**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

## Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

**February 25, 2014 at 1:30 p.m.**

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1. 13-33092-C-13 FELIX/LADORA GARCIA — MOTION FOR RELIEF FROM AUTOMATIC STAY
RTD-1 Charnel J. James — 1-31-14 [42]

SCHOOLS FINANCIAL CREDIT UNION VS.

Local Rule 9014-1(f)(2) 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 January 31, 2014. Fourteen days' notice is required. This requirement was met.

**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)(2). Consequently, 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 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:

Creditor, Schools Financial Credit Union, seeks relief from the automatic stay with respect to an asset identified as a 2003 Ford Ranger, VIN # ending in 5358 to sell the vehicle. Movant asserts that the value of the vehicle is $5,067.00 and the outstanding lien totals $5,223.79. The last payment of $134.90 was received on August 29, 2013. Debtor is delinquent one (1) pre-petition payment of $134.90 and three (3) post-petition payments totaling $404.70.

**Background**

Debtors filed a Chapter 7 petition on October 8, 2013. The Meeting of Creditors took place on November 13, 2013. On January 14, 2014, the case was converted to Chapter 13. As of the time of Creditor's filing, Debtor had not filed a Chapter 13 Plan. However, Debtors subsequently filed a Chapter 13 plan on February 7, 2014. Debtor's proposed plan (Dkt. 49) provides a monthly payment in Class 2 on a "2003 Ford Ranger" in the amount of $85.81 for a sixty (60) month term.

On February 7, 2014, Debtors also filed an Amended Schedule B (Dkt. 51). Schedule B lists three vehicles: 2006 Ford Fusion, 2003 Ford Ranger, and 2000 Ford Ranger. Creditor has secured interests in all three of the vehicles. In Amended Schedule B, Debtors list the "2003 Ford Ranger Pickup" valued at $8,050.00. Debtors indicate that the vehicle is located at Debtors' primary residence. Debtors' original Schedule B (Dkt. 1) included the additional note with the "2003 Ford Ranger Pickup:" "Note: this is an adult son's vehicle who lives with them [Debtors]. Loan is in moms name and son makes the payment every month." In Amended Schedule B this note is associated with the 2000 Ford Ranger, instead of the 2003 Ford Ranger.

In their Statement of Intention, Debtors state that they intend to retain the 2003 Ford Ranger and reaffirm the debt.

On January 6, 2014, Creditor repossessed the vehicle, incurring costs of $375.00.

**Motion for Relief from Stay**

Creditor argues that Debtors' non-payment of contract amounts due constitutes cause for terminating the stay. Further, Creditor argues that Debtors have no equity in the vehicle and that it is not necessary for an effective reorganization. At the time this Motion was filed, Creditor was relying on Debtors' Original Schedule B, which indicated that the subject vehicle is used by Debtors' son. In Amended Schedule B, this notation is not associated with the subject vehicle.

As to Creditor's authority to repossess the vehicle without first seeking relief from stay, Creditor asserts that the stay terminated by operation of law on December 13, 2013, thirty (30) days after the first date set for the Meeting of Creditors. It appears that Creditor is relying on 11 U.S.C. § 362(h) to support its right to repossess the vehicle after the filing of the petition.

**Discussion**

The court first addresses whether Creditor's assertion that the stay terminated as to the vehicle under 11 U.S.C. § 362(h). The relevant section states:

> (h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing whole or in party a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--

> (A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and
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> (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debtor on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms,

The relevant part of 11 U.S.C. § 521(a)(2), with regard to time, is a date thirty (30) days after the first meeting of creditors. 11 U.S.C. § 521(a)(2)(B). Therefore, if Debtors did not meet the requirements of § 362(h) by December 13, 2013, the stay terminated with respect to the 2003 Ford Ranger.

