

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION**

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In re:

BKY No. 03-47742

Chapter 7

Mahfood Abdalrhman Btoush

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

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TO: The Honorable Robert J. Kressel, Judge of United States Bankruptcy Court, The Debtor, Mahfood Abdalrhman Btoush, The Office of United States Trustee, Trustee Julia Christians, and all other parties-in-interest.

1. Ali Sabhari ("Sabhari"), by and through his undersigned attorney, moves the court for an order relief from stay and gives notice of hearing.
2. The Court will hold a hearing on this motion at 2:00 p.m. on September 9, 2004, or as soon thereafter as counsel may be heard, before the Honorable Robert J. Kressel, Judge of United States Bankruptcy Court, Courtroom 8W, United States Bankruptcy Court, 300 South Fourth Street, Minnesota.
3. **Any response to this motion must be filed and delivered not later than September 6, 2004, which is three business days before the time set for the hearing, or served and filed by mail not later than August 31, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. These motion proceedings arise under 11 U.S.C. §§361 and 362. This court has jurisdiction over these proceedings pursuant to 28 U.S.C. §§1334 and 157. These motion proceedings are core proceedings.
5. This case was commenced by the filing of a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code on October 31, 2003, and subsequently converted to a case under Chapter 7 of the United States Bankruptcy Code on August 16, 2004. This case is now pending in this court.
6. Sabhari moves the court for an order granting relief from stay with respect to certain business assets, inventory and equipment of Mahfood Abdalrhman Btoush (“Debtor”) located at the business premises of Minneapolis Food & Dollar Store at 1845 Nicollet Avenue South, Minneapolis, Minnesota (“Assets”).
7. As of the commencement of the case, Sabhari was a secured creditor of the Debtor and the estate herein. Sabhari sold the Assets to the Debtor pursuant to an Asset Purchase Agreement dated February 3, 2003. The purchase price for the Assets was to be paid in installments over time. Sabhari retained a security interest in the Assets in order to secure the unpaid purchase price. A true and correct copy of the Asset Purchase Agreement, the Security Agreement and the UCC-1 Financing Statement are appended to the accompanying Affidavit of Ali Sabhari as Exhibits 1, 2 and 3, respectively.
8. Consequently, Sabhari is a secured creditor, holding a claim in the amount of \$106,300, which is secured by substantially all of the business assets. The collateral securing the debt is worth less than \$40,000.

9. Defaults exist under the Asset Purchase Agreement insofar as the Debtor has failed to make regularly scheduled payments.
10. Good cause exists for the granting of relief from stay because: (1) Sabhari's interests in the collateral is not adequately protected, and the value of the collateral is diminishing; and (2) in light of the pending Chapter 7 case, the property is not necessary for an effective reorganization.
11. In the event this motion is opposed, Ali Sabhari, whose address is 1150 Hennepin Avenue South, #701, Minneapolis, Minnesota 55403 will testify as to the values of the collateral, the security interest, and other matters relevant herein.

NOW THEREFORE, Ali Sabhari respectfully moves the court for an order as follows:

1. Granting Ali Sabhari relief from the automatic stay in order to recover possession of and dispose of the Assets; and
2. For such other relief as the court deems just and equitable under all of the circumstances.

Respectfully submitted,

**Joseph W. Dicker, P.A.**

Dated: August 26, 2004

/e/ Joseph W. Dicker  
Joseph W. Dicker (158264)  
Suite 208  
1406 West Lake Street  
Minneapolis, MN 55408  
Telephone: (612) 827-5941

**UNITED STATES BANKRUPTCY COURT  
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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RELIEF FROM  
STAY**

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**INTRODUCTION**

This Memorandum of Law is submitted by Ali Sabhari (“Sabhari”), a secured creditor in these proceedings, in support of his motion for an order granting relief from stay.

**FACTUAL BACKGROUND**

Mr. Ali Sabhari is the owner of a convenience store business located at 1845 Nicollet Avenue South, Minneapolis, Minnesota. Sabhari sold the business to the Debtor, Mr. Mahfood Abdalrhman Btoush (“Debtor”). The parties entered into an Asset Purchase Agreement on February 3, 2003. The Asset Purchase Agreement provides for the purchase price of \$105,000. The purchase price was to be paid over time. Debtor granted Sabhari a security interest in the assets that he had purchased in order to secure his obligations to pay the deferred purchase price. The Debtor entered into a Security Agreement. The lien was perfected by the filing of a UCC-1 Financing Statement with the Secretary of State for the State of Minnesota on February 25, 2003.

The Debtor filed for relief under Chapter 13 of the United States Bankruptcy Code on October 31, 2003. The Chapter 13 case was converted to one under Chapter 7 of the United States Bankruptcy Code on August 16, 2004.

At the time of the conversion of the case, the Debtor remained in possession of the business assets and the business property that are Sabhari's collateral.

Sabhari moves the court for relief from stay in order to recover possession of his collateral and to enable him to dispose of the collateral in accordance with the Uniform Commercial Code.

### **3. ARGUMENT**

Commencement of the case under Title 11 U.S.C. invokes the automatic stay provided for in 11 U.S.C. §362. The automatic stay is to withstall collection activity against the Debtor and the property of the estate. Relief from stay may be granted upon the showing of cause including the lack of adequate protection, see, 11 U.S.C. §362(d)(2); or relief from stay is also warranted when there is no equity in the subject property, the property is not necessary for an effective reorganization, see, 11 U.S.C. §362(d)(2). Here, good cause exists for the granting of relief from stay. Sabhari's collateral is worth not more than \$40,000. The debt owed to Sabhari is in the amount of \$106,300. There is no equity in the property. Since this case has converted to a liquidation case under Chapter 7, there is no reorganization in prospect. The property is therefore not necessary to an effective reorganization. In addition, Sabhari's interest in the property is not being adequately protected. The collateral is diminishing in value. Sabhari believes the property is uninsured. Some of the inventory consists of perishable items that will go bad and be unsellable. A significant portion of the inventory are dated products which will become unsellable over time. This means that the inventory is diminishing in value daily. Sabhari has received no adequate protection and no offer of adequate protection with

respect to the diminishing in value. Mr. Sabhari is entitled to relief from stay in order to protect his interest in the collateral.

