UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 25, 2014 at 1:30 p.m.

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1. 13-30309-C-13 MICHAEL/ARLENE DISESSA
TJP-1 Richard L. Jare
MOTION FOR RELIEF FROM AUTOMATIC STAY
2-19-14 [43]

CALIFORNIA REPUBLIC BANK 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 13 Trustee, and Office of the United States Trustee on February 19, 2014. 28 days' notice is required. This requirement was met.

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 Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Lessor, California Republic Bank seeks relief from the automatic stay with respect to an asset identified as a 2012 Dodge Truck Journey, VIN # ending in 3943. The moving party has provided the Declaration of Jackie Dobbins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Dobbins Declaration states that the Debtor has not made 4 post-petition payments, with a total of $3,536.15 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 $32,909.02, as stated in the Dobbins Declaration, while the value of the asset is determined to be $18,000.00, as stated in Schedules B and D filed by Debtor.

The Chapter 13 Trustee filed a statement of non-opposition.

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).

Lessor will be permitted to pursue state remedies to regain possession. The court shall issue a minute order terminating and vacating the automatic stay to allow California Republic Bank to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow California Republic Bank to gain immediate possession of the property and dispose of the same in a commercially-reasonable sale.

The moving party has 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 granted.

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** that the automatic stay provisions of 11 U.S.C. §362(a) are vacated to allow California Republic Bank to pursue nonbankruptcy remedies with regard to the property commonly known as 2012 Dodge Truck Journey, VIN # ending in 3943.

2. 13-35188-C-13 MARIA ESPINOZA
DJD-1 David Foyil

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-14 [34]

SETERUS, INC. VS.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 13, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust. The court accepts the loan servicing company as being a real party in

interest for a motion for relief from the automatic stay.

B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.

C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.

D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total $2,400.93.

E. No post-petition payments have been made to Movant.

F. The principal amount due and owning on the Note is $129,274.36 and there is also an additional deferred principal of $56,479.13 owed under the modification Agreement.

G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of $141,611.00.

H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of $2,400.93 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 property is determined to be $185,753.46, as stated in the Robinson Declaration and drawn from the Loan Modification Agreement (Exh. D, Dckt. 38), while the value of the property is determined to be $141,611, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee Response, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent $1,105.00 and the plan is not confirmed. Debtor has paid a total of $1,105.00 to date. The Trustee will disburse $807.00 to Seterus on February 28, 2014.

Prior Hearing

The court first heard this matter at a hearing held March 4, 2014. The result of that hearing was to set the Motion for final hearing on March 25 2014. Creditor's Motion did not city any legal authority and while failure to cite legal authority justifying the relief sought is a ground for denial of the motion, the court permitted a continuance to allow Movant to

correct this error. LBR 9014-1(d)(5), 1001-1(g).

The court ordered that on or before March 6, 2014, Movant was to file and serve a supplement to the Motion, stating the legal basis for the relief requested. Debtor was ordered to file and serve any Opposition on or before March 14, 2014 and Movant to file and serve any reply to said Opposition by March 20, 2014.

Supplement to Motion for Relief From Automatic Stay, filed 3/6/14 (Dckt. 48)

On March 6, 2014, Movant filed a supplement to its Motion for Relief from Automatic Stay, clarifying that it is seeking relief from the stay under 11 U.S.C. §§ 362(d)(1) & (2).

Discussion

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, Movant provides the court with information concerning the subject property and related debt and, through the supplement, provided the court the grounds upon which it is seeking relief.

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 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** that the automatic stay provisions of 11 U.S.C. §362(a) are vacated to allow Seterus, Inc. to pursue nonbankruptcy remedies with regard to the real property commonly known as 4321 Greenholme Drive, Sacramento, California

3. 13-33092-C-13 **FELIX/LADORA GARCIA** **CONTINUED MOTION FOR RELIEF**
RTD-1 **Charnel J. James** **FROM AUTOMATIC STAY**
1-31-14 [42]

SCHOOLS FINANCIAL CREDIT UNION VS.

Local Rule 9014-1(f)(2) 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 13 Trustee, and Office of the United States Trustee on January 31, 2014. Fourteen days' notice is required. This requirement was met.

