

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
WINTHROP C. LOCKWOOD)	
SS # XXX-XX-5054)	Case No. 09-33026 SBB
)	
)	Ch. 11
)	
Debtor)	
_____)	
)	
ALPINE BANK)	
)	
Movant)	
)	
v.)	
)	
WINTHROP C. LOCKWOOD)	
)	
Debtor)	

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Motion for Relief from Stay filed January 29, 2010 (Docket #37) by the secured creditor Alpine Bank (“Alpine Bank”), seeking relief from stay to, among other things, foreclose its deed of trust against Debtor’s residence and an adjacent parcel. The matter was taken under advisement by the Court at the conclusion of closing arguments at the final hearing on March 30, 2010. Having reviewed the declarations of direct testimony of the witnesses, heard the testimony of the witnesses and the arguments of counsel, and having reviewed the evidence submitted, the file in this matter and the relevant case law, the Court is now prepared to rule on the Motion for Relief from Stay, and makes the following findings of fact, conclusions of law, order and judgment.

Issues Presented and Conclusion

The issues present by the Motion for Relief from Stay are: (1) whether Debtor has equity in the subject real property; and (2) whether the real property is necessary for an effective reorganization. The issues are routine in nature and resolution turns, in substantial part, on a determination of the value of the real property.

For the reasons set forth below, Alpine Bank’s Motion for Relief from Stay pursuant to 11 U.S.C. § 362(d)(2) is GRANTED. The Debtor has no equity in the real property, and Debtor

has failed to meet his burden of proving the real property to be necessary for an effective reorganization.

Jurisdiction and Facts

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper in this Court pursuant to 28 U.S.C. § 1408. The statutory predicate for the relief requested by Alpine Bank's Motion for Relief from Stay is 11 U.S.C. § 362(d)(2), and the Motion for Relief from Stay was made pursuant to and in accordance with Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

The following facts are undisputed:

1. Movant Alpine Bank is a secured creditor.
2. Debtor Winthrop C. Lockwood, Jr. is obligated to Alpine Bank pursuant to a promissory note, in the original principal amount of \$2,263,617.50, dated November 21, 2006, Loan No. 3760097801 (the "Note"), and Change in Terms Agreement dated November 21, 2007 (**Alpine Bank Ex. 1**)¹. The maturity date of the Note was April 10, 2008.
3. Debtor defaulted on the Note by failing to pay the balance on maturity.
4. Debtor is also obligated to Alpine Bank pursuant to a Ready Reserve Agreement, Account No. 3370109061, in the principal amount of \$34,386.61 (the "Line of Credit") (**Alpine Bank Exhibit 2**).
5. Debtor defaulted on the repayment obligations of the Line of Credit.
6. Debtor, via his trust, owns the two parcels of real property described as:

Lot 40, Spruce Valley Ranch Filing No. 1, Amended According to the Plat thereof filed March 29, 1978, at Reception No. 174703, Summit County, Colorado (the "Residence");
and

Lot 41, Spruce Valley Ranch Filing No. 1, Amended According to the Plat thereof filed March 29, 1978, at Reception No. 174703, Summit County, Colorado (the "Vacant Lot").

¹ The Court admitted into evidence all of the Alpine Bank Exhibits 1 through 8, 9A, 10A and 11. Exhibits 9A and 10A are the declarations of direct testimony of Bill Souba, President of Alpine Bank Breckenridge, and expert witness Robert H. Ebert, respectively. The Court also admitted into evidence Debtor's Exhibits A to G, I, J and K. Debtor's Exhibits J and K are the declarations of direct testimony of Debtor Winthrop C. Lockwood, and expert witness Roger Miller, respectively.

7. Record title to the Residence and Vacant Lot is held by Debtor in the name of the “Winthrop C. Lockwood, Jr., 1972 Revocable Trust”.²

8. Debtor is the grantor of a deed of trust given for the benefit of Alpine Bank to secure repayment of the Note and Line of Credit, dated November 21, 2006, and recorded December 12, 2006, at Reception No. 841418 in the records of Summit County, Colorado, and as amended (the “Deed of Trust”) (**Alpine Bank Ex. 3**).