Here, Debtors included the 2003 Ford Ranger on their Statement of Intent (Dkt. 1) filed with their voluntary petition. A review of the Statement of Intent shows that Debtors intended on retaining the vehicle and reaffirming the debt. As pointed out by Creditor, Debtors did not reaffirm the debt, redeem the vehicle, cure the pre-petition arrears, or make post-petition payments. Debtors did not take action to reaffirm the debt, as indicated, and there is no amended Statement of Intent suggesting Debtors' intent to pursue a different path. Therefore, by operation of law, the automatic stay terminated as to the 2003 Ford Ranger on December 13, 2013, and Creditor's repossession was proper.

Despite the stay terminating as to the 2003 Ford Ranger, Creditor is now moving for relief from stay to sell the vehicle. The court queried why Creditor would feel comfortable repossessing the vehicle upon evaporation of the stay under § 362(h) but is not comfortable selling the repossessed vehicle under the same theory. One potential reason may be because the court has not yet provided reassurance that criteria for termination of the stay have actually occurred and Creditor is merely being prudent. Also, once a stay terminates, creditor's rights are governed by state law; therefore, Creditor may be moving for relief to provide notice of intent to sell to all potentially interested parties. Interpretation of 11 U.S.C. § 362(h) is a constant project and there is potential that a court may find the relief granted in the section does not necessarily give creditors permission to transfer title of property released from the stay. Whether all or none of these are relevant to Creditor's motivations, the court will continue on with discussion concerning traditional relief from the automatic stay under 11 U.S.C. § 362(d).

In support of its Motion for Relief, Creditors makes arguments under both 11 U.S.C. §§ 362(d)(1) & (2).

Under 11 U.S.C. § 362(d)(1), the court shall grant relief from stay for cause, including lack of adequate protection of an interest in property of such party in interest. Section 362(d)(2) provides that the court shall grant relief from the stay if the debtor does not have equity in the property and

the property is not necessary for an effective reorganization.

The Spitzer Declaration states that the Debtors have not made three (3) post-petition payments, with a total of $404.70 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 $5,223.79, as stated in the Spitzer Declaration, while the value of the asset is determined to be $8,050.00, as stated in Schedules B and D filed by Debtors.

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). However, the existence of missed payments by itself does not guarantee relief from stay. Further, as discussed more thoroughly below, there exists a dispute over the value of the vehicle. If Debtors' value is correct, then the equity cushion provides enough protection to the creditor, and moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). The court lacks a sufficient evidentiary basis for granting relief for "cause" under 11 U.S.C. § 362(d)(1).

Section 362(d)(2) has two required elements: (1.) demonstration of no equity in the property; and (2.) the property is not necessary for a reorganization. The court is not convinced that it has sufficient clear evidence to make a determination on both of these issues. As to equity, there exists a factual dispute between the value asserted by Creditor and the value asserted by Debtor on Schedules B and D. Creditor uses the adjusted lending value of $5,065, drawn from the Kelley Blue Book. Meanwhile, Debtors' Schedules B and D assert a value of $8,050. The amount due on the loan is approximately 5,223.79. It is not clear, based on the conflicting evidence on the value of the vehicle, whether or not Debtors have equity in the 2003 Ford Ranger and; therefore, the court cannot act to grant relief from the stay under 11 U.S.C. § 362(d)(2) at this time.

Beyond the provisions of 11 U.S.C. § 362(d), the court is cognizant that Debtors recently converted their case from one under Chapter 7 of Title 11 to one under Chapter 13 of Title 11. Creditor filed its Motion for Relief from Stay prior to Debtors proposing a Chapter 13 plan of reorganization. Debtors have since filed a plan and provide for the claim of Creditor in Class 2 of the plan. The court is curious to hear whether Creditor still prefers moving for relief from stay and selling the vehicle over the treatment provided to Creditor in Debtors' proposed Chapter 13 plan.

Based on the foregoing, the court's decision is to deny the Motion for Relief from the Automatic Stay with respect to the 2003 Ford Ranger without prejudice.

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 Motion is denied without prejudice.

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