

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44327-RJK  
Chapter 13

Trellis S. Johnson,

Debtor(s).

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

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TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 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, November 4, 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, November 1, 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 26, 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 13 case was filed on August 4, 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 Malibu, vehicle identification number 1G1ND52J2Y6342810 (the "Vehicle").

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 Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$12,602.04 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,000.00.

10. The failure of the Debtor(s) to provide evidence of insurance 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.

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

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

13. 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 Vehicle promptly upon the Court signing the Order.

14. 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 Vehicle 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: October 7, 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:

Trellis S. Johnson,

Debtor(s).

Chapter 13 Case

Bky. No. 04-44327

Affidavit of Darin Wyant

I, Darin Wyant, 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 Malibu VIN# 1G1ND52J2Y6342810.
2. \$12,602.04 is the outstanding balance under the contract as of October 6, 2004.
3. \$3,241.96 is the amount of the existing delinquency under the contract.
4. \$6,000.00 is the fair market value of the Collateral.
5. No Appropriate insurance has been verified.
6. NA is the payment default under the Chapter 13 Plan.

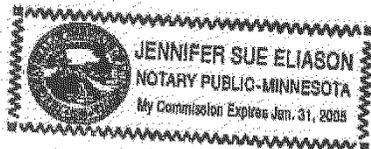
Further your affiant sayeth not.

Dated: 10/6/2004

  
Darin Wyant  
Bankruptcy Specialist  
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on October  
6, 2004

  
Notary



**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.  
 YOUR ACCOUNT IS PAYABLE TO THE CREDITOR SHOWN BELOW  
**WELLS FARGO FINANCIAL ACCEPTANCE, INC.**  
 1829 WEST COUNTY ROAD G  
 ROSEVILLE, MN 55113

Account Number: 31020042  
 Type: 0

Borrower's (Borrower and Address)  
**JOHNSON, TRELITS S.**  
 7281 OAK PARK VILLAGE DR  
 MINNEAPOLIS, MN 55425

Additional Borrower's Signature

Date of Loan	First Payment Due Date	Current Date of 90th Month	First Payment Due Date	First Payment	Current Payments	Number of Monthly Payments
03/27/03	05/09/03		04/09/07	\$ 423.89	\$ 352.00	48

18.00 % ANNUAL PERCENTAGE RATE: the cost of your credit as a yearly cost.  
 4888.81 FINANCE CHARGE: the dollar amount the credit will cost you.  
 11892.88 Amount Financed: the amount of credit (money) in full or on your behalf.  
 18987.88 Total of Payments: the amount you will have paid after you have made all payments as scheduled.

Law Charge: if any part of a payment, other than the final payment, is more than 10 days late, you will be charged a late charge equal to 5% of the scheduled payment, but not less than \$5.00.

Prepayment: if you pay off early, you may be entitled to a refund of part of the finance charge.

Security: You are giving us a security interest in the property indicated below:  
 Motor Vehicle(s)  Household Goods  Household Goods & Appliances/Recreation Equipment  
 This loan is unsecured  The Goods or Property Being Purchased  Real Estate  
 Other Property:

ITEMIZATION OF AMOUNT FINANCED

\$ 11892.88	AMOUNT FINANCED (Sum of amounts shown to the left)
\$ NONE	AMOUNT PAID ON YOUR ACCOUNT
\$ NONE	PAID FOR YOU FROM LEGAL SERVICE CONTRACT
\$ 34.81	AMOUNT OWED TO YOU DIRECTLY
AMOUNTS PAID TO OTHERS ON YOUR BEHALF	
\$ NONE	To Ins. Co. for Life Insurance (Single)
\$ NONE	To Ins. Co. for Life Insurance (Joint)
\$ NONE	To Ins. Co. for Accident & Health Insurance (Single)
\$ NONE	To Ins. Co. for Accident & Health Insurance (Joint)
\$ NONE	To Ins. Co. for Unemployment Insurance
\$ 19.00	To Public Utilities for Security Interest Fee
\$ NONE	To Public Utilities for Mortgage Payable Tax
\$ NONE	To Appraiser for Appraisal
\$ NONE	To Ins. Co. for Title Insurance
\$ NONE	For Title Charge To
\$ NONE	For Abstract To
\$ 11836.17	to WELLS FARGO ACCEPTANCE
\$	To
\$	To
\$	To

Can your contract documents for any vehicles:  
 Information about registration, safety, any required payment of tax before the scheduled date, and prepayment return and penalties.

Closed By

*Bg*

**YOUR PROMISE TO PAY AND THE TERMS OF REPAYMENT.** To repay your loan, you promise to pay us the amount shown above as Total of Payments which includes interest at the Agreed Rate of Interest Per Year and also includes any other charges shown above in the Itemization 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.