Tentative 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)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay as moot and further order that the automatic stay expired as to the 2003 Ford Ranger on December 13, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Schools Financial Credit Union, seeks relief from the automatic stay with respect to an asset identified as a 2003 Ford Ranger, VIN # ending in 5358 to sell the vehicle. Creditor asserts that the value of the vehicle is $5,067.00 and the outstanding lien totals $5,223.79. The last payment of $134.90 was received on August 29, 2013. Debtors are delinquent one (1) pre-petition payment of $134.90 and three (3) post-petition payments totaling $404.70.

Background

Debtors filed a Chapter 7 petition on October 8, 2013. The Meeting of Creditors took place on November 13, 2013. On January 24, 2014, the case was converted to Chapter 13 (Dckt. 37). As of the time of Creditor's filing, Debtor had not filed a Chapter 13 Plan. However, Debtors subsequently filed a Chapter 13 plan on February 7, 2014. Debtor's proposed plan (Dckt. 49) provides a monthly payment in Class 2 on a "2003 Ford Ranger" in the amount of $85.81 for a sixty (60) month term.

On February 7, 2014, Debtors also filed an Amended Schedule B (Dckt. 51). Schedule B lists three vehicles: 2006 Ford Fusion, 2003 Ford Ranger, and

2000 Ford Ranger. Creditor has secured interests in all three of the vehicles. In Amended Schedule B, Debtors list the "2003 Ford Ranger Pickup" valued at $8,050.00. Debtors indicate that the vehicle is located at Debtors' primary residence. Debtors' original Schedule B (Dckt. 1) included the additional note with the "2003 Ford Ranger Pickup:" "Note: this is an adult son's vehicle who lives with them [Debtors]. Loan is in moms name and son makes the payment every month." In Amended Schedule B this note is associated with the 2000 Ford Ranger, instead of the 2003 Ford Ranger.

In their Statement of Intention, Debtors state that they intend to retain the 2003 Ford Ranger and reaffirm the debt.

On January 6, 2014, Creditor repossessed the vehicle, incurring costs of $375.00.

Motion for Relief from Stay

Creditor argues that Debtors' non-payment of contract amounts due constitutes cause for terminating the stay. Further, Creditor argues that Debtors have no equity in the vehicle and that it is not necessary for an effective reorganization. At the time this Motion was filed, Creditor was relying on Debtors' Original Schedule B, which indicated that the subject vehicle is used by Debtors' son. In Amended Schedule B, this notation is not associated with the subject vehicle.

As to Creditor's authority to repossess the vehicle without first seeking relief from stay, Creditor asserts that the stay terminated by operation of law on December 13, 2013, thirty (30) days after the first date set for the Meeting of Creditors. It appears that Creditor is relying on 11 U.S.C. § 362(h) to support its right to repossess the vehicle after the filing of the petition.

Prior Hearing

The court first heard the Motion on February 26, 2014. At that hearing, the court continued the hearing on the Motion to March 25, 2014. The court modified the stay to allow Schools Financial Credit Union to retain possession of the vehicle; however, it was restrained from transferring any interest in the vehicle. Debtors were ordered to file and serve opposition to the Motion on or before March 4, 2014 with any reply by Creditor due on or before March 11, 2014.

During the hearing, issues arose concerning the conversion of the case from one under chapter 7 to chapter 13, and the impact it has on the termination of the stay due to the failure to complete a reaffirmation or redemption. The parties were ordered to brief that issue for the March 25, 2014 hearing.

Debtor's Opposition, filed 03/04/14 (Dckt. 64)

Debtors argue the following in support of its position that Creditor's Motion should be denied and the vehicle returned to Debtor:

1. Debtors are permitted to convert a bankruptcy proceeding from Chapter 7 to Chapter 13 as a matter of right, so long as the case was commenced as a voluntary Chapter 7 and there is not a showing of bad faith. 11 U.S.C. § 1307(a). Here, Debtors filed a

Chapter 7 proceeding and, after unsuccessful negotiation over a reaffirmation agreement, proceeded to convert to Chapter 13. There is no showing of bad faith and Debtor remains eligible for Chapter 13.

