by Movant's first deed of trust), as stated in the Declaration of Barb Essman. The value of the Property is determined to be \$272,700.00, as stated in Schedules A and D filed by Debtor.

Movant's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is without merit. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984); *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

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. 11 U.S.C. § 362(g)(2); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, 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 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 pursuant to 11 U.S.C. § 362(d)(2)—but not 11 U.S.C. § 362(d)(1)—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.

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 PNC Bank, National Association, successor by merger to National City Bank, successor by merger to National City Mortgage, a division of National City Bank of Indiana ("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 PNC Bank, National Association, successor by

merger to National City Bank, successor by merger to National City Mortgage, a division of National City Bank of Indiana, 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 obtain possession of the real property commonly known as 6442 Usher Drive, Valley Springs, California.

No other or additional relief is granted.