#### **4. CONCLUSION**

Ali Sabhari is entitled to relief from stay, and the court should grant relief from stay for the purpose of allowing Ali Sabhari to recover possession of and dispose of collateral.

Respectfully submitted,

**Joseph W. Dicker, P.A.**

Dated: August 26, 2004

/e/ Joseph W. Dicker  
Joseph W. Dicker (158264)  
Suite 208  
1406 West Lake Street  
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**AFFIDAVIT OF ALI SABHARI**

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

COMES NOW, Ali Sabhari, being first duly sworn, states and deposes as follows:

1. I am a secured creditor of the estate herein. I make this Affidavit in support of my motion for relief from stay. I make this Affidavit of my own knowledge. If called to testify orally in these proceedings, I would testify substantially as follows.
2. I was the owner of a convenience store business located at 1845 Nicollet Avenue South, Minneapolis, Minnesota.
3. Pursuant to an Asset Purchase Agreement dated February 3, 2003, I sold the business assets to Mr. Mahfood Abdalrhman Btoush, the Debtor in these proceedings. A true and correct copy of the Asset Purchase Agreement, the Security Agreement and the UCC-1 Financing Statement are appended to this Affidavit as Exhibits 1, 2 and 3 respectively.
4. The Asset Purchase Agreement provides for the payment of the purchase price in installments over time. The Debtor's obligation to pay the purchase price was secured by the granting of a lien on all of the business assets including

inventory, furniture, fixtures and equipment, as evidenced by the Security Agreement and UCC-1 Financing Statement.

5. The inventory consists of food and dry good items, cigarettes and the like. Most, if not all of the food products are “dated” goods which cannot be sold after the specified expiration date. The inventory also consists of food items that have short expiration dates because they are perishable such as dairy products and fresh produce.
6. The perishable items go bad on a virtually daily basis. Consequently, because of the perishability of some of the inventory, and the dated inventory, the inventory is diminishing in size and value daily.
7. The Debtor initially scheduled the value of inventory in his Chapter 13 case at approximately \$121,000. I believe that the inventory has been substantially diminished through depletion and use and has not been substantially replaced since the commencement of the Chapter 13 case.
8. Because the Debtor has not provided any current inventory information, it is difficult to estimate the value.
9. Based on recent observations of the store I believe that the inventory is worth substantially less than \$40,000.
10. The debt owed to me is in the approximate amount of \$106,300.
11. I have not received any offer for adequate protection and have not received any payments or any other form of adequate protection from the Debtor.
12. I do not know whether the business assets are insured, and have not received any confirmation.

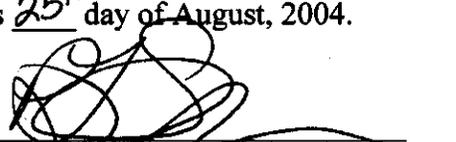
13. Based on all of these circumstances, I request that the court grant me relief from stay so that I may recover the collateral in order to protect my interests in this collateral.

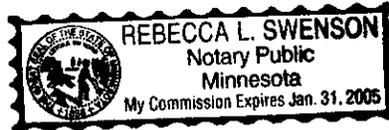
FURTHER YOUR AFFIANT SAYETH NOT.

  
Ali Sabhari

Subscribed and sworn to before me

this 25<sup>th</sup> day of August, 2004.

  
\_\_\_\_\_  
Notary Public



**UNITED STATES BANKRUPTCY COURT  
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Debtor.

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**ORDER GRANTING RELIEF FROM STAY**

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AT: Minneapolis, Minnesota.

This matter came before the Honorable Robert J. Kressel, Judge of United States Bankruptcy Court, on the 9<sup>th</sup> day of August, 2004, upon the motion of Ali Sabhari for relief from stay. The court having jurisdiction, due notice having been given, and the court being fully apprised on the premises, makes the following:

IT IS THEREFORE ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362(a) of the Bankruptcy Code is hereby modified as to Mr. Ali Sabhari, effective immediately, and Mr. Sabhari is granted relief from stay for the purpose of recovering possession of and disposing of all inventory, furniture, fixtures and equipment, accounts and accounts receivable constituting the collateral of the debt owed by the Debtor to Ali Sabhari.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

**By the court:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Robert J. Kressel  
Judge of U.S. Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
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**UNSWORN DECLARATION OF MAILING**

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Joyce L. Tomlinson, of the City of Minneapolis, County of Hennepin, State of Minnesota, upon penalty of perjury, hereby says that on August 26, 2004, she served the attached Notice of Hearing and Motion for Relief from Stay, Memorandum of Law, Affidavit of Ali Sabhari and proposed Order upon the following:

Office of U.S. Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Wayne G. Nelson, Esq.  
5500 Wayzata Boulevard  
Suite 1025  
Golden Valley, MN 55416

Julia Christians, Esq.  
120 South 6<sup>th</sup> Street  
Suite 2500  
Minneapolis, MN 55402

by U.S. Mail by mailing to said parties true and correct copies thereof, enclosed in an envelop, postage prepaid, and depositing same in the post office at Minneapolis, Minnesota, directed to said attorney at the address indicated.

/e/ Joyce L. Tomlinson  
Joyce L. Tomlinson