2. Pursuant to 11 U.S.C. § 348, the effect of the conversion does not change the date the petition was filed, the date the case was commenced, or the date for the order for relief. While a conversion constitutes a new order for relief, it does not change the filing date of the petition.

3. Debtors argue that the Motion to Convert should have been signed the day it was filed (January 5, 2014) by the clerk of the court.

4. Debtors argue that Creditor's argument that the automatic stay expired under 11 U.S.C. § 362(h) is disingenuous. Debtors informed Creditor that if the parties could not agree to adjust payment terms, Debtors would be forced to convert to Chapter 13.

5. Debtors cite 11 U.S.C. § 348(d) in asserting that the automatic stay should still prevent all collection efforts by creditor. 11 U.S.C. § 348(d) provides that a claim against the estate that raises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of Title 11, shall be treated as if such claim had arisen immediately before the date of the filing of the petition.

6. Debtors argue that there is sufficient equity in the vehicle to prevent granting the Motion. The value of the vehicle at the time of filing was $8,050 and the outstanding loan on the vehicle totals $4,684.90. Debtor exempted $3,333.25 under CCCP 703.140(b)(2).

7. Debtors argue that if the stay was violated, then the vehicle should be returned as Creditor's continued possession interferes with Debtor's right to exercise control over the vehicle.

Movant's Response, filed (Dckt. 69)

Movant provides the following response to Debtors' Opposition:

1. The conversion from Chapter 7 to Chapter 13 is effective upon entry of the order. Creditor disagrees with Debtors' statement that the Motion to Convert should have been signed that day by the clerk of the court. First, the Motion to Convert was filed on Sunday, January 5, 2014. It is not reasonable to expect the clerk to docket the Motion on a Sunday. Furthermore, an order converting a case is not a duty delegated to clerks under General Order 13-04. Creditor argues this case was still a case under Chapter 7 when the vehicle was repossessed on Monday, January 6, 2014.

2. Conversion from Chapter 7 to Chapter 13 does not reimpose the stay. Debtor cited three cases vaguely arguing that the automatic stay is still effective. The first case, *In re Suggs*, 377 B.R. 198 (8th Cir. CAP 2007), concerns the validity of both

a local rule permitting repossession post-petition pending presentation of proof of insurance and the grating of relief from stay to sell the vehicle. The Local Rule was eventually declared invalid. The second case, *In re Reed*, 102 B.R. 243 (Bankr. E.D. Okla. 1989), concerns repossession prior to filing of petition and sale post-petition of filing. The third case, *In re Koresko*, 91 B.R. 689 (Bankr. E.D. Pa. 1988), dealt with a case involving repossession pre-filing and sale post-filing. None of these cases discuss extending the stay upon conversion and all are only persuasive on this court.

3. Creditor cites *In re State Airlines, Inc.*, 873 F.2d 264, where the Eighth Circuit held that conversion does not trigger the automatic stay provisions of § 362. *Id.*

4. Debtors' analysis of 11 U.S.C. § 348(f) is not relevant as it concerns the effect of conversion from Chapter 13 to Chapter 7 and this case was converted from Chapter 7 to Chapter 13.

5. Despite Debtor's arguments to the contrary, the automatic stay did terminate pursuant to 11 U.S.C. § 362(h)(1)(B) prior to the time Creditor repossessed the vehicle.

6. Creditor contests Debtors' assertion that payments were current on the vehicle at the time the petition was filed. Debtors do not state when they made the payment due September 28, 2013 and do not provide proof of payment.

7. Debtors misstate monthly and total amounts due in their Declaration. The payments on this vehicle (2003 Ford Ranger) are $134.90 and are due on the 28th of each month. The pre-petition arrears were $134.90 and, as of March 4, 2014, five payments had become due and owing post-petition, for a total of $670.50.

   Payments on the 2006 Ford Fusion are $356.67 per month and are due on the 25th of each month. When the petition was filed, payments on the Fusion were due for September 2013, making the pre-petition arrears $365.67. As of March 4, 2014, payments totaling $1,828.35 have become due and owing post-petition.

