

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-44134-RJK
Chapter 7

Kevin J. Helgeson,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Terri A. Georgen, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion at **2:00 pm on Thursday, October 14, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.
3. Any response to this motion must be filed and delivered not later than Monday, October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, October 5, 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. This motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on July 26, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2000 Chevrolet S-10 Pickup and 1997 Ford Escort, vehicle identification number(s) 1GCCS19WOYK150095 and 1FALP13P4VW241917 (the "Vehicles").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicles are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of May through September 2004 totaling \$2,411.50 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$11,727.05 as of the date hereof. On information and belief, the fair market values of the Vehicles are approximately \$9,450.00.

10. Wells Fargo Financial Acceptance's interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicles. There is no appreciable equity in the Vehicles and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicles are not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicles constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

12. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, A. Hansen, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicles promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicles in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 20, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Kevin J. Helgeson,

Bky. No. 04-44134

Debtor(s).

Affidavit

I, Andy Hansen, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):
2000 Chevrolet S-10 Pick Up VIN# 1GCCS19WOYK150095 and 1997 Ford Escort VIN# 1FALP13P4VW241917.
2. \$11,727.05 is the outstanding balance under the contract.
3. \$2,411.50 is the amount of the existing delinquency under the contract.
4. \$9,450.00 is the fair market value of the Collateral.
5. Yes appropriate insurance has been verified.

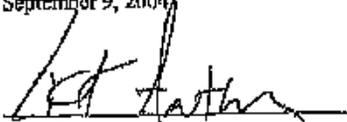
Further your affiant sayeth not.

Dated: 9/9/2004



Andy Hansen
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 9, 2004,



Notary



07/29/2004 07:48 7655372481

WELLS FARGO ACCEPTANCE

PAGE 05

NOTE AND SECURITY AGREEMENT (including Loan Statement)

IDENTIFICATION OF PARTIES: Except where we indicate otherwise, we use the words you and your to mean the Borrower and anyone else who signs this Note and Security Agreement. The words we, us, and our refer to the Creditor.

WELLS FARGO FINANCIAL ACCEPTANCE, INC.
7100 NORTHLAND DR N, 210
BROOKLYN PARK, MN 55400

Form with fields for Borrower Name (HELGESON, KEVIN J.), Address (8927 NECKER AVE), and various payment and interest details.

YOUR PROMISE TO PAY AND THE TERMS OF REPAYMENT. To repay your loan, you promise to pay all the amounts shown above as Total Payments which includes interest at the Agreed Rate of Interest Per Year and also includes any other charges shown above in the Identification of Amount Financed box. You'll pay the Total of Payments to us at our office in installments each month according to the terms of repayment shown directly above.

THE PARAGRAPHS CHECKED BELOW DESCRIBE THE COLLATERAL COVERED BY THIS NOTE AND SECURITY AGREEMENT:

Form with checked box (X) and details for Motor Vehicle (2000 CHEVROLET FORD, 510 PICKUP ESCORT).

I understand that some or all of the above property is normally protected by the law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract.

ADDITIONAL TERMS: The additional terms printed on pages 2 and 3 are a part of this Note and Security Agreement and you are bound by them in the same manner as if they were printed on page 1 of this Note and Security Agreement.

SIGNATURES: If you agree to be bound by the terms of this Note and Security Agreement, please sign your name below. All persons signing this Note and Security Agreement will be fully responsible for paying it in full.

YOU ACKNOWLEDGE THE EXISTENCE OF A SEPARATE ARBITRATION AGREEMENT SIGNED CONCURRENTLY WITH THIS NOTE AND SECURITY AGREEMENT, AND YOU SPECIFICALLY AGREE TO BE BOUND BY ITS TERMS.

Form with signature lines and checkboxes for COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST.

07/29/2004 07:48

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WELLS FARGO ACCEPTAN

PAGE 06

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

HELGESON KEVIN JAY
216 BROWN RD APT 105
LONG LAKE MN 55396

GNZZ9#

97 <small>Year</small>	FORD <small>Make</small>	4DEST <small>Model</small>	CG640L215 <small>Title No.</small>
1FALP13P4VNR241917 <small>VIN</small>		02/12/99 <small>Security Date</small>	NO <small>Retain</small>

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

COMMUNITY CREDIT CO
1350 E HWY 98
WHITE BEAR LAKE MN 55110

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

10-16-02

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

HELGESON KEVIN JAY
9497 DECKER AVE
NORTHFIELD MN 55057

DSD695

00 <small>Year</small>	CHEV <small>Make</small>	PCS <small>Model</small>	D2840P368 <small>Title No.</small>
1GCCS19W0YK1B0095 <small>VIN</small>		09/06/02 <small>Security Date</small>	NO <small>Retain</small>

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

WELLS FARGO FIN ACCEPT
7100 MOLAND CR N STE 210
BROOKLYN PARK MN 55428



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
Kevin J. Helgeson,
Debtor(s).

Case No.04-44134-RJK
Chapter 7

***MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY***

Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 2000 Chevrolet S-10 Pickup and 1997 Ford Escort with a vehicle identification number 1GCCS19WOYK150095 and 1FALP13P4VW241917 (collectively, the "Vehicle"). Payments due under the terms of the Contract for the months of May through September 2004 totaling \$2,411.50 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$11,727.05 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$9,450.00.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Financial Acceptance has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. United Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$11,727.05 as of the date hereof. The fair market value of the Vehicle is approximately \$9,450.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 20, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Kevin J. Helgeson

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-44134-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
April M. Little
Prescott & Pearson
PO Box 120088
New Brighton, MN 55112

(Trustee)
Terri A. Georgen
PO Box 16355
St Paul, MN 55116

(Debtor(s))
Kevin J. Helgeson

9697 Decker Ave Northfield,
MN 55057

And I declare, under penalty of perjury, that the foregoing is true and correct.

Date: September 20, 2004 Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
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**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Thursday, October 14, 2004 on the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2000 Chevrolet S-10 Pickup and 1997 Ford Escort, vehicle identification number 1GCCS19WOYK150095 and 1FALP13P4VW241917 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge