

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

Debtor.

COURT FILE NO. 04-33424/GFK
Chapter 13

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

TO: DEBTOR HOLLY LEE JENSEN and her attorney Curtis K. Walker, Esq., 4356 Nicollet Avenue South, Minneapolis, MN 55409, Chapter 13 Trustee, U.S. Trustee, and other parties in interest.

1. Chris and Linda Troup ("Movants"), secured creditors of the Debtor, by their undersigned attorney, move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion on **August 30, 2004 at 10:30 A.M.** before the Honorable Gregory F. Kishel, in Courtroom No. 228 B, United States Courthouse, 316 North Robert Street, Saint Paul, Minnesota 55101.

3. Any response to this motion must be filed and served not later than August 23, 2004, which is seven days before the time set for the hearing or filed and served by mail not later than August 20, 2004, which is ten days before the date set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5004 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 9, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 to 9019-1.

6. Movants request relief with respect to modifying the automatic stay to permit Movants to pursue state law remedies against its collateral, namely the Property as defined below.

7. Movants are the owners and holders of a Contract for Deed for certain real property located at 3511 Norwood Court, Eagan, Scott County, MN 55123, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition ("Property"). Debtor is the purchaser on the Contract for Deed. A true and correct copy of the Contract for Deed is attached hereto as Exhibit A.

8. The terms of the Contract for Deed require the Debtor to make interest-only payments in the amount of \$2,494.00 on the first day of each month for three years. Upon the successful completion of this payment schedule, the Debtor must make a balloon payment equal to the outstanding principal amount together with accrued interest in order to obtain title to the Property

9. On June 9, 2004, the Debtor filed her proposed Chapter 13 Plan. The Plan is scheduled for a hearing on confirmation on August 26, 2004.

10. The proposed Chapter 13 Plan requires the Debtor to maintain post-petition payments in the amount of \$2,494 to Movants as set forth in the Contract for Deed.

11. The Debtor has failed to pay the monthly Contract for Deed payment due on July 21, 2004.

12. The Debtor's pre-petition arrearage on her Contract for Deed is \$7,482.00. The principal amount due under the Contract for Deed is \$348,000. The total of principal, pre-petition and post-petition arrearages is \$357,976.00.

13. The Debtor does not have any equity in the Property because the balance due on the Contract for Deed exceeds the fair market value of the Property, estimated by the Debtor to be \$348,000.

14. The Movants have incurred and will continue to incur attorney's fees and costs in connection with the case and, specifically, for bringing this Motion.

15. By reason of the foregoing, "cause" exists to modify the automatic stay with respect to the Movants so that they can pursue their state law remedies with respect to the Property.

16. If the Court requires testimony at the hearing, Chris Troup will serve as a witness. Upon information and belief, Chris Troup will testify to the value of the Property and the amount of the Debtor's delinquency.

WHEREFORE, the Movants, by their undersigned attorney, move the Court for an Order modifying the automatic stay provided by 11 U.S.C. §362(a) to permit the Movants to pursue their state law remedies with respect to the Property and for such other and further relief as may be just and equitable.

Dated: August 13, 2004

By /e/ Cass S. Weil
Cass S. Weil (#115228)
Julia M. Dayton (#319181)
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis MN 55402-4129
Telephone: (612) 347-0300
ATTORNEYS FOR CHRIS AND LINDA
TROUP

VERIFICATION

I, Chris Troup, have read the above and foregoing Notice of Hearing and Motion for Relief from the Automatic Stay and know the contents thereof to be true and correct, except for those matters stated on information and belief, and as to those matters, I believe them to be true. I so declare under penalty of perjury.

BY _____
Chris Troup

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

Debtor.

COURT FILE NO. 04-33424/GFK
Chapter 13

**MEMORANDUM IN SUPPORT OF
CHRIS AND LINDA TROUP'S MOTION
FOR RELIEF FROM THE AUTOMATIC
STAY**

INTRODUCTION

Chris and Linda Troup ("Movants") submit this Memorandum in support of their Notice of Motion and Motion for Relief from the Automatic Stay ("Motion") in the above-entitled matter. "Cause" exists to grant relief from the automatic stay because the Debtor has not made the payment required by her proposed Chapter 13 Plan to Movants.

FACTUAL BACKGROUND

Movants are the owners and holders of a Contract for Deed, attached hereto as Exhibit A, concerning real property ("Property") located at 3511 Norwood Court, Eagan, Scott County, MN 55123, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition. The terms of the Contract for Deed require the Debtor to make interest-only payments in the amount of \$2,494.00 on the first day of each month for three years. (Exhibit A) Upon the successful completion of this payment schedule, the Debtor must make a balloon payment equal to the outstanding principal amount,

together with any accrued interest, in order to obtain legal title to the Property. (Id.) On the date this case was filed, the Debtor was three payments delinquent under the terms of the Contract for Deed with Movants. (Motion ¶¶ 12). The Debtor has not made the payment due July 21, 2004, under the Contract for Deed. (Motion ¶¶ 11). The Debtor's proposed Chapter 13 Plan requires the Debtor to maintain post-petition payments in the amount of \$2,494 to Movants as set forth in the Contract for Deed. Therefore, the Debtor is presently delinquent under the terms of the Contract for Deed and under the terms of her proposed Chapter 13 Plan. Movants have filed the immediate Motion in order to obtain relief from the automatic stay so that they can proceed with the cancellation of the Contract for Deed.

