

[NOT FOR PUBLICATION]

**UNITED STATES BANKRUPTCY APPELLATE
PANEL FOR THE FIRST CIRCUIT**

BAP NO. PR 97-066

**IN RE MARINA RIOS BAEZ,
Debtor.**

**GENERAL MOTORS ACCEPTANCE CORPORATION,
Appellant,**

v.

**MARINA RIOS BAEZ AND
DIEGO FERRER, CHAPTER 7 TRUSTEE,
Appellees.**

**Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(Honorable Gerardo A. Carlo, U.S. Bankruptcy Judge)**

Before

VOTOLATO, Chief Judge, and VAUGHN and KENNER, U.S. Bankruptcy Judges

Eva Margarita Cortes Vazquez, Esq., for Appellant.

July 13, 1998

PER CURIAM

General Motors Acceptance Corporation (“GMAC”) appeals from a July 22, 1997 Order denying it relief from the automatic stay to proceed with its repossession action against the Debtor, Marina Rios Baez. The Debtor has not submitted a brief. The primary issue on appeal is whether the bankruptcy judge abused his discretion by denying relief from stay more than thirty days after the preliminary hearing. Finding no abuse of discretion, we affirm the decision of the bankruptcy court.

I. BACKGROUND:

The relevant facts are undisputed. In March of 1997, the Debtor filed her voluntary Chapter 7 petition. GMAC filed a motion for relief from the automatic stay on April 23, 1997.¹ The motion for relief alleged that, as of the date of the motion, the Debtor had defaulted under the terms of the conditional sales contract and was in arrears eight pre-petition payments totaling \$4,009.92 and two post-petition payments totaling \$1,002.48 for a total of approximately \$5,012.00. On April 23, 1997, the Court issued a notice to the parties informing them that they must file any objection to the motion for relief within eleven days; if any party filed an objection, the Court would hold a hearing on May 19, 1997 at 9:00 A.M.

On May 7, 1997, the Debtor filed a motion to extend the time for filing a response to the motion for relief for thirty days because her attorney would be out of the country until May 20, 1997. The Court granted this motion on May 13, 1997 and ordered the Debtor to respond to the motion for relief by June 16, 1997, the date of the “final” hearing. On May 13, 1997, GMAC filed an opposition to the Debtor’s motion to extend

¹ GMAC holds a claim secured by a 1993 Oldsmobile Delta 88. As of April 15, 1997, the amount owed to GMAC was \$12,313.46.

time to respond to the motion for relief. GMAC argued that the Court must rule on the motion for relief within thirty days, otherwise the automatic stay is automatically lifted with respect to GMAC.

The Bankruptcy Court held a preliminary hearing on the motion for relief within 30 days of the filing of the motion; that hearing was held on May 19, 1997.² At this hearing, the Debtor (pro se) testified that she needed an extension to respond to the motion for relief because her attorney was out of the country and GMAC's attorney refused to speak with her directly. Based on this testimony, the Court found cause to extend the thirty-day period and scheduled a final hearing for June 16, 1997. The Court explicitly found that "there is a reasonable likelihood that the party opposing relief may prevail as required under Section 362(e)." (Court Order dated May 19, 1997).

At the hearing on June 16, 1997, the Court learned that the Debtor had met with a representative of GMAC without her attorney present and had reached an agreement that was not in writing and which lacked the Chapter 7 Trustee's consent.³ For these reasons, the Court found cause for extending the hearing on the motion for relief until July 14, 1997. The Court permitted the parties to file a stipulation (including the Trustee's assent) within ten days.

The Court held the final hearing on July 14, 1997. GMAC argued that the Debtor was now five post-petition payments in arrears and that GMAC's collateral was not adequately protected. The Court concluded, however, based on the Debtor's testimony

² We note that the appellant erroneously stated in its brief that the Bankruptcy Court held the preliminary hearing on May 29, 1997.

³ The oral stipulation presented to the bankruptcy court provided that the automatic stay would be lifted immediately, but GMAC would not act until June 30, 1997 in order to give the Debtor the opportunity to pay \$6,200.45 arrearages. The Chapter 7 Trustee, however, had not yet abandoned the estate's interest in the automobile.

that the collateral was adequately protected. At this hearing, the Court explicitly extended the thirty-day determination period for an additional 24 hours so that the Debtor could remit a \$2,140.00 certified check to the Court's clerk.⁴ The Court stated that if the Debtor failed to tender the payment in certified funds, it would grant the motion for relief without further hearing, but if the Debtor paid as required, the motion for relief would be denied.

On July 22, 1997, the Court entered an order denying GMAC's motion for relief because the Debtor had paid \$2,140.00 to the Court as ordered. GMAC now appeals from this order.

II. ANALYSIS:

Section 362(e) of the Bankruptcy Code provides that

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

11 U.S.C. § 362(e) (emphasis added). The issue in the instant case focuses on the last sentence of this section that requires the Court to hold a final hearing within thirty days of

⁴ The sum of \$2,140.00 represents the five post-petition payments due as of the date of the final hearing. The eight pre-petition payments would be paid over a six month period in equal installments in addition to the monthly payment that would also be due each month.

the preliminary hearing unless the parties agree to an extension or the Court finds compelling circumstances. Because GMAC expressly did not waive the 30-day requirement, this Panel need only determine whether the bankruptcy judge abused his discretion when he found compelling circumstances to continue the first “final” hearing.

As we noted above, the Bankruptcy Court continued the first “final” hearing from June 16, 1997 to July 14, 1997 because the Debtor had reached an agreement with GMAC without her counsel present and without having the assent of the Chapter 7 Trustee, an indispensable party. Having reviewed all the transcripts and the Bankruptcy Court minutes in this case, we find no abuse of discretion in the Bankruptcy Judge’s decision to continue the final hearing beyond the 30-day period set forth under Section 362(e) of the Bankruptcy Code, and that his finding of compelling circumstances is fully supported by the record.

The appellant raises three additional related issues on appeal: (1) whether the Bankruptcy Court had the authority to compel GMAC to accept payments from the Debtor without a reaffirmation agreement; (2) whether the Bankruptcy Court erred when it denied the motion for relief and found that GMAC’s interests were adequately protected; and (3) whether the Bankruptcy Court erred when it applied equity principles in this case.

It is unclear what relief GMAC is seeking with respect to the first issue. It appears that GMAC wants us to clarify the effect of the Bankruptcy Court’s July 22, 1998 Order on its relationship with the Debtor. In any event, we recently held in In re Burr, 218 B.R. 267 (B.A.P. 1st Cir. 1998) that a debtor who wishes to retain collateral is only required to state an intention to retain or surrender collateral and is not required to state

further whether he or she would redeem it, claim it as exempt, or reaffirm the debt it secures. 11 U.S.C. § 521. In the instant case, the Bankruptcy Judge, correctly, did not compel the Debtor to reaffirm.

With respect to the second issue, at the July 14, 1997 hearing, the Court specifically found that the certified funds paid by the Debtor to GMAC within 24 hours were adequate protection payments. (July 14, 1997 Transcript, p. 17). After reviewing the transcripts and the Court minutes, this Panel agrees; the Bankruptcy Judge did not abuse his discretion in so ordering.

Finally, in light of the foregoing analysis, we find that the Bankruptcy Judge did not abuse his discretion when he applied equity principles in this case.

Finding no abuse of discretion, this Panel hereby affirms the July 22, 1997 Order.

AFFIRMED.