

Eastern District of California

Chief Bankruptcy Judge
Sacramento, California

1. 14-22271-C-13 BOBBY JOHNSON MOTION FOR RELIEF FROM
RCO-1 Pro Se AUTOMATIC STAY
3-17-14 [9]

CASE DISMISSED 3/24/14

The court shall issue a minute order substantially in the following form holding that:

The Motion for Relief from Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied
as moot.

2. [13-23881](#)-C-13 TIMOTHY CHARSHAF
APN-1 Earl J. Hickman

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-24-14 [[70](#)]

NISSAN-INFINITI, LT 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 March 24, 2014. Twenty-eight days' notice is required. This requirement was met.

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 Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to grant the Motion for Relief from the Automatic Stay. No appearance is required. The court makes the following findings of fact and conclusions of law:

Lessor, Nissan-Infiniti, LT seeks relief from the automatic stay with respect to an asset identified as a 2011 Nissan 370Z, VIN # ending in 1467. The moving party has provided the Declaration of Jill Jones to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Creditor asserts that the grounds for the motion are that the Lease Agreement Debtor entered into with Creditor reached its maturity on February 11, 2014 and Debtor is required to provide Creditor with the monies that are legally and contractually due and owing to it thereunder or immediately surrender possession of the vehicle to Creditor.

Creditor further asserts that Debtor lacks equity in the vehicle and since Debtor does not own the vehicle, his interest in it is merely possessory. Creditor cannot be assured of repayment of the outstanding balance on the account or be assured of the proper care of the property. This renders Creditor without the adequate protection it is entitled to receive under 11 U.S.C. § 362.

Chapter 13 Trustee Statement

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

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 payments due on the Lease Agreement and is leaving Creditor without adequate protection. 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 Nissan-Infiniti, LT to enforce its rights and remedies under the parties' original contractual agreement, and thereby allow Nissan-Infiniti to gain immediate possession of the property.

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 Nissan-Infiniti, LT to pursue nonbankruptcy remedies with regard to the property commonly known as 2011 Nissan 370Z, VIN # ending in 1467.