

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

September 10, 2013 at 1:30 p.m.

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1. [13-26582](#)-E-13 VENIAMIN FURSOV AND ALLA CONTINUED MOTION FOR RELIEF  
APN-1 FURSOVA-TIMOFEYEVA FROM AUTOMATIC STAY  
Peter G. Macaluso 7-26-13 [[24](#)]

TOYOTA LEASE TRUST VS.

CONT. FROM 8-27-13

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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**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).

**The court's tentative decision is to deny 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**

Toyota Lease Trust seeks relief from the automatic stay with respect to an asset identified as a 2008 Lexus ES350, VIN ending in 9436. FN.1. The moving party has provided the Declaration of Mary Ibarra to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

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FN.1. The court is baffled by the Debtors' attorney's inclusion of a heading entitled "Points & Authorities" in his motion. Local Bankruptcy Rule 9004-1(a) and the Revised Guidelines for Preparation of Documents ¶ (3)(a), which require that the motion, points and authorities, each declaration, and

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the exhibits be filed as separate electronic documents. The court notes the subheading "Points and Authorities In Support of Motion for Relief" in the motion is followed by one brief paragraph referencing 11 U.S.C. §§ 362(d)(1) and (d)(2). Counsel would be wise to consider the Local Rules more carefully, as self designating the pleading as a points and authorities is sufficient to have it denied under the Local Rules.

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The Ibarra Declaration states that under and pursuant to the Chapter 13 plan put forth by Debtor, Movant is to be paid directly, pursuant to the terms of the prevailing contractual agreement. The monthly payments are in the sum of \$598.09 per month. The Ibarra Declaration states Debtor has defaulted under the contract because the lease agreement reached maturity May 2, 2013, and Debtor remains in possession of the vehicle.

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

**DEBTOR'S OPPOSITION**

Debtor argues that a review of the contract reveals that the debtor had a right to purchase this vehicle at the end of the contract. As such, Debtor has included the claim in both section 3.02 as "disguised PMSI" and as a class 2 claim of \$14,614.66, the payoff balance.

Debtor contends that Movant received proper notice of the filing, the plan and confirmation. No objection was made to the plan and it was confirmed on August 3, 2013. Dckt. 32. The Debtors assert they are current under the terms of the confirmed plan.

**CONTINUANCE**

Because of the poor print quality of the Lease Agreement (both filed as Exhibit A to this Motion and to the Proof of Claim), the court was unable to read the terms of the contract. The court will not guess or blindly adopt the contention of one party or the other. The court continued the hearing to allow Creditor to file a legible copy of the lease agreement.

No legible lease agreement has been filed by Movant prior to the court's review of the pleadings in preparation for the September 10, 2013 continued hearing date. Movant not having provided a legible copy, the court is precluded from granting the motion.

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 Motion is denied without prejudice.