

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

January 25, 2024 at 10:00 a.m.

FINAL RULINGS

1. 23-90452 -E-7	GREWAL CARGO, INC	MOTION FOR RELIEF FROM
HRH-2	Simran Hundal	AUTOMATIC STAY
		12-27-23 [36]
AUXILIOR CAPITAL PARTNERS,		
INC. VS.		

Final Ruling: No appearance at the January 25, 2024 Hearing is required.

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

Sufficient 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 December 27, 2023. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.
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Auxilior Capital Partners, Inc. ("Movant") seeks relief from the automatic stay with respect to two assets identified as trailers:

January 25, 2024 at 10:00 a.m.

1) a 2022 Great Dane Everest SS Trailer, VIN 1GR1A0622NW402087, with Thermo-King Refrigeration Unit, Serial Number 6001358396; and

2) a 2022 Great Dane Everest SS Reefer Trailer, VIN 1GR1A0624NW402097, with Thermo-King Refrigeration Unit, Serial Number 6001358411 (“Trailers”).

The moving party has provided the Declaration of Dominick Cevet to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Grewal Cargo, Inc. (“Debtor”). Decl., Docket 38. The trailers are listed in Debtor’s Schedules A/B to have a value of \$80,000 each, totaling \$160,000. Schedule A/B Continuation Sheet, Docket 12 p. 10.

Movant provides testimony that the unpaid amounts due on the Trailers totals “\$153,813.08, consisting of unpaid payments due on the obligation totaling \$132,664.95, unpaid payments in the amount of \$16,248.80, late charges in the amount of \$1,949.88, NSF fees in the amount of \$75.00 and insurance fees in the amount of \$2,874.45.” Declaration, Dckt. 38 ¶ 9. Movant also argues that Debtor is not making payments on the Trailers in violation of the security agreements. Mtn., Docket 36 p. 3:11-12.

Nikki Farris, the Chapter 7 Trustee, filed a non-opposition on January 1, 2024.

Debtor has not filed an opposition in this matter.

DISCUSSION

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 \$153,813.08 (*Id.*), while the value of the Trailers are determined to be \$160,000, as stated in Schedules A/B and D filed by Debtor. Schedule A/B Continuation Sheet, Docket 12 p. 10.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 a lack of adequate protection in the Trailers, and defaults in postpetition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, because of “Debtor’s and the Estate’s lack of equity in the Trailers, Debtor’s failure to pay therefor and their depreciating nature,” that the court grant relief from the Rule as adopted by the United States Supreme Court. Mtn., Docket 36 p. 3:18-20.

Without adequate protection payments being made, the Trailers are at risk of losing value and resulting in further harm to Movant. Therefore, Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 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 an 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 Auxilior Capital Partners, 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 agreements, loan documents granting it liens two assets identified as trailers:

- 1) a 2022 Great Dane Everest SS Trailer, VIN 1GR1A0622NW402087, with Thermo-King Refrigeration Unit, Serial Number 6001358396; and
- 2) a 2022 Great Dane Everest SS Reefer Trailer, VIN 1GR1A0624NW402097, with Thermo-King Refrigeration Unit, Serial Number 6001358411 (“Trailers”),

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-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

2. [23-90473-E-7](#)
[SKI-1](#)

ISAAC SALAZAR
Scott Mitchell

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-12-23 [\[16\]](#)

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the January 25, 2024 Hearing is required.

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

Sufficient 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 December 12, 2023. By the court's calculation, 44 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 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.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Santander Consumer USA Inc. d/b/a Chrysler Capital ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Kia Sorento, VIN ending in 3050 ("Vehicle"). The moving party has provided the Declaration of Ashley Young to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Isaac Che Salazar ("Debtor"). The vehicle has been voluntarily surrendered to Movant on October 24, 2023, and is being held pending relief from stay. Declaration, Dckt. 19 ¶ 9.

Movant argues that as of November 16, 2023, Debtor is in default of the security agreement in the amount of \$3,703.32. Declaration, Dckt. 19 ¶ 7. This sum includes at least five prepetition payments and one postpetition payment in the amount of \$594.41. *Id.*

Nikki Farris, the Chapter 7 Trustee, filed a non-opposition on December 19, 2023.

Debtor has not filed an opposition in this matter.

J.D. Power Used Car Guide Provided

Movant has also provided a copy of the J.D. Power Used Car Guide Valuation Report for the Vehicle. Exhibit D, Docket 21. 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).

DISCUSSION

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 \$27,409.19 (Declaration, Dckt. 19 ¶ 7), while the value of the Vehicle is determined to be \$11,575, as stated on the J.D. Power Used Car Guide Valuation Report, which is the adjusted clean retail value.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

No other or additional relief is granted by the court.

The court shall issue an 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. d/b/a Chrysler Capital (“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 2016 Kia Sorento, VIN ending

in 3050 (“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.

No other or additional relief is granted.