   The pre-petition arrears for both vehicles is $500.57 and the post-petition arrears is $2,502.85, for a total of $3,002.57 as of March 4, 2014. Debtors only mention $1,200 in their Declaration and have not provided and accounting for the $1,200.Debtors did not make timely post-petition payments.

   Debtors state that they have spent their money and are unable to pay the missing payments to Creditor and request creditor accept payments through the plan. Debtors contend that Creditor will be paid full under the plan; however, the plan is premised on a trustee fee of 5%. Further, the amounts to be paid on each vehicle are less than is owed, as shown on the proofs of claim. Creditor also objects to the proposed interest rate of 3.5%.

8. Regarding use of the 2003 Ford Ranger, Debtors' Declarations state that the vehicle is for personal used and is "designed and fitted to allow [debtor] to get into and out of it without

{debtor's] injury." The vehicle did have handicap plates when it was repossessed. Creditor inspected the vehicle and could not ascertain what modifications made the vehicle more accessible. To the contrary, Creditor found that the oversized tires, raised vehicle, small doors and small cab made access to the vehicle more difficult.

Discussion

Termination of the Automatic Stay

The court first addresses whether Creditor's assertion that the stay terminated as to the vehicle under 11 U.S.C. § 362(h). The relevant section states:

> (h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--
>
> > (A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and
> >
> > (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debtor on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms,

The relevant part of 11 U.S.C. § 521(a)(2), with regard to time, is a date thirty (30) days after the first meeting of creditors. 11 U.S.C. § 521(a)(2)(B). Therefore, if Debtors did not meet the requirements of § 362(h) by December 13, 2013, the stay terminated with respect to the 2003 Ford Ranger.

Here, Debtors included the 2003 Ford Ranger on their Statement of Intent (Dkt. 1) filed with their voluntary petition. A review of the Statement of Intent shows that Debtors intended on retaining the vehicle and reaffirming the debt. As pointed out by Creditor, Debtors did not reaffirm the debt, redeem the vehicle, cure the pre-petition arrears, or make post-petition payments. Debtors did not take action to reaffirm the debt, as indicated, and there is no amended Statement of Intent suggesting Debtors' intent to pursue a different path. Therefore, by operation of law, the automatic stay terminated as to the 2003 Ford Ranger on December 13, 2013, and Creditor's repossession was proper.

Date of Conversion

The court next addresses the date of conversion. Pursuant to 11 U.S.C. § 706(a), a debtor may convert a case under Chapter 7 to one under Chapter 13 at any time, so long as the case has not previously been converted. Federal Rule of Bankruptcy Procedure 1017(f) provides the procedure for conversion. Rule 1017(f)(2) provides that conversion under § 706(a) shall be on motion filed and served as required by Rule 9013. As explained by Rule 9013, a motion is a request for a written order, which must state, with particularity the grounds upon which relief is stated.

Debtors filed their Motion to Convert to Chapter 13 on January 5, 2014. The court entered an order granting the relief requested on January 24, 2014. As the date of the order granting the relief requested was January 24, 2014, the date of conversion was also January 24, 2014.

Effect of Conversion on the Automatic Stay

The conversion of the case from Chapter 7 to Chapter 13 did not reinstate the automatic stay. The Ninth Circuit has adopted the general policy that "a change in chapters should leave matters as they existed at the time of conversion." *In re Tillman*, 2008 WL 8462961, *3 (9th Cir. BAP 2008). In *Tillman*, a Debtor moved to convert his case from Chapter 7 to Chapter 13 and argued that conversion mooted an Order to Show Cause ordered in the Chapter 7 case prior to conversion. The court used the general policy that conversion leaves matters as they existed at the time of conversion and disagreed with Tillman's assertion that conversion mooted the Order to Show Cause. *Id.*

In *In re Ramirez*, the Ninth Circuit Bankruptcy Appellate Panel provided the following guidance:

> A proper reading of § 348 indicates that it is not a source of disruption but, instead, preserves the continuity of the bankruptcy proceedings. It should not be read as a nullification act. It is not designed to change what has gone before but, rather, to leave matters as they existed on the date of conversion.