9. In the fall of 2008 and pursuant to the terms of the Deed of Trust, Alpine Bank initiated Summit County Public Trustee’s Foreclosure No. 08-172 against the Residence and Vacant Lot.

10. A sale date of March 27, 2009, was set in Summit County Public Trustee’s Foreclosure No. 08-172.

11. On March 26, 2009, Debtor and Alpine Bank entered into a Forbearance Agreement, which agreement generally provided that Alpine Bank would suspend its foreclosure and that Debtor was to make monthly payments of interest only to Alpine Bank in the amount of \$11,850.90, until February 14, 2010, at which time all principal and accrued interest was to be due and payable. (**Alpine Bank Ex. 4**).

12. Debtor failed to make the payments as required under the Forbearance Agreement.

13. On October 29, 2009, Debtor filed his Voluntary Petition under Chapter 11 of the Bankruptcy Code.

14. Debtor’s income is irregular and primarily derived from trust distributions.

15. The Note, Line of Credit and Deed of Trust provide for cross-collateralization.

16. Debtor is in default on the Note, Line of Credit and Deed of Trust, for non-payment.

² The property is properly treated as property of the Debtor. *See* C.R.S. § 38-10-111; *See also In re Kester*, 339 B.R. 749 (10th Cir. BAP 2006); (See Schedule A Docket #17). The term “Debtor” as used herein shall be inclusive of the Trust as record owner of the subject real property.

17. According to **Alpine Bank Exhibit 9A**, the balance claimed due by Alpine Bank in the Motion for Relief from Stay are not dispute, and, exclusive of costs, expenses and attorney's fees, were as follows on the date of the final hearing:

The Note

Principal	\$	2,262,764.71
Interest at Note Rate	\$	241,471.59
Default Interest	\$	750,105.30
Total Due	\$	3,254,341.60
Per diem	\$	1,131.38

The Line of Credit

Principal	\$	34,845.41
Interest	\$	9,655.66
Total Due	\$	44,501.07
Per diem	\$	17.18

35. The Alpine Bank indebtedness is accruing interest at the combined per diem rate of \$1,148.56 per day. (**Alpine Bank Exhibit 9A**).

18. There is a senior encumbrance on the Residence in favor of Wells Fargo. According to the Proof of Claim filed by Wells Fargo, the balance claimed due by Wells Fargo is \$855,723.60 (Claim No. 8).

19. According to the Proof of Claim filed by Summit County, the real estate taxes due on the Residence and Vacant Lot are \$15,366.60 (Claim No. 2).

36. The approximate total of all encumbrances is:

Alpine Bank	\$3,298,842.67
Wells Fargo	\$ 855,723.60 ³
Summit County	\$ 15,366.60
Total	\$4,169,932.87

20. On the day before the final hearing, Debtor filed his Plan of Reorganization (Docket #61), and Disclosure Statement (Docket #62). Debtor testified that it is his plan to list

³ This amount reflects the principal balance set forth in Wells Fargo's proof of claim, but does not include additional accumulating interest or other amounts. Debtor has not paid the monthly payment to Wells Fargo during the pendency of this case.

and sell the Residence and Vacant Lot in order to pay off his secured creditors, including Alpine Bank. **Debtor's Exhibit J.**

The Motion for Relief from Stay

Alpine Bank's Motion for Relief from Stay (Docket #37), alleges that Alpine Bank is entitled to relief from stay pursuant to 11 U.S.C. § 362(d)(2), on the basis that Debtor has no equity in the Residence and Vacant Lot, and that such property is not necessary to an effective reorganization. Debtor filed an objection (Docket #45) on February 16, 2010, which asserts there is substantial equity in both the Residence and Vacant Lot, and the property is necessary to fund repayment of the secured creditors under Debtor's plan.

A preliminary hearing was held in the matter on February 23, 2010. The Court set the matter for a final hearing on March 30, 2010, and ordered the parties to, among other things, tender as evidence declarations of direct testimony for each witness. (See Minutes of Proceeding, Docket #50). The final evidentiary hearing was held on March 30, 2010.

