

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 29, 2014 at 1:30 p.m.

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1. [14-22510-E-13](#) ALFRED/MONICA SALAZAR MOTION FOR RELIEF FROM
APN-1 C. Anthony Hughes AUTOMATIC STAY
3-26-14 [[18](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. VS.

Final Ruling: No appearance at the April 29, 2014 hearing is required.

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 March 26, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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 non-responding parties 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.

Alfred Salazar and Monica Salazar ("Debtor") commenced this bankruptcy case on March 13, 2014. Americredit Financial Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Nissan Sentra, VIN ending in 0290 (the "Vehicle"). The moving party has provided the Declaration of Berit Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration provides testimony that Debtor has not made 7 pre-petition payments, with a pre-petition arrearage of \$1,734.95.

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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 \$7,708.46, as stated in the Williams Declaration. The value of the Vehicle is not stated in Schedules B and D filed by Debtor. Movant has provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17). The NADA Guide establishes a value for the Vehicle of \$5,100.

The Williams Declaration also asserts that Movant has not been able to verify insurance coverage on the Vehicle, and that based on this, believes that the Debtors were operating the Vehicle without insurance in violation of the contract between Movant and the Debtors. Movant repossessed the Vehicle prior to the filing of this bankruptcy case.

NON-OPPOSITION BY TRUSTEE

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

RULING

The court maintains the right to grant relief from stay for cause when a 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 and the estate have not maintained insurance coverage on the Vehicle. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Americredit Financial Services, 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.

Because Movant has established that there is no equity in the Vehicle for Debtor and no value in excess of the amount of Movant's claims as of the commencement of this case, Movant is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

Movant 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.

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 Americredit Financial Services, Inc. ("Movant") 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 Movant, 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 2004 Nissan Sentra, VIN ending in 0290 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

IT IS FURTHER ORDERED that the Movant party having established that the value of the Vehicle subject to its lien not having a value greater than the obligation secured, the moving party is not awarded attorneys' fees as part of Movant's secured claim for all matters relating to this Motion.

No other or additional relief is granted.