188 B.R. 413, 415 (9 Cir. BAP 1995)(citing *In re Lybrook*, 107 B.R. 611, 613 (Bankr. N.D.Ind. 1989). In *Ramirez*, a debtor converted from Chapter 13 to Chapter 11 and moved for reimposition of a previously lifted automatic stay. The court looked to the leading case on this issue, *In re State Airlines, Inc.*, which provided that "[i]f Congress has intended for a conversion to trigger the automatic stay of section 362 it could very easily have said so explicitly." 873 F.2d 264, 268 (11th Cir. 1989). The *State Airlines* court also reasoned that the filing of a petition operates as a stay under 11 U.S.C. § 362(a) and conversion under § 348 does not constitute the filing of a petition. *Id.* The Ninth Circuit Bankruptcy Appellate Panel expressly agreed and incorporated the reasoning of the court in *State Airlines* in *In re Ramirez*. 188 B.R. at 415. Conversion from Chapter 7 to Chapter 13 does not cause and is not cause for a previously lifted automatic stay to be reimposed.

Conclusion

The automatic stay, as to the 2003 Ford Ranger Pickup, expired on December 13, 2013 pursuant to 11 U.S.C. § 362(h). The conversion of the case from Chapter 7 to Chapter 13 did not cause the automatic stay to reimpose. Therefore, Creditor's repossession of the vehicle on January 6, 2014, was lawful and the stay remains lifted.

The court will issue an order denying the relief requested as moot because there is no automatic stay in place, as to the Debtor's interest in the 2003 Ford Ranger. The court will further order that pursuant to 11 U.S.C. § 362(h) the automatic stay terminated as to the 2003 Ford Ranger on December 13, 2013.

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** that the Motion is denied as moot, the automatic stay having terminated by operation of law as set forth in this Order.
>
> **IT IS FURTHER ORDERED** that pursuant to 11 U.S.C. § 362(h), the automatic stay as to the 2003 Ford Ranger expired on December 13, 2013.

4. 13-32432-C-13 JEFFREY/RACHELLE FILER ORDER TO SHOW CAUSE
DAO-3 3-18-14 [137]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Dale Orthner, attorney for the Debtors, Roxanne Daneri, attorney for objecting creditor, and the Office of the United States Trustee, on March 18, 2014. Seven days' notice of the hearing was provided.

No Tentative Ruling:

In this bankruptcy case the Debtors and Schools Financial Credit Union had set for evidentiary hearing on the Creditor's Objection to Confirmation of the Debtors' proposed Chapter 13 Plan for April 9, 2014. Evidentiary Hearing Order, Dckt. 119. Federal courts do not multiple set evidentiary hearings and trial for the same date, "gambling" that some will settle. When a trial or evidentiary hearing date is set the courtroom, judge, and staff are committed to the parties and their good faith prosecution of the trial or evidentiary hearing. When parties seek to settle or alter the trial or hearing date, relief must be obtained from the court.

Neither party notified the court that the Evidentiary Hearing would not be prosecuted and requested that the court remove the matter from the calendar. It came to the attention of the court, through attorneys contacting the courtroom deputy for Department E that the Debtors had filed a Third Amended Chapter 13 Plan, Dckt. 129, and a Motion to Confirm the Third Amended Chapter 13 Plan, Dckt. 139, which was set for hearing on April 29, 2014. Presumably the Third Amended Chapter 13 Plan has rendered the Second Amended Plan as moot. However, such would merely be an assumption by the court.

The court ordered that Dale Orthner, attorney for Debtors, and Roxanne Daneri, attorney for objecting creditor, shall appear on March 25, 2014 at 1:30 p.m. in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, to show cause as to why the court should not dismiss the Motion to Confirm the second amended plan, there being a Third Amended Plan filed March 7, 2014.

The court further ordered that any opposition or response to the dismissal of the Motion to Confirm the second amended pan may be presented orally at the hearing on March 25, 2014.

The court further ordered that Dale Orthner and Roxanne Daneri appear at the hearing in person, no telephonic appearance is authorised for the order to show cause.

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The hearing on the Order to Show cause having been conducted, counsel for Debtors and Objecting Creditor having presented their respected Responses, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is ----- .

5. 13-32432-C-13 **JEFFREY/RACHELLE FILER** **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY**
RTD-1 **12-11-13 [62]**

SCHOOLS FINANCIAL CREDIT UNION VS.

