

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 24, 2015 at 1:30 P.M.

1. [13-20662](#)-C-13 CHRISTOPHER DUNBAR MOTION FOR RELIEF FROM
APN-1 Aaron Koenig AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-20-15 [[29](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the March 24, 2015 hearing is required.

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 February 20, 2015. Twenty-eight days' notice is required. This requirement has been 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 granted.

Creditor, Santander Consumer USA, Inc., servicer for GEMB Lending, Inc. fka E*Trade Consumer Finance Corporation, seeks relief from the automatic stay with respect to the property commonly known as a 2001 Itasca Horizon Motorhome (VIN 4UZAHAHAK21CH72675) as to Debtor and the nonfiling Co-Debtor Spouse. The moving party has provided the Declaration of Marianne Favors to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Favors Declaration states that the Debtor has not made 25 post-petition payments, with a total of \$30,904.50 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 \$96,109.70, as stated in the Favors Declaration, while the value of the property is determined to be \$49,550, as stated in the Favors Declaration. Finally, Creditor asserts that Debtor does not have insurance on the vehicle under their contractual terms. Creditor is currently in possession of the vehicle. Debtor has not noted the existence of or obligation as to the motor home in any of his schedules.

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

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).

The court shall issue a minute order terminating and vacating the automatic stay to allow Creditor, Santander Consumer USA, Inc., 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 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 granted.

The court makes no judgment as to the non-filing Co-Debtor. 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 Santander Consumer USA, Inc., 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 2001 Itasca Horizon Motorhome, VIN ending in 2675, and applicable nonbankruptcy law to obtain possession 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.

2. [15-20972](#)-C-13 CASSANDRA HUAPAYA
TJP-1 Richard Jare

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-14-15 [[25](#)]

TIDEWATER FINANCE COMPANY
VS.

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.

Below is the court's tentative ruling.

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 February 14, 2015. 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). 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 granted.

Creditor, Tidewater Motor Credit & Tidewater Credit Services, seeks relief from the automatic stay with respect to a 2010 Ford Escape (VIN 1FMCU0DG5AKA03034). The moving party has provided the Declaration of Cinnamon Kelley to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kelley Declaration provides the following. Debtor filed a previous chapter 13 bankruptcy case on May 13, 2013 (Case No. 13-26601). In that case, Creditor and Debtor entered into a stipulation for adequate protection on August 12, 2013. Debtor defaulted on the terms of the Adequate Protection order by failing to make regular monthly payments. On November 28, 2015, the court entered an order granting Creditor-Movant relief from the automatic stay with regards to the vehicle. The case was dismissed on February 4, 2015 because of Debtor's failure to make plan payments. At the time of the

closing of that bankruptcy case, Creditor-Movant asserts that Debtor was in arrears for 7 post-petition payments amounting to \$2,698.99 in post-petition arrears.

Five days after the dismissal of the previous bankruptcy case, Debtor filed the instant bankruptcy case on February 9, 2015. Relevant to the instant motion, and 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 \$24,695.58, as stated in the Kelley Declaration, while the value of the property is determined to be \$11,700, as stated in Schedules A and D filed by Debtor.

The Movant's declaration does not assert that Debtor has defaulted on post-petition payments in the instant bankruptcy case. Instead, Movant provides that Debtor and Creditor-Movant executed an "Agreement to Furnish Insurance Policy" requiring a \$500.00 deductible. Based upon the Insurance Declaration provided to Movant by Infinity Insurance Company, Debtor does not have auto insurance on the vehicle with a \$500.00 deductible. Instead, Creditor asserts that Debtor has obtained the auto insurance with a \$1000.00 deductible, and as such, has not provided adequate protection for Creditor under the terms of their agreement.

TRUSTEE'S RESPONSE

Trustee has filed responsive motion, stating that because Debtor does not have proper insurance on the vehicle, Trustee has no opposition to the instant Motion for Relief.

DEBTOR'S OPPOSITION

Debtor opposes the instant motion, providing that she believes even \$1000 deductible is sufficient to provide adequate protection. Debtor further provides that Movant's assertion that the contract requires \$500 deductible is not a per se requirement of the plan, and states that the contract from which the \$500 deductible obligation arises is no longer applicable because the contract has been breached.

DISCUSSION

The court notes that on the March 24, 2015, 2:00 p.m. calendar, the court is prepared to deny Debtor's Motion to Extend the Automatic Stay because the automatic stay terminated as to Debtor by operation of law on March 11, 2015. Hence, the court will review Debtor's opposition to the instant motion as an opposition on behalf of the estate, and not on behalf of the Debtor, for whom the automatic stay is no longer in effect and is therefore moot as to the Debtor.

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 provided adequate protection, 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 provided correct insurance on the vehicle, and therefore has not adequately protect Creditor under the terms of their agreement. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor provides that she believes that the terms of the agreement entered into with Creditor on or about June 3, 2012, under which the her obligation to provide insurance on the vehicle with a \$500 deductible arises, are no longer applicable because the contract has been breached. The court notes that it is Debtor who caused the breach in the contract. However, even if the court is to entertain this logic, and the terms of the original contract are no longer in effect, this would mean that Debtor is no longer under any legal obligation to insure the vehicle and can in theory cancel insurance on the vehicle at any time-tomorrow, if she wished. If such is the case, the court agrees that Creditor Tidewater Motor Credit is not adequately protected.

If Debtor agrees that the terms of the original contract are in effect, and there is a legal obligation to provide insurance on the vehicle, it must be under the terms of that original contract-insurance with a \$500 deductible, not a \$1000 deductible. Because Debtor has not provided insurance with a \$500 deductible under the terms of their agreement, Creditor is not adequately protected.

The court shall issue a minute order terminating and vacating the automatic stay to allow Tidewater Motor Credit & Tidewater Credit Services, 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.

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 as to the bankruptcy estate to allow Tidewater Motor Credit & Tidewater Credit Services, 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 2010 Ford Escape, VIN ending in 3034, and applicable nonbankruptcy law to obtain possession of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, for

whom the automatic stay expired on March 11, 2015, it is denied as moot pursuant to 11 U.S.C. § 362(c)(3)(A).

No other or additional relief is granted.
