

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

September 18, 2018 at 1:30 p.m.

1. [18-23024](#)-C-13 JAMES/HEATHER OLIVER MOTION FOR RELIEF FROM
[JHW](#)-1 Peter Macaluso AUTOMATIC STAY
8-13-18 [\[36\]](#)

SANTANDER CONSUMER USA, INC.

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' attorney, The Chapter 13 Trustee, and Office of the United States Trustee on August 13, 2018. Twenty-eight days' notice is required. That requirement was met.

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 ~~xxxx~~.

The Santander Consumer USA, Inc.(the "Movant"), seeks relief from

the automatic stay with respect to a 2014 Ford Focus ("the Vehicle").

Movant, through Kim Miller, states that on June 17, 2018, the Vehicle was involved in a collision and declared a total loss. Movant states that it is the "loss payee." Movant seeks relief in order to apply the insurance proceeds in the amount of \$9,888.10 to the remaining balance of the secured claim, with any overage sent to the Trustee's office. Debtor's Schedules listed the value of the property as \$9,627.00.

Movant's Motion does not include a copy of the insurance policy, as such the court is unable to ascertain whether Movant as the "loss payee" was the designated beneficiary on the insurance policy. As such, the court is unable to determine whether the insurance proceeds are in fact property of the estate and whether relief from stay is required. Additionally, Movant does not specify whether the insurance proceeds are solely for property damage, or whether a portion of the proceeds is attributable to personal injury or other damages.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor 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).

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 that the automatic stay provisions of 11 U.S.C. § 362(a) are ~~xxxxxx vacated to allow Santander Consumer USA, Inc., its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non bankruptcy rights with respect to the 2014 Ford Focus.~~

~~No other or additional relief is granted.~~

2. [16-28366](#)-C-13 TIMOTHY SCHAD
[CJO-1](#) Lucas Garcia

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-21-18 [[147](#)]

U.S. BANK TRUST, 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.

Local Rule 9014-1(f)(1) Motion - Hearing Required

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 August 21, 2018. Twenty-eight days' notice is required. That requirement was met.

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 ~~xxxx~~.

U.S. Bank Trust, N.A., as Trustee for LSF10 Master Participation Trust, By Caliber Home Loans, Inc., (the "Movant"), seeks relief from the automatic stay with respect to real property located at 1938 N. Court St., Visalia, CA (the "Property"). Movant seeks relief from the stay with respect to the Debtor and non-filing Co-Debtors.

Movant, through Melba Arredondo, states that:

A. On November 23, 2016, Debtor acquired an interest the Property as reflected in a Trust Transfer Grant Deed recorded in Tulare County. (Dckt.

152, Exhibit 7). The court notes that the Trust Transfer Grant Deed transferred ownership of the Property from Antonia Holguin to Antonia Holguin, Timothy Francis Schad, and Penelopi Holguin-Schad as Co-Trustees of Holguin 1938 North St. Trust. *Id.*

B. Movant states that approximately \$39,000.00 is due and owing, that the last payment by Debtor was received on March 30, 2016 and that Debtor has not paid (9) pre-petition payments and (2) post-petition payments.

The court notes that:

1. Movant's Motion does not include a copy of 1938 North St. Trust. As such, the court is unable to determine whether the Debtor is a beneficiary of the trust or what interest the Debtor may have in the Property.

2. The last payment purportedly received by Debtor was (7) months prior to Debtor acquiring an interest in the Property.

3. Movant does not indicate the valuation of the property or the equity that Debtor may have in the property.

The Trustee's Response:

The Trustee responds to Movant's Motion by stating the following:

A. Debtor is delinquent \$13,909.66 under the confirmed plan, with a total of \$124,701.38 paid into the Plan.

B. The Movant is not provided for in the confirmed Plan.

C. Movant filed Claim No. 6-1.

D. Debtor has not disclosed his interest in the Property or the "Holguin 1938 North St. Trust."

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor 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).

At the hearing -----.

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 that the automatic stay provisions of 11 U.S.C. § 362(a) are ~~xxxx~~.
