

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 7, 2024 at 1:30 p.m.

FINAL RULINGS

1. <u>18-25851</u> -E-13	ROBERT HUNTER	MOTION FOR RELIEF FROM
<u>KMM</u> -3	Peter Macaluso	AUTOMATIC STAY
		3-29-24 [<u>228</u>]

**NISSAN MOTOR ACCEPTANCE
COMPANY LLC VS.**

Final Ruling: No appearance at the May 7, 2024 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient 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 29, 2024. By the court’s calculation, 39 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted.

Nissan Motor Acceptance Company LLC (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2015 Nissan Versa, VIN ending in 7671 (“Vehicle”). The moving party has provided the Declaration of Norma Estrada to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Robert Hunter (“Debtor”). Decl., Docket 231.

Movant argues Debtor has defaulted on the obligation owed, and Movant is not adequately protected. Movant provides evidence that the loan matured on February 1, 2021. Debtor and Non-filing Co-Debtor have an outstanding balance of \$4,253.49. *Id.* at p. 2:22-25. Trustee has not distributed a payment to Movant for its claim since June 30, 2023. *Id.* ps. 2:26-3:2. Further, Movant provides evidence that Debtor has not paid insurance on the Vehicle, serving as another grounds for default. *Id.* at p. 3:8-21.

The Chapter 13 Trustee, David Cusick, filed a non-opposition in the case, stating the court has already granted relief from stay as to the Vehicle on February 14, 2024.

Debtor and Movant entered into a Stipulation, filed with the court at Docket 240, agreeing to granting relief from stay as to the Vehicle in this case or any potentially converted case.

DISCUSSION

This court already granted relief from stay as to the Vehicle by Order entered on February 14, 2024. Docket 212. Movant has not addressed in its pleadings why it now files a second Motion for Relief as to the same Vehicle in the same case. However, the Confirmed Third Modified Plan at Docket 208 provides for treatment of the vehicle, which gives rise to this second Motion for Relief.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Valuation Report for the Vehicle. Exhibit D, Docket 230. 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).

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 \$4,253.49 (Declaration, Docket 231), while the value of the Vehicle is determined to be \$7,025, as stated on the J.D. Power Valuation Report for clean retail. Exhibit D, Docket 190.

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 and a potential lapse in insurance coverage. 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.

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 Nissan Motor Acceptance Company LLC (“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 2015 Nissan Versa, VIN ending in 7671 (“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.