

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

November 19, 2013 at 1:30 p.m.

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1. [13-32601](#)-E-13 BRIAN ZIELKE AND AMANDA MOTION FOR RELIEF FROM
TJP-1 HILL AUTOMATIC STAY
Diana J. Cavanaugh 10-11-13 [[15](#)]
CARFINANCE CAPITAL VS.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 11, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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 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 respondent and other parties in interest 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. No appearance required.

Carfinance Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Kia Sorrento, VIN ending in 4418. The moving party has provided the Declaration of Veronica Munoz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Munoz Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$478.79 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 \$24,678.27, as stated in the Munoz Declaration, while the value of the asset is determined to be \$20,000.00, as stated in Schedules B and D filed by Debtor.

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Movant also states that Debtor is voluntarily surrendering the vehicle.

The Chapter 13 Trustee has filed a statement of non-opposition to the Motion for Relief from Automatic Stay.

DISCUSSION

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).

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 to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the asset for either the Debtor or the Estate, and the asset is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow Carfinance Capital, 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 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Carfinance Capital, its agents, representatives, and successors, and any other

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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 2012 Kia Sorrento, VIN ending in 4418, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

No other or additional relief is granted.

2. 13-33318-E-13 THERESA SCHMITS MOTION FOR RELIEF FROM
SMR-1 Eric John Schwab AUTOMATIC STAY
10-21-13 [9]
YANGZHAN MA 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, and Office of the United States Trustee on October 21, 2013. By the court's calculation, 29 days' notice was provided. 14 days' notice is required. Movant filed amended Motion and supporting pleadings on November 4, 2013 to serve the Chapter 7 Trustee, after the case converted from Chapter 13 to Chapter 7.

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:

Yangzhan Ma ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4968 Trouville Lane, Sacramento, California. The moving party has provided the Declaration of Yangzhan Ma to introduce evidence which establishes that the Debtor is tenant under a lease. Debtor owes two post-petition payments in the amount

of \$3,400.00. Movant commenced an unlawful detainer action in Sacramento County Superior Court (Case No. 13UD06748).

Movant has provided a copy of Residential Lease Agreement. Based upon the evidence submitted to the court, and no opposition having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 7 case. 11 U.S.C. § 362(d)(2).

The court shall issue a minute order terminating and vacating the automatic stay to allow Yangzhan Ma, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4968 Trouville Lane, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

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 vacated to allow Yangzhan Ma and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4968 Trouville Lane, Sacramento, California.

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.

3. [11-25322-E-13](#) DAVID/ROSAURA JENSON
APN-1 Eric John Schwab

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-11-13 [[98](#)]

TOYOTA LEASE TRUST 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 October 11, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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 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 respondent and other parties in interest 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. No appearance required.

Toyota Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2011 TOYOTA CAMRY, VIN ending in 3175. 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.

The Ibarra Declaration states that the Debtor has not made post-petition payments. The lease agreement reached maturity on September 13, 2013. The total due is the matured lease balance \$13,680.55. Declaration of Ibarra establishes that the Debtor is no longer the lessee of the subject property and does not have interest in the subject property. 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 \$13,680.55, as stated in the Ibarra Declaration. Debtor claimed a \$1.00 value in the leased vehicle on Schedule B.

The Ibarra Declaration also states that Debtor does not have insurance coverage on the vehicle.

The Chapter 13 Trustee filed a statement of non-opposition to the Motion for Relief from Automatic Stay.

DISCUSSION

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).

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 to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the asset for either the Debtor or the Estate, and the asset is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow Toyota Lease Trust, 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 the moving party has established that there is no equity in the asset for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees in the total amount of \$576.00 for all matters relating to this Motion.

The moving party has plead 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 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 Toyota Lease Trust, 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 2011 TOYOTA CAMRY, VIN ending in 3175, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset 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.

4. [11-39249](#)-E-13 TROY/CATHERINE HICKMAN MOTION FOR RELIEF FROM
NLG-1 C. Anthony Hughes AUTOMATIC STAY
10-17-13 [[152](#)]
SETERUS, INC. 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 Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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 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 respondent and other parties in interest 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. No appearance required.

Seterus, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1737 Edwin Drive, Yuba City, California. 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 7 post-petition payments, with a total of \$9,595.18 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 \$265,613.03 (including \$206,912.03 secured by movant's first trust deed), as stated in the Robinson Declaration, while the value of the property is determined to be \$140,000.00, as stated in Schedules A and D filed by Debtor.

NON-OPPOSITION

The Chapter 13 Trustee filed statement of non-opposition to Movant's Motion for Relief from Automatic Stay. The Trustee provided additional information for the Court to take into consideration such as Movant was reclassified from class 1 to class 4 to be paid outside. The last disbursement to the Movant was on December 28, 2013. The Modified Plan was confirmed on March 20, 2013.

DISCUSSION

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).

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 to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

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 vacated to allow Seterus, Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1737 Edwin Drive, Yuba City, California.

No other or additional relief is granted.

5. [09-23720-E-13](#) TERRENCE/LISA RICHARDSON
DPC-2 Mark A. Wolff

CONTINUED MOTION TO DISMISS
CASE
10-1-13 [[113](#)]

CONT. FROM 11-13-13

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 Debtor, Debtor's Attorney, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 ~~xxxxx~~ the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court continued the hearing from November 13, 2013, and ordered both Debtors to appear at the November 19, 2013 hearing. Though this bankruptcy case has only 5 months left, the Debtors' marital disputes appear to have resulted in one or both of the Debtors refusing to complete the Plan. Before dismissing the case, as to either or both of the Debtors, the court has availed itself of this opportunity of having both Debtors appear in open court.

PRIOR HEARING

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,660.00 delinquent in plan payments, which represents multiple months of the \$2,500.00 plan payment. Prior to the hearing, another payment of \$2,500.00 will be due. Therefore, Debtor will need to pay \$8,160.00 in order to bring this Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

Debtors filed an opposition to Trustee's Motion to Dismiss stating that Debtors are in the process of determining the feasibility of the current Plan and preparing a modified Plan.

CONTINUANCE

Counsel for the Debtors appeared and advised the court that because the Debtors are separated, obtaining their agreement on a modified plan has

been challenging. The evening before the hearing one spouse came to counsel's office to sign the modified plan.

It appears that the prosecution of this case, with only 5 plan payments left, may be the subject of contention arising out of the dissolution of the marriage. The court continues the hearing one week, and orders the Debtors and their counsel to appear, to determine if the Debtors, or one of the Debtors, can prosecute this case in good faith.

NOVEMBER 19, 2013 CONTINUED HEARING

Based on a review of the docket, no Motion to Modify has been filed, served or set for hearing to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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 to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee 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 to Dismiss is xxxx.