

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

June 2, 2015 at 1:30 P.M.

1. [12-41786](#)-C-13 JAMES LANINI MOTION FOR RELIEF FROM
JHW-1 Scott Hughes AUTOMATIC STAY
4-24-15 [[114](#)]
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 April 24, 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 denied.

SUMMARY OF MOTION

Creditor AmeriCredit dba GM Financial seeks relief from the automatic stay with respect to a 2008 Dodge Ram 1500, VIN: 1D7HA18258J106791. The moving party has provided the Declaration of Mandy Youngblood to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Youngblood Declaration states that Movant has been informed that the vehicle was involved in a collision on March 25, 2015, and the vehicle was declared a total loss by Debtor's insurer, Farmers Insurance Company (claim number 3002996751) with Movant named as the loss payee.

TRUSTEE'S OPPOSITION

The Chapter 13 opposes the motion as Movant has not revealed the total amount of insurance proceeds they seek to recover. Dckt. 121. The plan provides for Movant's claim with the amount set by stipulation. Dckt. 50. The Trustee reports that debtor currently owes Movant \$6,943 on their secured claim.

DISCUSSION

The docket does not reflect that Movant has filed documentary proof of the Farmers Insurance claim. Neither the motion nor Youngblood Declaration disclose the amount sought to be recovered. Movant's relief from stay information sheet states that \$18,226.61 is presently owing to Movant. As the Trustee's opposition highlights, the amount reported on the relief from stay sheet does not discern between the secured and unsecured portion of Movant's claim or the amount already received through plan payments.

From the evidence provided to the court, the court cannot discern the amount that Movant seeks to collect if the stay is lifted. Because the moving party has not revealed the total amount of insurance proceeds they seek to recover, the court declines to grant the motion for relief.

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 not vacated to allow AmeriCredit dba GM Financial to collect the Farmers Insurance proceeds pertaining to the 2008 Dodge Ram 1500, VIN: 1D7HA18258J106791.
