

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 21, 2017 at 1:30 p.m.

1. [17-26497](#)-C-13 TIMOTHY DEL CARLO MOTION FOR RELIEF FROM
[APN](#)-1 Matthew DeCaminada AUTOMATIC STAY
10-24-17 [[15](#)]
NISSAN-INFINITI LT VS.

Final Ruling: No appearance at the November 21, 2017 hearing is required.

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 October 24, 2017. 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.

Nissan-Infiniti LT seeks relief from the automatic stay with respect to a 2016 Nissan Altima motor vehicle leased by the debtor.

The Estrada Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$306.32 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 \$19,042.40.

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 Chapter 13 Trustee filed a response indicating that it did not oppose the relief as the debtor included this creditor on Schedule D and the Plan rejects the lease.

The debtor filed a non-opposition to the Motion for Relief.

The court shall issue a minute order terminating and vacating the automatic stay to allow Nissan-Infiniti LT, and its agents, representatives and successors, and all other creditors having lien rights against the property, to enforce their rights according to applicable nonbankruptcy law.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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, 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 2016 Nissan Altima.

No other or additional relief is granted.
