

Duane M. Geck
Cal. State Bar No. 114823
dmg@severson.com
Donald H. Cram
Cal. State Bar No. 160004
Tex. State Bar No. 05000300
dhc@severson.com
SEVERSON & WERSON
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, California 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

Keith A. Langley
State Bar No. 11919500
Brandon K. Bains
State Bar No. 24050126
LANGLEY LLP
1301 Solana Blvd
Building 1, Suite 1545
Westlake, Texas 76262
Telephone: 214.722.7171
Facsimile: 214.722.7161
bbains@l-llp.com

Attorneys for Secured Creditor
FORD MOTOR CREDIT COMPANY LLC

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

IN RE:	§	
	§	
REAGOR-DYKES MOTORS, LP	§	Case No. 18-50214-rlj11¹
	§	(Jointly Administered)
Debtor.	§	

**REPLY TO DEBTORS' OBJECTION TO FORD MOTOR CREDIT COMPANY LLC'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

¹ The Debtors are Reagor-Dykes Imports, LP (Case No. 18-50215), Reagor-Dykes Amarillo, LP (Case No. 18-50216), Reagor-Dykes Auto Company, LP (Case No. 18-50217), Reagor-Dykes Plainview, LP (Case No. 18-50218), and Reagor-Dykes Floydada, LP (Case No. 18-50219).

I. INTRODUCTION

Debtors' objection to Ford Motor Credit Company LLC's ("Ford Credit") motion for relief from the automatic stay is nothing short of a last ditch effort to buy additional time. The objection is long on speculative allegations and short on objective detail. The statement that the Debtors now somehow dispute Ford Credit's claim runs contrary to the Debtors' Bankruptcy Schedules, filed under penalty of perjury, which clearly indicate that Ford Credit's claim is undisputed. Further, there has been no objection to Ford Credit's Proofs of Claim. The undisputed facts evidence that Ford Credit has a valid perfected security interest in substantially all of the Debtors' assets and that Debtors lack an equity in Ford Credit's collateral. It is also a forgone conclusion that the majority of Ford Credit's collateral consist of Debtors' inventory of vehicles which are, by nature, depreciating assets. The position that the Debtor "is not dead," "is not out of money," and that Ford Credit's collateral "is necessary for an effective reorganization" does not help Debtors because *there is no reorganization that is in prospect*. A Plan (no Disclosure Statement) was filed the day before the hearing on Ford Credit's motion – a Plan that is unconformable on its face. Debtors have taken no steps to gain Court approval of any post-petition financing. Debtors' permission to use Ford Credit's cash collateral expired January 5, 2019. After five months, there is nothing in the Court's record to support that the Debtors have a reorganization "in prospect." Ford Credit's collateral position has eroded over the past five months and continues to erode.

Ford Credit has been transparent with Debtors and the Court in its willingness to support operations through a § 363 sale and went to extraordinary efforts to do so in an attempt to maximize the value of its collateral. Debtors' last minute Plan is conditioned upon legally impermissible third-party releases of Bart Reagor and Rick Dykes by all creditors and Debtors. That begs the question, is this reorganization really an effort to repay creditors and help the Lubbock community or an effort to eliminate the personal liability of non-debtor individuals from significant debts owed not only to Ford Credit, but the Debtors and other creditors. Debtors' characterization of its motion as an effort to "bury" the Debtors is unfounded. The

answer to the question “why” Ford Credit wants to proceed to liquidate its collateral is simple – the efforts over the last five months have produced no asset sale and there is no realistic prospect that the Debtors can enhance the value of Ford Credit’s collateral in the near term. Ford Credit is simply not willing to shoulder further risk of diminution of its collateral. Ford Credit is legally entitled to relief from the automatic stay and its motion should be granted.

Worse yet, Debtors’ submission goes onto make reckless, and completely false statements to the Court regarding Ford Credit employee, Gary Byrd, in some last ditch attempt to create a reason for this Court to give more time to the Debtors. Indeed, the Debtors state that Gary Byrd’s “son worked for Reagor-Dykes without the ownership’s group’s knowledge...” and the Debtors are trying to understand this fact. But Gary Byrd does not have a son, let alone one that worked at the Dealerships. Debtors later amended its objection to state, without supporting evidence, that Shane Smith hired a person named Preston Legere, who was allegedly the boyfriend of Gary Byrd’s daughter. However, the damage has already been done. Gary Byrd’s daughter does not date Preston Legere. This all post-dates Bart Reagor threatens to shoot Gary Byrd. Now Debtors make completely false and salacious statements to slander Gary Byrd reputation and attempt to tie him to Debtors’ fraud. This is further evidence that Debtors will stop at nothing, including making misrepresentations about a Ford Credit employee’s family to buy more time. Debtors are grasping at straws and continuing a pattern of intimidation of Ford Credit’s employees. Debtors are not to be believed (or trusted) with respect to the representations that it makes to the Court. This desperate and slanderous conduct should not be rewarded or condoned by the Court.

