UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 9, 2021 at 10:00 a.m.

FINAL RULINGS

1. 21-90248-E-7 RLM-1
CHAD COOPER
Michael Benavides
MOTION FOR RELIEF FROM AUTOMATIC STAY
8-10-21 [20]

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS.

Final Ruling: No appearance at the September 9, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 10, 2021. By the court's calculation, 30 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). 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 and other parties in interest 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.

State Farm Mutual Automobile Insurance Company ("Movant") seeks relief from the automatic stay to proceed against Debtor's auto insurance policy with Kemper in relation to th civil matter entitled *State Farm Mutual Automobile Insurance Company v. Chad Lynn Cooper* (Stanislaus County Superior Court Case No.: CV-21-001304) ("State Court Litigation"). Movant has provided the Declaration of Richard L. Mahfouz II to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Chad Lynn Cooper ("Debtor").

Movant argues that relief is sought for the sole purpose of collecting Debtor's insurance policy which existed on the date of the accident which gives rise to said state court action, and there will be no personal exposure to Debtor. Declaration, Dckt. 22. Movant is seeking the $5,000.00 policy amount present as of the date of the accident on June 13, 2020. MPA, at 3:17. Movant asserts that although the action against Debtor in the State Court Litigation exceeds Debtor's available insurance coverage, Movant agrees not to pursue Debtor's personal estate or assets. *Id.*, at 3:23-25.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Gary Farrar ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

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 State Farm Mutual Automobile Insurance Company ("Movant") 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 modified as applicable to Chad Lynn Cooper ("Debtor") to allow Movant, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in Stanislaus County Superior Court Case No.: CV-21-001304.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Gary Farrar ("the Chapter 7 Trustee"), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

2. **21-90296-E-7** **ARTURO DIAZ MAGANA** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION**
EAT-1 **Pro Se** **8-4-21 [19]**

KINECTA FEDERAL CREDIT UNION
VS.

Final Ruling: No appearance at the September 9, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 4, 2021. By the court's calculation, 36 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Relief from the Automatic Stay is granted.

KINECTA FEDERAL CREDIT UNION ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 GMC SIERRA 1500, VIN ending in 3922 ("Vehicle"). The moving party has provided the Declaration of Marshaun Logan-Larry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Arturo Diaz Magana ("Debtor").

Movant argues Debtor has not made one (1) post-petition payments, with a total of $628.27 in post-petition payments past due. Declaration, Dckt. 22. Movant also provides evidence that there is one (1) pre-petition payments in default, with a pre-petition arrearage of $628.27. *Id*.

Debtor filed a statement of intention that indicates the Debtor intends to retain the Property and enter into a reaffirmation agreement. Dckt. 1. According to Movant, Debtor has failed to return calls to the Movant regarding the vehicle. Declaration, ¶ 13. [Fn.1.]

FN. 1. Movant has provided the court with a Motion that clearly states the grounds with particularity which is the basis for the relief requested. Motion, Dckt. 19. The Motion does not state the legal basis for the

relief, such as 11 U.S.C. § 362(d)(1) – a lack of adequate protection. Such is not the "points and authorities," but something as simple as, "Based upon the above, relief from the stay as requested is proper due to the lack of adequate protection, and because there is no equity in the vehicle for Debtor/Estate and it is not necessary for any effective reorganization in this Chapter 7 case. 11 U.S.C. §§ 362(d)(1) and (d)(2)."

Under the Local Bankruptcy Rules, if the motion is six pages or less, the "points and authorities," if necessary may be included as part of the motion. L.B.R. 9014-1(d)(5). If the "points and authorities" would make the "mothorities" (a combined motion and points and authorities) more than six pages, then a separate points and authorities is required. As is shown by the present Motion, when grounds are stated clearly and with particularity and it is a discrete, well settled area of law, other than a reference to the applicable statute in the motion, no points and authorities are required.

DISCUSSION

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 $21,890.88 (Declaration, Dckt. 22), while the value of the Vehicle is determined to be $12,500.00, as stated in Schedules A/B and D filed by Debtor.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

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.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request For Special Order to Make Relief From Stay Effective If This Bankruptcy Case is Converted to Another Chapter

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion:

> 4. That the order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy code; . . .

Motion, p. 3:7.5-8.5; Dckt. 19.

Essentially, Movant's further relief requested in the prayer is that this court make this order, as opposed to every other order issued by the court, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

The court does not grant this "additional relief" requested in the prayer.

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 KINECTA FEDERAL 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 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 2014 GMC SIERRA 1500, VIN ending in 3922 ("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.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.