Local Rule 9014-1(f)(1) Motion – Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on December 11, 2013. 28 days' notice is required. This requirement was met.

Tentative 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 Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing

The court originally heard Creditor's Motion for Relief on January 14, 2014. At that hearing, the court continued the matter to February 4, 2014, to be heard at the same time as Debtor's Motion for Confirmation of Second Amended Chapter 13 Plan. At the hearing on February 4, 2014, the court set an evidentiary hearing on the Motion to Approve the second amended plan to determine the issues of adequate protection payments and legality of operating Debtors' moving business. As this current Motion for Relief was in part dependant on a determination of what amounts to "adequate protection," the court also continued it to April 9, 2014.

The court issued an order rescheduling the hearing on the Motion for Relief from Automatic Stay to March 25, 2014. It is being heard concurrently with an Order to Show Cause why the Motion to Confirm the Second Amended Plan should not be dismissed in light of the filing of a Third Amended Plan with a related Motion to Confirm.

Motion for Relief from Stay

Lessor, Schools First Credit Union seeks relief from the automatic stay with respect to an asset identified as a 2006 Honda Odyssey Minivan, VIN # ending in 2490. The moving party has provided the Declaration of Kevin Benner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Benner Declaration, dated December 10, 2013 states that the Debtor is in default for monthly payments due September 25, 2013, through December 2013. The September 25, 2013 amount due is $374.44 and the amount due for October through December 2013 in the full monthly payment of $381.48 each in the amount of $381.48. As of November 19, 2013, Debtor is delinquent two (2) pre-petition payments and 2 (two) post-petition payments.

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 $20,511.76. Pursuant to order of the court (Dckt. 76) the value of the vehicle is set at $11,800.00.

Pleading History (filed 12/23/13, Dckt. 77)

On December 23, 2013, Debtors filed opposition to the Motion for Relief based on their proposed treatment of Creditor's claim in their Second Amended Plan. The plan listed Movant as a Class 2 Creditor and proposed increasing the plan payment from the initial $187.00 per month to $319.80 per month. Debtors have since filed a Third Amended Chapter 13 Plan. (Dckt. 129).

On December 27, 2013, The Chapter 13 Trustee filed a statement of non-opposition to Movant's Motion for Relief.

On January 16, 2013, Creditor filed a Response to Debtors' Opposition (Dckt. 90). Creditor disagreed that it was receiving adequate protection payments and argued that the vehicle was not necessary for an effective reorganization. Creditor highlighted in its Opposition that Debtors' vehicle lacked equity, was not necessary for an effective reorganization, and questioned whether Debtors' were adequately licensed to operated their income generating business. A detailed account of Creditor's Response is available in the Civil Minutes from the hearing held on February 4, 2014 (Dckt. 114)

Third Amended Chapter 13 Plan

On March 7, 2014, Debtors filed a Third Amended Chapter 13 Plan (Dckt.). This plan treats Movant's collateral differently than in the Second Amended Plan. As discussed above, the Second Amended Plan lists Movant as a Class 2 Creditor. The Third Amended Plan provides for Movant and its collateral in Class 3, which includes all secured claims satisfied by the surrender of collateral.

Discussion

Pursuant to § 362(d)(2), a creditor may be granted relief from stay if Debtor lacks equity in the property and if the property is not necessary to an effective reorganization. Here, the property has no equity. At a hearing on December 17, 2013, the court determined the value of the collateral to be $11,800.00. Creditors proof of claim, filed October 11, 2013 and amended December 6, 2013, claims a debt due of $20,570.57. Debtor's Third Amended Plan provides for the surrender of the vehicle through Class 3, with no payments to be made to the Creditor, demonstrating that the vehicle is not necessary for

an effective reorganization. Therefore, the court finds it proper to grant relief from the automatic stay under 11 U.S.C. § 362(d)(2).

The court shall issue a minute order terminating and vacating the automatic stay to allow Schools Financial Credit Union, 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 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 Schools Financial Credit Union, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under the security agreement or loan documents granting it a lien in the asset identified as a 2006 Honda Odyssey Minivan, VIN # ending in 2490, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.