

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-45441-RJK
Chapter 7

Jeffrey A. Blair and Beth E. Blair,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Randall L. Seaver, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One Wisconsin, 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. Bank One Wisconsin 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 September 28, 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. Bank One Wisconsin holds a valid, perfected interest in a 2001 Ford F-150, vehicle identification number 1FTRW08L21KE01866 (the "Vehicle").

7. Copies of Bank One Wisconsin's agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One Wisconsin's interest in the Vehicle 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 July through September 2004 totaling \$1,607.21 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$22,025.01 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$21,250.00.

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

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

12. Bank One Wisconsin 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, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One Wisconsin.

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, Bank One Wisconsin will repossess the Vehicle 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, Bank One Wisconsin respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One Wisconsin 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 8, 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

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VERIFICATION

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One Wisconsin declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated:

10/7/04


Tracy Johnson
Bankruptcy Specialist
Bank One Wisconsin

BOCC-END OF TERM

Fax: 602-674-7173

Oct 5 2004 15:09 P.04

BOCC-END OF TERM

MEMBER INFORMATION

MEMBER NAME: [Redacted]

ADDRESS: [Redacted]

CITY: [Redacted] **STATE:** [Redacted] **ZIP:** [Redacted]

PHONE: [Redacted]

EMAIL: [Redacted]

DATE OF BIRTH: [Redacted]

MEMBERSHIP TYPE: [Redacted]

STATUS: [Redacted]

EXPIRES: [Redacted]

DUES: [Redacted]

REMARKS: [Redacted]

SIGNATURE: [Redacted]

DATE: [Redacted]

BOCC-END OF TERM FAX:602-674-7173

Oct 5 2004 15:09 P.02

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
345 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF IDENTIFICATION - DRIVER NAME AND ADDRESS

JEFFREY BLAIR ENTERPRISES DBA
SYNERGYPRO INC AND
BLAIR JEFFREY ALAN
891W PRESTWICK PKWY
BROOKLYN PARK MN 55443

Fee Class
U.S. Postage
PAID
Permit No. 174
St. Paul, MN

KH0508

1ST SECURED PARTY

LIEN HOLDER

01	FORD	CNGOP	K0030P69X
VIN	1FTRW01L21KE01866	04/30/01	HD
REG		REGISTRATION	

RETAIN THIS DOCUMENT - See reverse
end of this form for recording this lien.

1210002418002 B1 408
MEMPHIS
61 FORD F150 V6
J BLAIR ENTERPRISES INC

ONE WISCONSIN
BX 57264
LOUISVILLE KY 40233-7264

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

Bank One Wisconsin submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One Wisconsin holds a perfected interest in a 2001 Ford F-150 with a vehicle identification number 1FTRW08L21KE01866 (the "Vehicle"). Payments due under the terms of the Contract for the months of July through September 2004 totaling \$1,607.21 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$22,025.01 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$21,250.00.

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 Bank One Wisconsin 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 Bank One Wisconsin 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 \$22,025.01 as of the date hereof. The fair market value of the Vehicle is approximately \$21,250.00. 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, Bank One Wisconsin 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: October 8, 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:

Jeffrey A. Blair and Beth E. Blair

Debtor(s).

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Bky. No. 04-45441-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))
Eric R. Rousar
15500 Wayzata Blvd., Suite 818
Wayzata, MN 55391

(Trustee)
Randall L. Seaver
12400 Portland Avenue S. Suite
132
Burnsville, MN 55337

(Debtor(s))
Jeffrey A. Blair
8919 Prestwick Pkwy
Brooklyn Park, MN 55443

Beth E. Blair
8919 Prestwick Pkwy
Brooklyn Park, MN 55443

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

Date: October 8, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
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**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Thursday, November 4, 2004 on the motion of Bank One Wisconsin 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 Bank One Wisconsin 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 Bank One Wisconsin, and Bank One Wisconsin is authorized to foreclose its interest in the subject 2001 Ford F-150, vehicle identification number 1FTRW08L21KE01866 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