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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
CYNTHIA SCOTT,
Debtor.

Case No. 01-54859-MM
Chapter 13

**ORDER VACATING ORDER FOR
RELIEF FROM THE AUTOMATIC
STAY**

It appearing to the court as follows:

FINDINGS OF FACT

1. On October 31, 2001, the motion of Home Loan Service Corporation, dba California Home Loans, for relief from the automatic stay came before the court for consideration. By the motion, Home Loan Service Corporation requested authority to proceed with a foreclosure of the debtor's residence commonly known as 691 Le Mans Drive, Hollister, San Benito County, California, and more particularly described in the motion. The motion, however, did not request that relief be granted on an *in rem* basis or that the stay of California Civil Code § 2924g or B.R. 4001(a)(3) be waived.

2. At the hearing, the parties stipulated to an adequate protection order, entered on November 21, 2001, which provided that the debtor would make monthly post-petition payments of \$375.00, plus late fees, to Home Loan Service Corporation. The adequate protection order further provided that on default under its terms, Home Loan Service Corporation would provide the debtor and her counsel 10 days' written

1 notice of the default and right to cure, and, upon failure to cure, be entitled to immediate relief from the stay
2 upon the submission of an *ex parte* declaration and proposed order.

3 3. Upon the debtor's default under the terms of the adequate protection order, Home Loan
4 Service Corporation on January 3, 2001 filed a declaration concerning the alleged default and lodged a
5 proposed form of order granting relief from the automatic that provided, *inter alia*, that Home Loan Service
6 Corporation may proceed immediately with its nonjudicial foreclosure. The order for relief from the automatic
7 stay further provided that the relief granted "is *in rem* and is valid against this property for 90 days
8 notwithstanding any bankruptcy conversion or any other subsequent bankruptcy filing." In addition, the order
9 provided for a waiver of the stay under California Civil Code § 2924g and B.R. 4001(a)(3).

10 4. Having received no objections to the form of the order, the court signed the order on January
11 3, 2002. The order was entered on the court's docket on January 7, 2002, and Home Loan Service
12 Corporation served notice of the entry of the order upon the debtor and her counsel on January 16, 2002. The
13 provisions of the January 3, 2002 order clearly exceeded the scope of the relief requested in the motion by
14 Home Loan Service Corporation. Had the court been aware that the proposed order submitted by Home
15 Loan Service Corporation was overreaching, the court would not have entered the order in the form submitted.

16 5. On January 16, 2002, Randy J. Scott, the debtor's spouse, filed a chapter 13 petition in this
17 court. Notwithstanding the automatic stay in the case of Randy J. Scott, Case No. 02-50275-MM, and in
18 reliance on the *in rem* provision in the January 3, 2002 order, Home Loan Service Corporation caused to be
19 conducted on January 17, 2002 a foreclosure sale of the property. A trustee's deed to the property was
20 recorded January 24, 2002, conveying the property to Quita Martin.

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22 **CONCLUSIONS OF LAW**

23 1. A motion shall state with particularity the grounds therefor and shall set forth the relief or
24 order sought. Rule 7(b)(1), Fed. R. Civ. P. The relief granted shall not exceed the scope of that requested
25 in the prayer of the motion. Compton v. Alton Steamship Company, 608 F.2d 96, 104 fn.16 (4th Cir.
26 1979); In re Heidenreich, 216 B.R. 61, 63-63 (Bankr. N.D. Okla. 1998).

27 2. A bankruptcy court has the inherent equitable power to *sua sponte* vacate an order to
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1 correct a mistake. See In re Cisneros, 994 F.2d 1462, 1466 (9th Cir. 1993); In re Anwiler, 958 F.2d
2 925, 928-29 f.5 (9th Cir. 1992), cert. denied, 506 U.S. 882 (1992); In re Lenox, 902 F.2d 737, 740 (9th
3 Cir. 1990).

4 Based on the foregoing and for good cause, the court orders as follows:

- 5 1. The order on relief from the automatic stay granting relief to Home Loan Service Corporation
6 is hereby vacated effective January 3, 2002.
- 7 2. The moving party may submit an alternate order, which conforms to the scope of its motion.

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10 DATED: _____

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12 UNITED STATES BANKRUPTCY JUDGE
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