

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

GREGORY ANTOINE STARWOOD AND  
LISA KAYE STARWOOD,

Debtors.

Case No. 04-34205  
Chapter 7

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NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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**TO: The Debtors Gregory Antoine Starwood and Lisa Kaye Starwood, 1214 Conway Street, St. Paul, Minnesota 55106.**

1. Caberallo, LLC, a secured creditor of Debtors, 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 on Tuesday October 19, 2004 at 10:30 a.m., in Courtroom 228B, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any responses to this motion must be filed and delivered not later than October 14, 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 October 8, 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.

Caberallo, LLC seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by Debtors.

5. The Petition commencing this Chapter 7 case was filed on July 20, 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. Caberallo, LLC owns the property legally described as The West 5 and 64/100 feet of Lot 5; All of Lot 6 except the West 3 76/100 feet thereof, all in Block 5, Lindley Heights, Ramsey County, Minnesota, commonly known as 1214 Conway Street, St. Paul, Minnesota (the "Property").

7. Caberallo, LLC entered into a Contract for Deed as seller and Starwood as the buyer dated March 19, 2004 and recorded as document number 1819314 with the Ramsey County Registrar of Titles transferring the property.

8. Starwood went into default on said Contract for Deed on July 1, 2004 and Caberallo, LLC wishes to commence Cancellation of Contract for Deed proceedings upon Starwood.

9. Starwood continues to fail to comply with the provisions of the Contract for Deed and said Contract is delinquent since July 1, 2004.

10. Caberallo, LLC requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

11. If testimony is necessary as to any facts relevant to this motion, Jason Heroux, or some other representative of Movant, will testify on behalf of Caberallo, LLC.

WHEREFORE, Caberallo, LLC respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Caberallo, LLC to take action to cancel the Contract for Deed 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 22, 2004

MORRIS CARLSON & HOELSCHER, P.A.

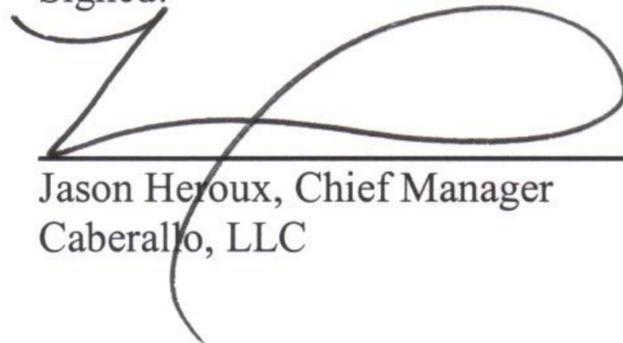
By /s/ Richard M. Carlson  
Richard M. Carlson (#187148)  
7380 France Avenue South, Suite 200  
Minneapolis, MN 55435  
(952) 832-2000

VERIFICATION

I, Jason Heroux, Chief Manager of Caberallo, LLC, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 22, 2004

Signed:



A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a loop and a horizontal line extending to the right.

Jason Heroux, Chief Manager  
Caberallo, LLC

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MEMORANDUM OF LAW

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Caberallo, LLC submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Caberallo, LLC owns the property legally described as The West 5 and 64/100 feet of Lot 5; All of Lot 6 except the West 3 76/100 feet thereof, all in Block 5, Lindley Heights, Ramsey County, Minnesota, commonly known as 1214 Conway Street, St. Paul, Minnesota (the “Property”).

Caberallo, LLC entered into a Contract for Deed as seller and Starwood as the buyer dated March 19, 2004 and recorded as document number 1819314 with the Ramsey County Registrar of Titles transferring the property.

Gregory Antoine Starwood and Lisa Kaye Starwood (hereinafter collectively referred to as “Starwood”) went into default on said Contract for Deed and Caberallo, LLC intends to initiate Cancellation of Contract for Deed proceedings upon Starwood.

Starwood has failed to make any payments required under the Contract for Deed since July 1, 2004.

## **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). The creditor intends to initiate cancellation proceedings for Starwood’s failure to comply with the Contract for Deed. Caberallo, LLC is entitled to relief from stay to obtain possession of the Property.

## **CONCLUSION**

For all the reasons set forth herein, Caberallo, LLC is entitled to an order terminating the automatic stay of 11 U.S.C. §362 and authorizing it to foreclosure its interest in the Property in accordance with Minnesota law.

Dated: September 22, 2004

MORRIS CARLSON & HOELSCHER, P.A.

By /s/ Richard M. Carlson  
Richard M. Carlson (#187148)  
7380 France Avenue South, Suite 200  
Minneapolis, MN 55435  
(952) 832-2000

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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UNSWORN CERTIFICATE OF SERVICE

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I, Richard M. Carlson, declare under penalty of perjury that on September 22, 2004, I called Metro Legal Services to personally serve the attached Caberallo, LLC's Motion For Relief From Stay upon each entity named below at the respective address as stated:

	(Debtor(s)) <i>Pro Se</i>	(Trustee)
United States Trustee 1015 U S Courthouse 300 South 4 <sup>th</sup> Street Minneapolis, MN 55415	Gregory Antoine Starwood 1214 Conway Street St. Paul, MN 55106	Mary Jo A. Jensen-Carter 1339 East County Road D Vadnais Heights MN 55402
	Lisa Kaye Starwood 1214 Conway Street St. Paul, MN 55106	

Date: September 22, 2004

Signed: /e/ Richard M. Carlson  
Morris Carlson & Hoelscher, P.A.  
7380 France Avenue South, Suite 200  
Minneapolis, MN 55435  
(952) 832-2000

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ORDER GRANTING MOTION FOR RELIEF FROM STAY

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The above-entitled matter came before the Court for hearing on October 19, 2004 at 10:30 a.m. on the motion of Caberallo, LLC seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were notes 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 Caberallo, LLC to the relief requested.

NOW, THEREOFRE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Caberallo, LLC. Caberallo, LLC is hereby authorized to serve the Notice of Cancellation of Contract for Deed regarding the subject property legally described as The West 5 and 64/100 feet of Lot 5; All of Lot 6 except the West 3 76/100 feet thereof, all in Block 5, Lindley Heights, Ramsey County, Minnesota and commonly known as 1214 Conway Street, St. Paul, Minensota, in accordance with Minnesota law. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

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

\_\_\_\_\_  
United States Bankruptcy Judge