

**UNITED STATES BANKRUPTCY COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	CHAPTER 7
Jane Doe,	:	
	:	CASE NO. 1:17-bk-0000HWV
Debtor	:	
	:	
Doe Corporation, LLC,	:	
	:	Motion for Relief from Stay
Movant	:	
v.	:	
	:	11 U.S.C. §362(d)(1) & (2)
Jane Doe,	:	
	:	
Respondent	:	

**PRE-HEARING STATEMENT**

**I. ISSUE TO BE DECIDED**

A. WHETHER “CAUSE” EXISTS UNDER 11 U.S.C. §362(D) TO LIFT THE AUTOMATIC STAY AS IT RELATES TO THE REAL PROPERTY WHERE THE DEBTOR HAS FAILED TO: (1) MAKE POST-PETITION MORTGAGE PAYMENTS TO MOVANT; OR (2) TO ESTABLISH THE EXISTENCE OF EQUITY IN THE REAL PROPERTY TO OTHERWISE “ADEQUATLY PROTECT” MOVANT’S INTEREST IN SAME?

**II. STATEMENT OF THE GOVERNING STATUTE**

A. **11 U.S.C. §362(d)(1)**: On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay --  
                    (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

**III. STATEMENT OF THE GUIDING LEGAL PRINCIPLES**

A. A majority of courts that have construed the “for cause” provision of section 362(d)(1) have found that a debtor’s failure to make payments to the creditor can constitute “cause” to modify or lift an automatic stay, particularly where there is insufficient equity remaining in the collateral to “adequately protect” the creditor’s interest in same. *Americredit Fin. Servs., Inc. v. Nichols (In re Nichols)*, 440 F.3d 850, 856 (6<sup>th</sup> Cir. 2006) (*citing In re Mathews*, 208 B.R. 506, 511 n. 6 (Bankr.N.D.Ala. 1997)).

#### IV. **BURDEN OF PROOF**

##### A. STATUTE:

11 U.S.C. §363(g): In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section:

1. the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
2. the party opposing such relief has the burden of proof on all other issues.

##### B. CASELAW:

Initial burden is on party requesting relief from automatic stay to make a prima facie showing of "cause" sufficient to support such relief, whereupon the burden shifts to the party opposing relief to show a lack of cause to grant relief from stay. *In re Scalera*, 521 B.R. 513 (Bankr. W.D. Pa. 2014).

#### V. **STATEMENT OF THE FACTS**

- A. On October 28, 2012, the Debtor purchased the real property located at 101 Debtor Road, Harrisburg Pa, 17111 (the "Real Property"). This fact is not in dispute.
- B. In connection with such transaction, and to provide financing, the Debtor executed a promissory note made payable to Doe Corporation in the amount of \$225,000 (the "Note"). This fact is not in dispute.
- C. As security for repayment of the Note, the Debtor also executed a mortgage dated October 28, 2012 in the amount of \$225,000.00 in favor of Doe Corporation with respect to the Real Property (the "Real Property"). This fact is not in dispute.
- D. The Mortgage was properly recorded in the Office of the Recorder of Deed in and for Dauphin County at Mortgage Book Volume 1770, Page 4482 on November 15, 2012. This fact is not in dispute.
- E. The Movant is the holder of the Note and Mortgage. This fact is not in dispute.
- F. Debtor's chapter 13 plan, which was filed on January 8, 2014 and confirmed on April 5, 2014, requires the Debtor to make all post-confirmation payments due under the Note directly to the Movant. This fact is not in dispute.
- G. Beginning with the payment due on March 1, 2015, the Debtor missed three consecutive months of payments under the plan causing movant to file this motion. The Debtor disputes this assertion and maintains that all payments were made.
- H. As of June 21, 2015, the principal balance due under the Note is \$173,456.78. The Debtor disputes this fact and asserts that she made the 3 payments which are the subject of this Motion and that she entitled to credit for same.

**VI. EXHIBITS TO BE PRESENTED**

<b><u>Exhibit</u></b>	<b><u>Relation to Resolution of Issue to be Decided</u></b>
Promissory Note	Support Doe Corporation's claim that Debtor is obligated to make payments.
Mortgage	Support Doe Corporation's claim that the Note is secured by the Property
Records of Payment History	Support Doe Corporation's assertion that Debtor failed to make payments in accordance with the Plan.

**VII. WITNESSES TO BE PRESENTED**

<b>Witness</b>	<b>Relation to Resolution of Issue to be Decided</b>
John Johnson	Credit manager for Jane Doe Mortgage. Will testify to the amount owed on the mortgage and the alleged missed payments.