The bottom line is that Ford Credit has done all it can do for over five months to support an outcome to maximize value and Ford Credit has taken risk and allowed over \$3.1 million of cash collateral to be used while its collateral position diminished. Now, Ford Credit asks this Court to lift the stay because there is no reorganization that is in prospect and Ford Credit can no longer allow its collateral to be used and its losses to increase in pursuit of an unconformable Plan. Ford Credit’s motion should be granted.

II. REPLY

A. There Is No Reorganization That Is In Prospect.

Despite Debtors' statement to the contrary², the debt owing to Ford Credit is undisputed and the value of Ford Credit's collateral is significantly less than what is owing. The Debtors' lack an equity in Ford Credit's collateral. In its last ditch effort to buy time, Debtors resort to smear tactics and fabrication. Without any supporting proof or evidence, Debtors recklessly and slanderously allude to an alleged relationship between RDAG employee, Shane Smith, and Ford Credit employee, Gary Byrd and the allegation that Gary Byrd's son worked for RDAG. The truth is that: 1) Gary Byrd does not have a son; 2) that there was no long-term friendship between Smith and Byrd that resulted in Byrd's or Ford Credit's knowledge of or involvement in the fraud; and 3) any insinuation/speculation that Ford Credit (or Byrd) participated in the fraud engaged in by Debtors and Debtors' employees in completely unfounded in fact or reality.

Debtors' eleventh hour Plan is facially unconfirmable because: 1) it contains impermissible third-party releases; 2) it is conditioned upon Ford Credit providing post-confirmation floorplan financing; and 3) it violates § 1129(b)(2)(B)(ii) of the Bankruptcy Code (the Absolute Priority Rule). Under *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988), there is sliding scale with respect to the debtor's burden to show the court that there is a reorganization in prospect. The longer the case remains in Chapter 11, the heavier the burden. This case has been pending since August 1, 2018. There has been a failed § 363 sale process. Ford Credit has permitted Debtors to use over \$3.1 million of its cash collateral and allowed the Debtors to sell 72 unfloored vehicles and use all of the proceeds. Filing a Chapter 11 Plan that is unconfirmable on its face the day before Ford Credit's relief

² Debtors allude to an alleged relationship between RDAG employee, Shane Smith, and Ford Credit employee, Gary Byrd and the allegation that Gary Byrd's son worked for RDAG. The truth is that: 1) Gary Byrd does not have a son (he has two daughters who never worked for RDAG); 2) that there was no long-term friendship between Smith and Byrd; and 3) any insinuation/speculation that Ford Credit participated in the fraud engaged in by Debtors and Debtors' employees in completely unfounded in fact or reality.

from stay hearing does not satisfy Debtors' burden. There is no reorganization that is in prospect. Ford Credit is entitled to relief from stay.

B. Ford Credit is Entitled to Relief from Stay for Cause, Including Lack of Adequate Protection.

Debtors do not address Ford Credit's motion seeking relief from stay "for cause" under 11 U.S.C. § 362(d)(1), other than to say that they are providing adequate protection. However, that offer of adequate protection is illusory as it is conditioned upon the confirmation of the yet to be filed Plan. In reality, all the risk of any proposed reorganization is being foisted on Ford Credit. That is not the way adequate protection works. Ford Credit's collateral continues to deteriorate as Ford Credit's vehicle collateral consist of depreciating assets that lose value every day. There is no light at the end of the tunnel as to when the facially unconfirmable Plan could possibly be confirmed. Ford Credit is entitled to relief from stay for cause and lack of adequate protection pursuant to 11 U.S.C. § 362(d)(1). At this point, the estate is administratively insolvent and Debtors should not be permitted to further erode Ford Credit's Collateral in an effort to confirm a facially unconfirmable Plan.

III. CONCLUSION

For the reasons set forth above, Ford Credit respectfully requests that this Court:

1. Issue an order granting relief from the automatic stay authorizing Ford Credit to enforce its security interests in its Collateral including but not limited to taking possession and disposing of Ford Credit's vehicle and non-vehicle collateral pursuant to applicable law;
2. Waive the 14 day waiting period under Bankruptcy Rule 4001(a)(3);
3. Issue an order directing Debtors to turnover and surrender the Collateral to Ford Credit;
4. Issue an order directing Debtors and their counsel to cease and desist from making unsupported and wholly false statements about Ford Credit's employees;
5. Issue a show cause order directing Debtors and their counsel to explain to the Court and Ford Credit the basis of their false misrepresentations to the Court regarding Gary

Byrd alleged involvement is the Debtors' fraud and misrepresentations about his family including making up family members that do not exist; and

6. Enter such other and further relief as this Court deems necessary and proper.

DATED: January 7, 2019

SEVERSON & WERSON
A Professional Corporation

By: /s/ Donald H. Cram
Donald H. Cram

Cal. State Bar No. 160004
Tex. State Bar No. 05000300
SEVERSON & WERSON
A Professional Corporation
One Embarcadero Center, Suite 2600
San Francisco, California 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439
dhc@severson.com

Attorneys for Secured Creditor
FORD MOTOR CREDIT COMPANY LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served electronically by the Court's ECF System on all parties registered to receive such service on the 7th day of January 2019.

/s/ Donald H. Cram
Donald H. Cram