UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

August 20, 2015 at 10:00 a.m.

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1. 15-90404-E-7 AARON GOODLOE — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
APN-1 Scott D. Mitchell — **7-22-15 [15]**

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the August 20, 2015 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 7 Trustee, and Office of the United States Trustee on July 22, 2015. By the court's calculation, 29 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.

Aaron Eldean Goodloe ("Debtor") commenced this bankruptcy case on April 24, 2015. Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 Chevrolet HHR, VIN ending in 6428 (the "Vehicle"). The moving party has provided the Declaration of Marquette Sadler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Sadler Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of $683.38 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments in default, with a pre-petition arrearage of $1,708.45.

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 $13,942.36, as stated in the Sadler Declaration, while the value of the Vehicle is determined to be $7,360.00, as stated in Schedules B and D filed by Debtor.

The Sadler Declaration also seeks to introduce evidence establishing the value of the asset. Though the *Kelley Blue Book* valuation is attached as an Exhibit, it is not properly authenticated.

Furthermore, the Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

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 made post-petition payments. 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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, 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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving 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 Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("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 all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2011 Chevrolet HHR ("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 not waived.
>
> No other or additional relief is granted.

2. 11-94410-E-7 SAWTANTRA/ARUNA CHOPRA
14-9033 RMY-1
ARTERBURN ET AL V. CHOPRA
Mark Gorton

CONTINUED MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT AGAINST MID VALLEY SERVICES, INC.
6-4-15 [19]

Final Ruling: No appearance at the August 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. is continued to 10:00 a.m. on October 22, 2015.

Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

STIPULATION

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an *ex parte* Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

The court approved the stipulation on June 25, 2015, approving the

requested continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on August 20, 2015.

STIPULATION

On August 14, 2015, the parties filed an ex-parte Application to Approve Second Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 39. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on October 22, 2015.

DISCUSSION

The court approved granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on October 22, 2015.

3. 15-90510-E-7 ISA/THALJIEH SALEM **MOTION FOR RELIEF FROM**
BN-1 Wilber Manuel Salgado **AUTOMATIC STAY**
7-13-15 [9]

THE GOLDEN 1 CREDIT UNION
VS.

Final Ruling: No appearance at the August 20, 2015 hearing is required.

The Creditor having filed a "Withdrawal of Motion" for the pending Motion for Relief from Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion for Relief from the Automatic Stay**.

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.
>
> A Motion for Relief from the Automatic Stay having been filed by Creditor, the Creditor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

4. 15-90632-E-7 PATRICK BUCHANAN
APN-1 Ashley R. Amerio

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-21-15 [9]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the August 20, 2015 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 7 Trustee, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 30 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.

Patrick Walter Buchanan ("Debtor") commenced this bankruptcy case on June 25, 2015. Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2010 Ford Taurus, VIN ending in 7482 (the "Vehicle"). The moving party has provided the Declaration of Thuy Eastman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Eastman Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $448.91 in post-petition payments past due. The Declaration also provides evidence that there are 4 pre-petition payments in default, with a pre-petition arrearage of $2,222.97.

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 $22,083.82, as stated in the Eastman Declaration, while the value of the Vehicle is determined to be $11,131.00, as stated in Schedules B and D filed

by Debtor.

Movant has also 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 Valuation Report values the Vehicle at $12,100.00

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 made post-petition payments. 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). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an 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 Vehicle, 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.

In light of the Debtor intending to surrender the Vehicle, Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving 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 Santander Consumer USA 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 all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2010 Ford Taurus ("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.

No other or additional relief is granted.

5. 14-90060-E-7 AP-1 STEVEN GOOLSBY AND TERRI CANTRELL Christian J. Younger
MOTION FOR RELIEF FROM AUTOMATIC STAY 7-16-15 [56]
WELLS FARGO BANK, N.A. VS.

No 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 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Not 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 July 16, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Certificates of Service, Dckts. 62, 66, do not attest to serving the pleadings on The Trustee's attorney of record. Order Authorizing Employment, Dckt. 44

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 xxxxxxx.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay

with respect to the real property commonly known as 1809 Larkspur Lane, Ceres, California (the "Property"). FN.1. Movant has provided the Declaration of Jazmin Rosalia Ceja to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN.1. The court notes that the Memorandum of Points and Authorities contain additional requests that are not present in the Motion. The court shall only review the requests for relief present in the Motion, as is required by Local Bankr. R. 9014-1.

The Ceja Declaration states that there are 14 post-petition defaults in the payments on the obligation secured by the Property, with a total of $8,862.08 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $110,095.87 (including $102,095.87 secured by Movant's deed of trust), as stated in the Ceja Declaration and Schedule D filed by Steven Wayne Goolsby and Terri Lorrinda Cantrell ("Debtor"). The value of the Property is determined to be $100,000.00, as stated in Schedules A and D filed by Debtor.

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, including defaults in post-petition payments which have come due. 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 Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Debtor was granted a discharge in this case on May 7, 2015. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.