

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

RODRIGO HERNANDEZ : BK No. 10-15011
Debtor : Chapter 7

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ORDER GRANTING RELIEF FROM STAY

Heard on Greenwood Credit Union's Motion for Relief from Stay seeking to exercise its state law rights concerning a vehicle owned by the Debtor in which Greenwood holds a security interest. Greenwood also seeks allowance of attorney's fees and costs.

The Debtor opposes the motion, arguing that by the time Greenwood's motion was filed on January 31, 2011, Debtor was only one month delinquent rather than two months as stated in the Memorandum. Apparently, some confusion arises from the timing of payments made telephonically, probably through an automated clearing house, by the Debtor on January 31, vis-a-vis the computer posting of these payments to Debtor's account. Greenwood acknowledges that the December 2010 payment was posted on February 2, 2011,¹ but argues that even after this payment the Debtor is still delinquent under the contract when it (Greenwood) filed this motion.

¹ Under the installment sales agreement, the payment is due on the twenty-fourth of each month.

Debtor's response is that under R.I. Gen. L. § 6-51-3, a creditor cannot take any action until the defaulting party under an automobile loan agreement is ten days late in paying. Otherwise, Debtor has offered no evidence or argument refuting Greenwood's showing under § 362(d)(1). Debtor's argument misperceives the relief sought in this Court. Unless and until relief from stay is granted, the creditor may not take any action under applicable state law, and Greenwood acknowledges, as it must, that it is subject to all of the requirements of state law if relief from stay is granted here.

Therefore, for the reasons stated by Greenwood, Relief from Stay is **GRANTED** for the purposes stated above, and Greenwood's request for attorney's fees and costs is **ALLOWED** in the amounts of \$400.00 and \$151.61, respectively. At the hearing Greenwood agreed to stay any action for sixty days to allow the Debtor to pay the fees and costs, and it is so **ORDERED**.

Entered as an Order of this Court.

Dated at Providence, Rhode Island, this 16th day of June, 2011.



Arthur N. Votolato
U.S. Bankruptcy Court

Entered on docket: 6/16/11