Discussion

The Properties

Alpine Bank presented testimony of its President, Bill Souba. (**Alpine Bank Exhibit 9A**). There is no material dispute with respect to Debtor's default and the extent of the encumbrances upon the Residence and Vacant Lot. The Deed of Trust which Alpine Bank seeks to foreclose encumbers both properties and the Note and Line of Credit are cross collateralized. As such, it is appropriate for the Court to determine whether there is equity in the properties by comparison of the aggregate value of both properties and the total amount of all encumbrances. *See* 11 U.S.C. 362(d)(2)(A); *In re Steffens*, 275 B.R., 570, 577 (Bankr. D. Colo. 2002). The parties offered substantially different views of the value of the Residence and Vacant Lot.

Debtor's properties are somewhat unique in character and location. The Residence is the personal home of the Debtor and was constructed by Debtor between 1981 and 1983. The Residence is located on a 2.6 acre parcel in the Spruce Valley Ranch subdivision. Spruce Valley Ranch is comprised of larger lots in a forested setting and lies approximately 3 miles south of the Town of Breckenridge, Colorado. The Residence is approximately 9,000 square feet in size, has 4 bedrooms and 5 and ½ bathrooms, and includes an indoor swimming pool that accounts for nearly 2,000 square feet of the home's interior. (**Alpine Bank Exhibit 10A, ¶ 11**). The Vacant Lot is contiguous to the Residence, is an undeveloped homesite, and is approximately 2.5 acres in size. Breckenridge is home to a popular ski area and can be fairly characterized as a resort community in which values for some real estate are very high, especially for properties with ski-in/ski-out access. While there is a difference of opinion with respect to the value of the Vacant Lot, there is a substantial divergence over the value of the Residence.

Both parties presented appraisal testimony at the final hearing. Alpine Bank offered the testimony of Robert H. Ebert (**Alpine Bank Exhibit 10A**), and Debtor the testimony of Roger

Miller (**Debtor's Exhibit K**). There was no dispute with respect to the qualifications of either, and both have appraised numerous properties in Breckenridge, Colorado, the location of both properties.

Alpine Bank engaged Mr. Ebert to appraise the Residence and Vacant Lot on October 14, 2010, prior to Debtor's petition herein, and in connection with its intended foreclosure of the properties. (**Alpine Bank Exhibit 10A, ¶ 9**). Mr. Ebert performed an exterior only appraisal on the Residence and issued a report on October 16, 2009 (**Alpine Bank Ex. 10A, ¶ 10-12 and Ex. 5**). On cross examination he explained that he was familiar with the interior of the home and its quality from a prior appraisal, and that he shared the view of Debtor's appraiser that the home was very well built and maintained. Mr. Ebert set the value of the Residence at \$2,100,000, based upon a marketing time frame of 6 to 12 months. (**Alpine Bank Exhibit 10A, ¶ 12 and 5**).

In forming his opinion of the value, Mr. Ebert considered eight (8) comparable sales bracketing the age, size and characteristics of the Residence. As described in his report (**Alpine Bank Ex. 10A, ¶ 12 and 5**), and direct testimony, six were comparable sales, five being from 2009, and one, within the same subdivision, Spruce Valley Ranch, in 2008. Mr. Ebert also included a comparable sale of a 12,284 square foot, 5 bedroom, 5 bath, home located in the Ruby Ranch Subdivision in Silverthorne, Colorado, as an example of a very large, 16 year old home, with similar utility and sited on a large, estate type parcel of 8.33 acres. The report also included two comparable listings, one for a 29 year old, 7,234 square foot home located on a 2.66 acres site also in Spruce Valley Ranch and listed at \$2,850,000, and the other, a 12 year old, 9,488 square foot home with ski access, on a 0.5 acre site in Breckenridge, listed at \$2,690,000.

Mr. Ebert's testimony and other evidence (**Alpine Bank Ex. 10A, ¶ 16 referencing Debtor's Exhibit G**) point to several other significant factors that bear on the value of the Residence and the Vacant Lot, including:

- a. Summit County values the Residence and Vacant Lot on a single combined tax schedule at \$2,984,915 which Mr. Ebert has found to be the higher indicator of value in recent appraisals he has performed;
- b. There have never been any sales in excess of \$3,350,000 in Spruce Valley Ranch;
- c. There have only been seven sales of over \$2,000,000 in Spruce Valley Ranch;
- d. There are currently five active listings in Spruce Valley Ranch, ranging from \$1,199,000 to \$2,999,000, all indicating listing price reductions;
- e. In the past 12 months, there have only been 4 sales over \$3,000,000, in the Breckenridge area, with an average sales price of \$3,262,500, and only 1 sale over \$4,000,000 in the past 17 months;

f. There are currently 9 listings over \$4,000,000 in the Breckenridge area, which, based on the absorption rate of the past 2 years, indicates a 9 year supply.

