

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 5, 2018 at 1:30 p.m.

1. [18-21840](#)-C-13 BRIAN/KIMBERLEE SWANSON MOTION FOR RELIEF FROM
[RE-2](#) Matthew DeCaminada AUTOMATIC STAY
5-17-18 [[35](#)]

MARIA ROSARIO VS.

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. 14 days' notice is required.

The Motion for Relief from Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The for Relief from the Automatic stay is granted.

Maria Rosario seeks relief from the automatic stay with respect to the Sacramento Superior Court Case 34-2018-226329. The claim is insured, and the movant seeks recovery from the insurance only and waives the deficiency against estate property.

Movant is provided for in the plan with an unsecured \$300,000.00 claim.

The Trustee responded to the motion pointing out that the notice and the motion for relief from stay were filed together instead of as separate filings as required by Local Rule 9004-2(c)(1). The trustee does not oppose granting relief from stay as the movant seeks recovery from insurance only and waives any deficiency.

The court finds the procedural deficiency in this case to be non-prejudicial, and will not deny the motion on those grounds. There appears to be no opposition to the substantive motion, and the court finds that relief from stay is proper under these circumstances.

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 Maria Rosario, to proceed with litigation in Sacramento Superior Court Case No. 34-2018-226329.

No other or additional relief is granted.

2. [14-24246](#)-C-13 CARL ASMUS AND JODI MOTION FOR RELIEF FROM
[JHW](#)-1 CAMPISI ASMUS AUTOMATIC STAY
Scott Coben 5-4-18 [[187](#)]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the June 5, 2018 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, Chapter 13 Trustee, and Office of the United States Trustee on May 4, 2018. Twenty-eight 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). 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.

Santander Consumer USA Inc. seeks relief from the automatic stay with respect to a 2007 Mercedes Benz motor vehicle.

The Debtor has not made 6 post-petition payments, with a total of \$3,348.00 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 \$12,615.68.

Trustee responds to the motion indicating that he does not oppose the motion. Trustee points out that the debtor has not disclosed this creditor, and it appears that this vehicle was purchased without permission from the bankruptcy court.

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 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 trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non-bankruptcy rights with respect to the 2007 Mercedes Benz.

No other or additional relief is granted

3. [18-21274](#)-C-13 KEITH/TABITHA BOLKISH
[JHW](#)-1 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-4-18 [[32](#)]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling: No appearance at the June 5, 2018 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, Chapter 13 Trustee, and Office of the United States Trustee on May 4, 2018. Twenty-eight 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). 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.

Santander Consumer USA Inc. seeks relief from the automatic stay with respect to a 2014 Hyundai Elantra motor vehicle.

The Debtor has not made 1 post-petition payment, with a total of \$336.30 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 \$13,961.02.

Trustee responds to the motion indicating that he does not oppose the motion.

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 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 trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non-bankruptcy rights with respect to the 2014 Hyundai Elantra.

No other or additional relief is granted
