

1 STEPHEN L. BURTON (State Bar No. 113748)
Law Offices of Stephen L. Burton
2 15260 Ventura Boulevard Suite 640
Sherman Oaks, California 91403
3 Telephone: (818) 501-5055
Facsimile: (818) 501-5849

4 Attorney for Debtor, G8 CAPITAL FUND VII, LLC
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6
7 UNITED STATES BANKRUPTCY COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10
11 GORDY A. SPIRES,

12 Debtor/Plaintiff

13 VS,

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15 G8 CAPITAL FUND VII, LLC;
16 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
17 "MERS" AND DOES 1-50
Inclusive.

18 Defendant.
19

CHAPTER 13

CASE NO. 08-13091-LT 13

ADV. CASE NO. 09-90133-LT

OPPOSITION TO REQUEST FOR
EXPEDITED EMERGENCY HEARING
TO (1) ENJOIN SALE OF PROPERTY;
(2) POSTING A BOND (3) HEARING
ON THE MERITS; AND DECLARATION
OF BRETT GILLILAND IN SUPPORT
THEREOF.

DATE: May 19, 2009
TIME: 11:00 a.m.
PLACE: Dept 3 Rm. 29

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22 Secured creditor G8 CAPITAL FUND VII, LLC. hereby files it's Opposition to the
23 Request by the Debtor for Expedited Emergency Hearing to Enjoin Sale of Real Property,
24 Posting a Bond, and Hearing on the Mertis as follows:

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1 **FACTUAL SUMMARY**

2 The relevant facts are as follows:

3 1. Respondent G8 CAPITAL FUND VII, LLC. (hereinafter Respondent) obtained Relief
4 from the Automatic Stay in this case, after notice on March 19, 2009.

5 2. At the hearing on the Relief from Stay Motion the Debtor indicated his intent to
6 convert the case to a Chapter 13 and to file the instant Adversary Proceeding against Respondent.
7 The court specifically overruled the Debtor, and granted relief from the automatic stay without a
8 waiver of the ten (10) day rule.

9 3. The Debtor filed his Adversary Proceeding on March 27, 2009.

10 4. The Debtor's Chapter 7 case was converted to a Chapter 13 on March 19, 2009

11 5. Respondent conducted the foreclosure sale on April 20, 2009. Respondent now
12 owns the subject property.

13 6. Thereafter, the Debtor did nothing

14 7. The Debtor was to file his Chapter 13 plan by April 13, 2009. The Debtor late
15 filed his Chapter 13 plan on April 20, 2009.

16 8. The Debtor never sought a renewal of the automatic stay, injunction, or took any other
17 action between the granting of relief from stay and date the sale was conducted.

18 9. The Debtor only made this Emergency Motion to postpone a sale after the sale had
19 occurred.

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21 **ARGUMENT**

22 First, it is the Debtor who has brought this Motion in bad faith.

23 The Debtor unabashedly contends that "The sole reason that the Debtor has litigated this
24 matter is to negotiate a reasonable loan with the lender". (See Motion page 3 lines 9 - 11). So
25 much for the god faith nature of the relief sought by the Debtor. That is bad faith. The Motion
26 should be denied .

27 Second, the Debtor contends in his declaration that he had an agreement with Respondent
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1 on the one hand, but the moving papers reveal that there was never actually an agreement struck.
2 According the Declaration of Brett Gilliland filed contemporaneously with this Opposition, it
3 was Mr. Spires who never came to G8 offices to sign the final agreement on December 18, 2008.
4 Therefore, there is no agreement.

5 Third, finally, Respondent contends that the Respondent has sold the property back, "with
6 zeal". The fact remains that the Debtor had from late December 2008 until early April 2009 to
7 bring the instant Adversary Proceeding and never did so. The fact also remains that after the
8 Bankruptcy Court granted Relief from the Stay on March 19th, the Relief from Stay Order was
9 not entered until April 8, 2009. The ten (10) day rule was not waived. The Debtor brought his
10 Adversary Proceeding on March 19, 2009 and did not convert his case to Chapter 13 until March
11 27, 2009. The Debtor had ample opportunity for the Debtor to bring this Motion in his adversary
12 proceeding before the April 20th sale. Debtor knew the ten (10) day rule had not been waived.
13 The Debtor had time. The Debtor did nothing. The Debtor did not even timely file a Plan.


14 Fourth, the Motion is moot. The property sold at a duly noticed Foreclosure Sale on April
15 20, 2009. Therefore, the Debtor's Motion is moot as there is no longer a sale to postpone and the
16 property has gone back to the lender.

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18 **CONCLUSION**

19 For all the foregoing reasons, the Motion of the Debtor should be denied.
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22 LAW OFFICES OF STEPHEN L. BURTON
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25 DATE: 5-14-2009

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27 STEPHEN L. BURTON, ATTORNEY FOR
28 G8 CAPITAL FUND VII, LLC.

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DECLARATION OF BRETT GILLILAND

I, BRETT GILLILAND declare as follows:

1. I am the Vice President of Asset Management for Respondent, G8 CAPITAL FUND VII. As such, I have personal knowledge of the foregoing, and could and would be able to competently testify thereto.

2. I make this declaration in support of Respondent's Opposition to the request of the Debtor for Expedited Emergency Hearing.

3. I have read the declaration of Gordy Spires filed in connection with this motion. At paragraph six (6) of his declaration, Mr. Spires contends he reached a settlement in the State Court litigation. He goes on to state in paragraph six (6) that he was presented with a settlement agreement, essentially, with terms to which he would not agree.

4. By Mr. Spires own admission, there is no agreement.

5. The truth is a proposed agreement was reached with Mr. Spires in December 2008. Mr. Spires was supposed to come to our offices on December 18, 2008 and sign the agreement. Mr. Spires never did so.

6. Respondent has made every effort to act in good faith with Mr. Spires, however, when Mr. Spires refused to sign the settlement agreement, Respondent was left with no option other than to move forward with Relief from Stay and to Foreclose.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed this 14th day of May 2009 at Ladera Ranch, California.


BRETT GILLILAND, DECLARANT.

SERVICE LIST

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Attorney for Debtor

Joseph J. Rego, Esq.
8765 Aero Dr. #306
San Diego, CA 92123

Bankruptcy Trustee

Thomas H. Billingslea
530 B. Street #1500
San Diego, CA 92101

U.S. Bankruptcy Judge

Honorable Laura S. Taylor
325 West F Street
San Diego, CA 92101