

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 25, 2014 at 1:30 p.m.

1. [13-33513](#)-E-13 MARLON/REBECCA LAWAS MOTION FOR RELIEF FROM
JHW-2 Yasha Rahimzadeh AUTOMATIC STAY
2-12-14 [[100](#)]

AMERICREDIT FINANCIAL
SERVICES, INC. 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 12, 2014. By the court's calculation, 41 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). 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.

Marlon Hill Lawas and Rebecca Garcia Lawas ("Debtors") commenced this bankruptcy case on October 18, 2013. Americredit Financial Services

March 25, 2014 at 1:30 p.m.

dba GM Financial ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2009 Nissan Altima, VIN ending in 2289 (the "Vehicle"). The moving party has provided the Declarations of Aaron Rangel and Jennifer Wang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration provides testimony that Debtors have not made an unspecified number of plan payments under their Chapter 13 plan. A review of the exhibits shows that the Debtors have not paid the first three payments that have come due under their Chapter 13 plan. The Chapter 13 plan shows that Movant is to be paid \$362 per month as a class 1 creditor through the plan. Based on these figures, it appears that the total amount past due is \$1,086; however, Movant does not provide any testimony on this point. FN. 1.

FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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 \$17,013, as stated in the Rangel Declaration, while the value of the Vehicle is determined to be \$11,850, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response to the motion verifying that the Debtor is 3 months behind in plan payments, and that the Movant is to be paid \$362 per month. The response also noted that the Trustee has filed a motion to dismiss which is set for hearing on March 19, 2014.

RULING

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. *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 and the estate have 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 an order terminating and vacating the automatic stay to allow Americredit Financial Services dba GM Financial, 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.

Movant 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 Americredit Financial Services dba GM Financial ("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 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 2009 Nissan Altima, VIN ending in 2289 ("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.

2. [12-35521](#)-E-13 CHRISTOPHER DEAN
PD-2 Peter G. Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-20-14 [[172](#)]

SAN FRANCISCO FIRE CREDIT
UNION 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 21, 2014. By the court's calculation, 32 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). 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 court's decision is to continue the Motion for Relief From the Automatic Stay to 3:00 p.m. on April 29, 2014, to be heard in conjunction with the motion to approve the stipulation and motion to dismiss. No appearance at the March 25, 2014 hearing is required.

Movant San Francisco Fire Credit Union ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2718 Adriatic Way, Sacramento, California. Movant argues that cause exists to terminate the stay under 11 U.S.C. § 362(d)(1) because Debtor is in default on 13 post-petition payments due and owing. Further, Movant argues that relief is property under 11 U.S.C. § 362(d)(2) in that there is no equity in the property and the property is not necessary for a reorganization.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response to the motion verifying that the Debtor has no confirmed plan and the last motion to confirm was dismissed on March 5, 2014. To date Debtor has paid the Trustee a total of \$10,430.00.

DEBTOR'S OPPOSITION

Debtor opposes the motion on the basis that the subject property is subject to an on-going adversary proceeding. Debtor states the adversary proceeding with regards to the Home Owners Association has been resolved, disbursement is set via the Trustee and possession is being transferred back to the Debtor so that disbursements are again possible.

RULING

The court continues the Motion for Relief to 3:00 p.m. on April 29, 2014, to be heard in conjunction with the motion to approve the stipulation and motion to dismiss.

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 San Francisco Fire Credit Union ("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 Motion for Relief from Stay is continued to 3:00 p.m. on April 29, 2014, to be heard in conjunction with the motion to approve the stipulation and motion to dismiss.

3. [12-41250](#)-E-13 MARIEANN PEREZ
TJS-1 Mohammad M. Mokarram

MOTION FOR RELIEF FROM
AUTOMATIC STAY, MOTION FOR
ADEQUATE PROTECTION AND MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-24-14 [[32](#)]

JPMORGAN CHASE BANK, N.A.
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, Non-filing Co-Debtor, and Office of the United States Trustee on February 24, 2014. 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). 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 denied without prejudice.

Marieann Braganza Perez ("Debtor") commenced this bankruptcy case on December 10, 2012. JP Morgan Chase Bank, NA ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Toyota FJ Cruiser, VIN ending in 3567 (the "Vehicle"). The moving party has provided the Declaration of Maria Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Brown Declaration provides testimony that Debtor's monthly

payment is \$650.52, and that the Debtor has not made payments, with a total of \$4,029.12 "due and owing." The Brown Declaration does not specify whether the missed payments represent pre-petition or post-petition payments.

The Brown Declaration does not provide the total debt secured by the Vehicle or the value of the subject property. A review of the documents filed in this case show a variety of potential values: the Relief from Stay Information Sheet shows a total debt of \$17,129.12; Proof of Claim No. 2 filed by the Movant lists its claim at \$4,635.28; the Debtor's Schedule D lists amount of claim for the Vehicle as \$5,200. The court does not have sufficient evidence to determine the total debt secured by the vehicle or the value of the vehicle. The court cannot and will not rely on the Relief from Stay Information Sheet, which is not evidence.

TRUSTEE'S RESPONSE

The Trustee filed a response to the motion clarifying that Debtor has confirmed a Chapter 13 plan under which Movant receives a monthly distribution of \$97.54, and that there is a principal balance due of \$173.59. The Trustee's response states that the Debtor is one month delinquent in her plan payments.

OPPOSITION

The Debtor filed an opposition to the motion asserting that the existence of missed payments by itself does not guarantee relief from stay, and that Movant has a sufficient equity cushion to protect its interests.

RULING

As the Movant has failed to provide evidence in support of its claim, the court denies the motion 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 JP Morgan Chase Bank, NA ("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 motion is denied without prejudice.