

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

STANLEY J. CATERBONE,
Debtor(s)

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Case No. 05-23059REF

:

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ORDER

AND NOW, this **23** day of February, 2006, it is ORDERED that the motion filed by Fulton Bank ("Movant") requesting relief from the automatic stay under 11 U.S.C. §362(d)(1) is GRANTED as the Court finds that Movant met its burden of establishing that "cause" exists to grant it relief from the automatic stay under section 362(d)(1) because Movant established at the hearing held on its motion on February 21, 2006 that Debtor has not made any post-petition mortgage payments since May of 2005 and Debtor failed to meet his burden of showing that Movant's interests in the property in question are adequately protected. See In re Dupell, 235 B.R. 783, 788 (Bankr. E.D. Pa. 1999); In re Skipworth, 69 B.R. 526, 527-28 (Bankr. E.D. Pa. 1987).¹

1. The party seeking relief from the automatic stay under section 362(d)(1) has the initial burden to demonstrate that "cause" exists to grant relief. In re Dupell, 235 B.R. 783, 788 (Bankr. E.D. Pa. 1999); see also In re Ward, 837 F.2d 124, 128 (3rd Cir. 1988). A mortgagee can meet this initial burden by introducing evidence of the debtor's default in making post-petition mortgage payments. Dupell, 235 B.R. at 788; In re Skipworth, 69 B.R. 526, 527-28 (Bankr. E.D. Pa. 1987). The burden then shifts to the debtor to establish the absence of "cause," which the debtor may do by showing that the movant is adequately protected. Dupell 235 B.R. at 789; Skipworth, 69 B.R. at 527-28. Moreover, once the creditor meets his initial burden of production on the issue of "cause" and the burden shifts to the debtor, the ultimate burden of proof on the issue of adequate protection under section 362(d)(1) is on the debtor. Skipworth, 69 B.R. at 528.

Turning to the facts before us, we note that Movant met its initial burden of producing evidence of "cause" under section 362(d)(1) by establishing that Debtor has not made any post-petition mortgage payments since May of 2005. The burden then shifted to Debtor to prove that Movant's interests are

BY THE COURT

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RICHARD E. FEHRING

United States Bankruptcy Judge

adequately protected. Here, Debtor failed to meet this burden because he did not introduce any evidence whatsoever of adequate protection. Accordingly, we grant Movant's section 362(d)(1) motion.