

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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ENTERED <b>APR 08 2011</b>
FILED
<b>APR 8 2011</b>
CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA
BY <i>[Signature]</i> DEPUTY

8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 In re ) Case No. 10-22206-PB11  
12 GREGORY CHARLES CARLING, ) RS No. JFL-1  
13 Debtor. ) ORDER ON RELIEF FROM STAY  
14 )

15 This case was filed as a "barebones" Chapter 11 on  
16 December 19, 2010. The balance of the Schedules were filed on  
17 January 2, 2011. On Schedule A, debtor listed real estate valued  
18 at \$2,699,000 and securing debt of \$1,973,003. However, on  
19 Schedule D debtor claimed that the debts owed to the first,  
20 second and third trust deed holders were contingent, unliquidated  
21 and disputed.

22 On Schedule J, debtor is listed as single, with pension or  
23 retirement income of \$3,330 per month. Schedule J showed  
24 expenses of \$2,665, but contained no expenses for any debt  
25 service on the over \$1.9 million in secured debt.

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1           The Court conducted a status conference on January 13, 2011  
2 and told the debtor to file an application to employ a real  
3 estate broker since it was debtor's goal to sell the property.  
4 To the present date, April 8, no application to employ a broker  
5 has been submitted to the Court, although counsel has represented  
6 one was submitted to the U.S. Trustee, which was returned for  
7 revisions, which have not yet been made.

8           On February 10, the junior secured creditor, Mr. Struyk,  
9 filed and served a motion for relief from stay. Debtor did not  
10 timely oppose. Debtor's counsel sought an enlargement of time  
11 to oppose, which the Court granted. Debtor then filed his  
12 opposition, saying he needed to conduct discovery to show he had  
13 a meritorious defense to Mr. Struyk's motion.

14           Notwithstanding that debtor's counsel has known of the  
15 accepted offer since at least February 28, no motion has been  
16 brought to seek authority to sell, to employ the broker, or to  
17 dismiss this case. Nor has there been any application to employ  
18 counsel, even though counsel has accepted a \$5,000 retainer.

19           At a status conference on April 4, the Court was apprised by  
20 counsel that debtor's counsel had finally, that day, shared some  
21 information on the proposed sale, which Mr. Struyk's counsel had  
22 been scrambling to verify. The Court and counsel discussed how  
23 the matter might be resolved, whether by dismissal on shortened  
24 notice or otherwise. Then, the matter was continued to April 7  
25 for the continued hearing on relief from stay. Counsel for  
26 debtor asked for more time and a hearing 30 days out. The Court

1 indicated that debtor's time allowed under § 362(e) had all but  
2 expired. Debtor's broker discussed the status of the sale,  
3 reporting that it is ready to close April 12, and the only  
4 contingency is Court approval. Mr. Struyk asked for an order  
5 granting relief from stay on a date certain if the sale does not  
6 close.

7 Based on all the foregoing, the Court finds and concludes as  
8 follows:

9 The only opposition to Mr. Struyk's relief from stay came  
10 from the debtor, not from any of the 20 largest unsecured  
11 creditors, or any of the other secured creditors. That allows  
12 the Court to conclude that as to them they do not assert an  
13 expectancy of excess funds from the real property. The offer is  
14 \$2,050,000, and the debt is \$1,973,003 or more. Therefore, it  
15 makes no difference to those creditors whether the property is  
16 gone from the estate by relief from stay and foreclosure, or by  
17 sale. Accordingly, the Court hereby authorizes the real property  
18 to be sold in accordance with the represented offer. If such  
19 sale does not close by April 19, 2011, Mr. Struyk may present an  
20 order for relief from stay after serving it on debtor's counsel,  
21 only. Debtor may apply to extend the stay for good cause.  
22 Absent good cause shown, however, the Court will grant Mr. Struyk  
23 relief. Any application by debtor to extend the stay must be  
24 filed and served by April 22, 2011.

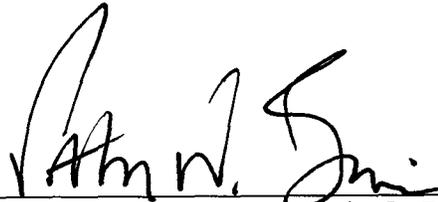
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1 A continued status conference hearing date will be  
2 separately noticed.

3 IT IS SO ORDERED.

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5 DATED: APR - 8 2011

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8 PETER W. BOWIE, Chief Judge  
9 United States Bankruptcy Court  
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