g. For properties over 6000 square feet in size, and eliminating one \$8,285,000 sale for newly constructed slope-side residence, the average sales price has been \$2,429,844, or \$362 per square foot;

h. For properties over 6000 square feet in size and more than 5 years old, the average sales price declines to \$2,171,792, or \$322 per square foot; and

i. In 2008 and 2009, the market sales data show that the average sales price per square foot for homes in the Breckenridge area declined.

Debtor, via cross examination, called the Court's attention to fact that Mr. Ebert adjusted a number of the comparable sales to address the difference in size of the Residence using a figure of \$45 per square foot, which Debtor asserted to be too low. Mr. Ebert ably explained that this figure was the product of directly analyzing each comparable sale against the Residence and then calculating a figure that best explained the variance in market data across all of the comparables, rather than simply selecting a uniform value to be applied without regard to the actual variation in properties. He further explained that nearly 2,000 square of the Residence is represented by the indoor pool, an area which is of marginal additional utility or value.

The comparables selected by Mr. Ebert effectively bracket the age, size and utility, and location of the Residence. These comparable sales, along with all of the other data considered by Mr. Ebert, support a market value of \$2,200,000 for the Residence for the subject marketing period.

Debtor's appraiser Roger Miller valued the Residence at \$5,200,000, with a marketing time of 12 to 18 months. **(Debtor's Exhibit K)**. This opinion was in large part premised on his assertion that the Residence is extraordinarily well maintained and constructed, and is the equivalent of a new or very recently constructed home. On this basis, Miller suggested three properties for comparison from an appraisal he prepared in February, 2009 **(Debtor's Exhibit E)**, all of which were new or very recently constructed, and with prices at or in excess of \$5,500,000. Mr. Miller also indicates that the average price of single family homes in the Breckenridge area is increasing, despite a reduced volume of sales from 2008 to 2009.

Cross-examination of Mr. Miller revealed several shortcomings which suggest his approach to valuation of the Residence is not reliable or well supported by current sales data. Most notably, Mr. Miller had not inspected any of the comparables, which calls into question his assertion that the Residence, despite being nearly 30 years old, is not dated and is, in fact, properly compared to new or very recently built construction with no adjustment for its age. His selection of the comparables was also questioned and revealed that: (i) all were located in either premium, ski-in/ski-out locations or within the Town of Breckenridge; (ii) one of the comparables was a listing, rather than an actual sale; and (iii) the two sales comparables were dated, being from 2007 and 2008. **(Debtor's Exhibit C)**. It was also revealed that Mr. Miller overlooked a comparable sale within Spruce Valley Ranch establishing an upper end of value for

the subdivision of \$3,350,000 in 2007. Unlike Mr. Ebert, it was also apparent from Mr. Miller's testimony that over the course of several appraisals of the Residence performed in different years and using different comparables, he applied a fixed figure to adjust for the size of the Residence and that his adjustment had no particular relationship to the market data established by the sales comparables. Finally, Mr. Miller conceded on cross-examination that, contrary to his current position that no adjustment to the value of the Residence is necessary to reflect its age, Mr. Miller had previously found it appropriate to make an age adjustment to the value of the Residence when arguing for a lower value for the properties in conjunction with a tax protest (**Alpine Bank Exhibit 11**).

The Court did not find Mr. Miller to be a witness without credibility – indeed he is an experienced, knowledgeable and credible expert – but based on the not insubstantial inconsistencies and lapses in methodology and conclusions drawn, Mr. Miller came across as not impartial as to his analysis of Debtor's home.