ARGUMENT

Section 362(d) of the Bankruptcy Code provides in pertinent part, that:

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by termination, annulling, modifying, or conditioning such stay—
 - (1) for cause, including the lack of adequate protection of an interest in property of such party in interest...

Movants request relief from the automatic stay under 11 U.S.C. §361(d)(1).

The Debtor has failed to make the requisite payments pursuant to the terms of the Contract for Deed. Such circumstances establish cause, within the meaning of §362(d)(1), for relief from the automatic stay. *See First Federal Savings and Loan Association of Minneapolis v. Whitebread*, 18 B.R. 192 (Bankr. D. Minn. 1982)(relief from the stay was warranted where the debtor failed to maintain payments post-petition and failed to pay down arrearages owed on the mortgage pre-petition); *see also In re*

Geiger, 260 B.R. 83 (Bankr. E.D. Pa. 2001)(secured creditor was entitled to relief from stay to exercise rights in collateral where creditor's foreclosure judgment exceeded value of collateral and where debtor had not made any payments to creditor upon debt in over two years), *In re Shahid*, 27 B.R. 673 (Bankr. S.D. Ohio 1982)(relief from stay is appropriate where the debtor has allowed a sizable arrearage to accumulate on the mortgage payments to be made post-petition); *In re Kornhauser*, 184 B.R. 425 (Bankr. S.D.N.Y. 1995)(relief from stay is warranted where the debtor filed petition on eve of foreclosure and has made no payments since filing the petition).

Movants have a right under state law to cancel the Contract for Deed and take possession of the Property, but they must first secure relief from the automatic stay in this proceeding. "Cause" sufficient to justify relief from the automatic stay has been demonstrated in this matter because the Debtor has failed to comply with the terms of her proposed Chapter 13 Plan. Under her proposed Chapter 13 Plan, the Debtor is required to "maintain the regular payments which come due after the date the petition was filed." Chapter 13 Plan, ¶ 5. Since the filing of the petition, the Movants have not received the payment due in July under the Contract for Deed. Furthermore, pursuant to 11 U.S.C. §362(g), once the creditor has met its burden of production of facts which establish grounds for relief from the automatic stay, the burden is on the Debtor to prove that there is an absence of cause for relief from the automatic stay. See *In re Allstar Bldg. Products, Inc.*, 834 F.2d 898 (9th Cir. 1987). In this case, unless the Debtor pays the delinquent payment, she cannot show an absence of cause.

Accordingly, the Movants are entitled to an Order modifying the automatic stay of §362(a) to permit the Movants to proceed with their state court remedies with respect to the collateral.

CONCLUSION

Based on the foregoing, the Movants respectfully request that the automatic stay be modified in accordance with this Motion.

Dated: August 13, 2004

By /e/ Cass. S. Weil
Cass S. Weil (#115228)
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90 South Seventh Street
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Telephone: (612) 347-0300
**ATTORNEYS FOR CHRIS AND LINDA
TROUP**

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Angela M. Zmuda, of the law firm of Moss & Barnett, City of Minneapolis, County of Hennepin, State of Minnesota, declare under the penalty of perjury that on August 13,, 2004 I mailed copies of the attached **Notice of Motion and Motion of Chris and Linda Troup for Relief from the Automatic Stay, Verification of Chris Troup, Memorandum in Support thereof, and Proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

United States Trustee
U.S. Trustee Office
300 South Fourth Street, Room 1015
Minneapolis, MN 55415
(U.S. Trustee)

Curtis K. Walker
4356 Nicollet Avenue South
Minneapolis, MN 55409
(Attorney for Debtor)

Jasmine Z. Keller
12 South Sixth Street, Suite 310
Minneapolis, MN 55402
(Trustee)

Holly Lee Jensen
2618 Anna Court
New Market, MN 55054
(Debtor)

Bohlman Properties, LLC
1938 Ireland Court
Lakeville, MN 55044
(Creditor/ Lien Claimant)

Executed on: Aug 13, 2004.

Signed: Angela M. Zmuda

Angela M. Zmuda
Moss & Barnett
A Professional Association
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Holly Lee Jensen,

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**ORDER GRANTING MOTION FOR
RELIEF FROM STAY**

The above-entitled matter came on for hearing upon Motion of Chris Troup and Linda Troup, pursuant to 11 U.S.C. §362 before the undersigned Bankruptcy Judge. Appearances were as noted in the record. Based upon all of the files, records, and proceedings herein, the evidence adduced at the hearing and statements of counsel, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

That Chris Troup and Linda Troup are granted a modification of the automatic stay imposed by 11 U.S.C. §362 in order to pursue its state law remedies with respect to real property located at 3511 Norwood Court, Eagan, Scott County, MN 55123, with the following legal description: Lot 12, Block 4, The Farm 2nd Addition, Scott County, Minnesota.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

Dated: August __, 2004

By _____
Gregory F. Kishel
Chief United States Bankruptcy Judge,
District of Minnesota