**RATE OF INTEREST.** The Agreed Rate of Interest Per Year is the Annual Percentage Rate shown above. The amount of interest is the Finance Charge shown above. Unless this Note and Security Agreement is converted to an interest-bearing loan, the rate of interest per year after maturity until fully paid is also the Annual Percentage Rate shown above.

**YOU GRANT US A SECURITY INTEREST.** You give us a security interest in your property described below. This property is called collateral. You also give us a security interest in any accessions to and proceeds of the collateral. Accessions are goods collateral. You also give us a security interest in any amount due to you under any credit insurance and scheduled services contract purchased with this loan and listed in the Itemization of Amount Financed, including any refund of unearned premium for the insurance and unearned charge for the extended service contract. The purpose of this security interest is to protect us if you don't repay your loan described above or if you break any promise made in this Note and Security Agreement.

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

(a) All of the household goods and transportation equipment of every kind now located at the Borrower's residence address shown above, except cars, vans, property which is exempt under Minnesota Statutes Section 600.02, and water, electric, telephone, telegraph, or radio and television sets and other equipment.

(b) The following property located at the Borrower's residence address indicated above:

(c) Motor vehicle(s) described as follows:

Year	Make	Model	Serial Number
2000	CHEVROLET	NAL18U	1G1ND52J2Y6342810

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. By signing below, you are authorizing disbursement of the loan proceeds as shown above in the "Itemization of Amount Financed" box.

**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.**

*Mellie Johnson* SIGN HERE

**COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST**

In this Collateral Owner's Grant of a Security Interest, the word you means anyone who signs below. The words we and us refer to the Creditor. To see all of the Borrower's obligations under this Note and Security Agreement, you give us a security interest in the property you own described in the description of collateral above ("collateral") and you agree that we have rights in the collateral as provided by this Note and Security Agreement. However, you shall not be personally responsible for the payment of any amounts owed under this Note and Security Agreement.

SIGN HERE

2004 THU 10:40 AM WELLS FARGO ACCEPT 9578

FAX NO. 6516369480

4/22/03

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

JOHNSON TRELLIS SHERELLE  
7821 OAK PARK VILLAGE DR  
ST LOUIS PARK MN 55426

HVT395

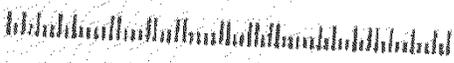
1ST SECURED PARTY

LIEN HOLDER

00 Year	CHEV Make	4DMAL Model	J1084R006 Title NR.
IG1ND52J2Y6342810 VIN	03/27/03 Security Date	NO Rebuilt	

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

WELLS FARGO FINANCIAL ACCEPT  
1629 W CTY RD C  
ROSEVILLE MN 55115



**WELLS  
FARGO FINANCIAL**

Wells Fargo Financial Acceptance  
3101 West 69th Street  
Edina, MN 55435  
(952) 920-9270

Fax: (952) 915-6550

September 21, 2004

Ian T. Ball  
12 S 6th St Ste 326  
Minneapolis, MN 55402

Re: *Trellis S. Johnson*  
Bky. No. 04-44327  
Acct. No. 31020042

Dear Counselor:

Please be advised that according to our records, insurance coverage has lapsed and/or no current proof of insurance has been provided on the 2000 Chevrolet Malibu VIN# 1G1ND52J2Y6342810 owned by the above-referenced Debtor(s). Please be further advised that the amount of the deductible on this insurance cannot exceed \$500. If we are not provided acceptable insurance information on or before September 27, 2004, we may seek relief in the Bankruptcy Court. Thank you for your attention to this matter.

Sincerely,

Wells Fargo Financial Acceptance

By 

Ryan Fods

*\* Third and last request!!*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-44327-RJK

Chapter 13

Trellis S. Johnson,

Debtor(s).

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

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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 Malibu with a vehicle identification number 1G1ND52J2Y6342810 (the "Vehicle"). The balance due under the Contract is \$12,602.04 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$6,000.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

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. § 362(d)(1). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Financial Acceptance with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan

supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

### 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.

Respectfully Submitted,

Dated: October 7, 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:

Trellis S. Johnson

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-44327-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))  
Ian Tranqair Ball  
12 S. 6th St., Ste. 326  
Minneapolis, MN 55402

(Trustee)  
Jasmine Keller  
12 S 6th Street Suite 310  
Minneapolis, MN 55402

(Co-Obligor)

(Debtor(s))  
Trellis S. Johnson  
7281 Oak Pk Village Dr  
St. Louis Park, MN 55426

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

Dated: October 7, 2004

Signed: /e/ Bradley J. Halberstadt

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-44327-RJK  
Chapter 13

Trellis S. Johnson,

Debtor(s).

**ORDER GRANTING  
MOTION FOR RELIEF FROM STAY**

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The above-entitled matter came before the Court for hearing on Thursday, November 4, 2004 at 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 Malibu, vehicle identification number 1G1ND52J2Y6342810 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