There was also substantially differing testimony on the value of the Vacant Lot. Alpine Bank's appraiser Mr. Ebert set the value of the Vacant Lot at \$900,000, based on a selection of current comparables (**Alpine Bank Ex. 10A, ¶ 13, and Ex. 6**) and noted that the average sales price of land has declined (**Debtor's Exhibit G**), and that the highest price recent sale of vacant land in Spruce Valley Ranch was for \$1,100,000 in 2006. (**Alpine Bank Exhibit 10A, ¶ 13**). Mr. Ebert also noted a decline in average prices for vacant land (**Alpine Bank Ex. 10A, ¶ 19**). Conversely, Mr. Miller opined that \$1,495,000 is a reasonable value for the property. This testimony cannot be reconciled with Mr. Miller's position that the value of land has been stable (**Debtor's Exhibits E and F**), and his opinion that the Vacant Lot was valued at \$1,800,000, several hundred thousand dollars higher than his current estimate of value. Debtor also testified that the Vacant Lot had been periodically listed for sale over the past several years with an asking price ranging from \$1,800,000 to \$1,495,000 without a successful sale, which tends to indicate that price range as too high for the market.

Debtor's Reorganization

Debtor argues the property is necessary to an effective reorganization, but did not offer significant support for this position at the hearing. Debtor's plan is to sell the Residence and Vacant Lot at the prices suggested by Mr. Miller's values in order to pay all of his secured and unsecured creditors.

Debtor testified that his current monthly income amounts to a few thousand dollars and that it has been sufficient to meet his expenses. Debtor also testified that he is not servicing any of the secured debt. Debtor's monthly operating report for December, 2009, shows income of \$3,790.00 and expenses of \$4,775.90 (Docket #52). His report for January, 2010, shows income of \$3,683.32, and expenses of \$2,378.15 (Docket #48), and for February, 2010, income of \$1,248.48 and expenses of \$2,007.98 in expenses (Docket #57). In short, Debtor is not presently generating any significant income and is operating at a net loss. Debtor's schedules indicate other past income from discretionary trusts, but Debtor acknowledged that future distributions are amounts are unpredictable. Debtor also testified that the discretionary family trusts may distribute sufficient amounts to fund his plan, but that it is unknown whether or when

such amounts may be distributed. Debtor's schedules also show personal property with a value in excess of \$1,000,000, which is more than sufficient to address any unsecured claims.

With respect to the properties themselves, Debtor testified that the Residence has never been on the market, and that the Vacant Lot has been listed for sale without success. The Debtor testified that the listing agreement for the Vacant Lot expired at the end of 2009, has not been renewed, and that neither property was on the market at the time of the final hearing.

There was no evidence offered by Debtor that the plan is in prospect and can be concluded in a reasonable time. Debtor's plan and disclosure statement propose to commence marketing of the properties at the values established by Mr. Miller beginning in May, 2010. The evidence indicates that Debtor has attempted to sell the Vacant Land at or about the value suggested by Mr. Miller for several years and without success. Since filing of this case in October, 2009, the Residence has never been on the market and there was no evidence of any attempts to sell the same. Mr. Ebert's opinion of value is premised on a 6 to 12 month marketing period which is reasonable. Mr. Miller's marketing time is longer and the evidence suggests that if the home is listed at more than \$4,000,000, its sale may take even more time. At current absorption rates, there is sufficient inventory in the Breckenridge for homes priced over \$4,000,000 to last several years (**Debtor's Exhibit G**).

Debtor offered no testimony to explain how he might address the real property taxes due on the property or other obligations and it is clear that Debtor's very limited cash flow will not support any significant payments. It is also notable that interest is accruing on the Alpine Bank obligations at the rate of \$1,148.56 per day. There is simply insufficient evidence to establish the sale of the Vacant Lot or the Residence, within a reasonable time, will provide sufficient funding for the plan to succeed. The alternative funding mechanism, namely distributions from Debtor's family trusts, is entirely speculative.

Application of the Law to the Facts of this Case

The Court finds that Alpine Bank is entitled to relief from stay pursuant to 11 U.S.C. § 362(d). Debtor does not have equity in the real property, and has not met his burden of demonstrating that the property "is necessary for an effective reorganization that is in prospect." *United Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

11 U.S.C. § 362(d) allows for relief from stay if: (1) the debtor does not have equity in the subject property; and (2) such property is not necessary to an effective reorganization. Pursuant to Section 362(g), Alpine Bank has the burden of proof on the issue of the Debtor's equity in the property, and the Debtor has the burden on all other issues.

As noted above, all liens must be considered when determining whether the Debtor has equity in the properties. *Steffens*, at 577. The Court concludes that Mr. Ebert's opinion of the value of the Residence and Vacant Lot is well supported and demonstrative of a more credible approach, especially given the age, location, and size of the Residence, and the past unsuccessful marketing of the Vacant Lot by Debtor at or near values suggested by Mr. Miller. The evidence

also indicates a decline in the overall market and that it is simply unrealistic to expect a home that is nearly 30 years old to be equivalent or competitive with new or very recently built homes. Accordingly, based on the evidence presented and the current economic conditions, the Court concludes that the reasonable, fair market value of the Residence is \$2,100,000, and of the Vacant Land is \$900,000, for a combined value of \$3,100,000⁴. This value is approximately 25% less than the total encumbrances on the properties of 4,169,932.87. The Debtor therefore has no equity in the properties.

Lack of equity is not necessarily fatal under Section 362(d)(2), but the burden is on the Debtor to prove the property is “necessary to an effective reorganization.” 11 U.S.C. 362(g)(2); *In re Gunnison Center Apartments, LP*, 320 B.R. 391, 402 (Bankr.D.Colo. 2005). The seminal case addressing the standard to be applied under § 362(d)(2)(B) is *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (Timbers)*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). Although *Timbers* involved a question under § 362(d)(1), it provides the framework and analysis for evaluating relief from stay motions filed under (d)(2). According to *Timbers*:

What this [demonstrating the property is necessary to an effective reorganization] requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*. This means, as many lower courts ... have properly said, that there must be “a reasonable possibility of a successful reorganization within a reasonable time.”

Timbers, 484 U.S. at 375-76, 108 S.Ct. 626 (emphasis added); *See also Gunnison*, 320 B.R. at 402.

There is insufficient proof that Debtor has a realistic plan in prospect. Sale of the properties at the values suggested by Mr. Miller would bolster the plan. However, as more fully set forth above, these values are not well supported and there is no evidence that there will be any sale in any reasonable time at prices sufficient to address the secured claims. Debtor has offered no evidence of how he might market the properties to ensure a prompt sale. Debtor has been in default on his obligations to Alpine Bank since 2008, and a substantial additional delay is unreasonable. Moreover, the evidence indicates that Debtor’s current income is irregular and insufficient to support a plan through the 12 to 18 month time for sale suggested by Mr. Miller, or a longer period given the current market absorption rates for properties priced over \$4,000,000. The Court therefore concludes that the Debtor has failed to meet his burden of

⁴ The Court notes that a further reduction in value is also appropriate to reflect transactions costs. Indeed, the evidence indicates that vacant land sold in the Breckenridge area during 2009 at an average of 85% of the listing price. A five percent reduction in value would not be unreasonable. *See In re Mountain Side Holdings, Inc.*, 142 BR. 421, 423 (Bankr.D.Colo. 1992) (costs of sale must be included in equity calculation where debtor seeks to retain property); *In re Steffens*, 275 B.R. 570, 578 (Bankr. D. Colo. 2002) (approved 5% reduction for cost of sale in context of relief from stay); *In re Dickinson*, 185 BR 76, 77 (Bankr.D.Colo. 1995) (approving 10% reduction); *See also In re Stratford Hotel Co.*, 1120 BR 515 (Bankr.E.D. Mo. 1990) (court takes into account additional expenses such as sales commission, cost of sale, real estate taxes, which would reduce the amount of apparent equity); *In re Figueroa*, 121 BR 419, 422 (D.P.R. 1990) (court takes into account interest that would accrue until time of sale, and also attorney’s fees in event of foreclosure). Under the circumstances presented, this analysis is not necessary in order to establish Debtor’s lack of equity in the properties, but is further evidence of the same.

proof to establish that the properties are necessary to an effective reorganization in progress. *See Steffens*, at 578; 11 U.S.C. § 362(d).

IT IS THEREFORE ORDERED that Alpine Bank's Motion for Relief from Stay (Docket #37) shall be and hereby is GRANTED.

DATED: April 16, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Sid Brooks". The signature is written in a cursive, flowing style.

United States Bankruptcy Judge