

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 27, 2014 at 9:30 a.m.

1. [13-21878-E-7](#) THOMAS EATON MOTION FOR RELIEF FROM
APN-1 David Foyil AUTOMATIC STAY
1-21-14 [[86](#)]
SANTANDER CONSUMER USA, INC.
VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 21, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Santander Consumer USA, Inc. seeks relief from the automatic stay with respect to an asset identified as a 2007 Toyota Tacoma, VIN ending in 6280. The moving party has provided the Declaration of Marianne Favors to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Favors Declaration states that the Debtor has not made post-petition payments, with a total of \$1,559.46 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$12,938.65, as stated in the Favors Declaration, while the value of the asset is determined to be \$17,399, as stated in Schedules B and D filed by Debtor.

February 27, 2014 at 9:30 a.m.

The Favors Declaration also seeks to introduce evidence establishing the value of the asset. Though the NADA Guide valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the NADA Guide can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Marianne Favors to be that she obtained the NADA Guide valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

The Favors Declaration also states that the creditor is unable to verify that the Debtor's insurance coverage on the vehicle, and that the creditor believes that the Debtor is operating the vehicle without insurance. The contract between the creditor and the Debtor requires the debtor to keep the vehicle insured.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The Debtor was granted a discharge on September 18, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Santander Consumer USA, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Santander Consumer USA, Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2007 Toyota Tacoma, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.