

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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In Re:

GERALDINE L. COLLUM,

Debtor.

Bankruptcy Case No. 04-34580  
Chapter 7

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**TRUSTEE'S RESPONSE TO MOTION FOR RELIEF  
FROM STAY OF TOWN & COUNTRY CREDIT CORP.**

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Paul W. Bucher, the trustee of the bankruptcy estate of Geraldine L. Collum, debtor, hereby submits this Response to Motion for Relief from Stay filed by Town & Country Credit Corp. This matter is scheduled for hearing on September 27, 2004, at 10:30 a.m.

1. This case was filed on August 5, 2004. The Meeting of Creditors in this case is presently scheduled for September 29, 2004, at 10:00 a.m. The Trustee has not yet had a chance to examine the debtor concerning this matter.

2. The debtor has scheduled real estate, listed as a homestead, as having a value of \$149,100.00. This value appears to represent her undivided one-half ownership interest in the property with her present husband, Calvin Collum. Therefore, the trustee believes that the property has an actual value, using the debtor's calculations, of \$298,200.00.

3. As of today, the trustee has received an offer to purchase the property for the sum of \$328,000.00 from Brian Hennessey. A copy of the offer is attached to this Response as Exhibit A.

4. The trustee believes that the property has a value of at least \$328,000.00, thus providing an equity cushion to Town & Country Credit Corp. of approximately \$64,000.00. This constitutes adequate protection for the interest of Town & Country Credit Corp. in this property.

WHEREFORE, the Trustee respectfully requests that the court deny the Motion of Town & Country Credit Corp. for Relief from Stay.

Dated: September 22, 2004

DUNLAP & SEEGER, P.A.

By: /e/ Paul W. Bucher  
Paul W. Bucher  
Attorney License No. 123237

Attorneys for Trustee  
206 South Broadway, Suite 505  
P.O. Box 549  
Rochester, Minnesota 55903-0549  
(507) 288-9111

#### VERIFICATION

I, Paul W. Bucher, the Trustee in the foregoing Trustee's Response to Motion for Relief from Stay of Town & Country Credit Corp., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Date: September 22, 2004

By: /e/ Paul W. Bucher  
Paul W. Bucher

## Memorandum

From: Brian L. Hennessy  
(Current address is the Holiday Inn New Ulm Rm. 260)  
2101 S. Broadway St.  
New Ulm, MN 56073  
(507) 227-1201 or (507) 794-8028

To: Paul W. Bucher  
P.O. Box 459  
Rochester, MN 55903-0459

Mr. Bucher:

The purpose of this memo is to express my intent to make a formal offer to purchase the home/property located at 22166 195<sup>th</sup> Ave., New Ulm, MN 56073, currently owned by Geraldine L. Collum and Calvin C. Collum II for the amount of \$328,000. My wife, Kelli K. Hennessy and I have already sold our home in Wisconsin Rapids and have our down payment funds secured at Citizens Bank of New Ulm, therefore there is no contingency on us selling a home.

### Assumptions:

This intent to purchase assumes that the title will be free and clear of all liens or charges that are or could be assigned to the buyer. (Brian L. Hennessy) The buyer also makes this offer under the assumption that there will be no additional charges outside of a normal real estate transaction unless fully discussed and agreed upon by all parties.

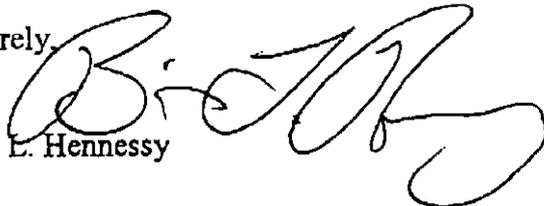
### Contingencies:

Given the nature of the current ownership, (pending divorce, Geraldine's bankruptcy) my intent to purchase is contingent upon a home inspection and all required or normal inspections meeting the approval of the buyer. (Hennessy) Should the property be found in less than satisfactory condition, the buyer reserves the right to renegotiate the purchase price or cancel the transaction. The offer to purchase would also be contingent upon the deal closing prior to the end of the year, 2004. We would undoubtedly like to close as soon as possible.

My family, wife Kelli, and six children ranging in ages from 1 to 14 have been hotel bound while searching for an adequate permanent residence. We are excited at the opportunity to purchase this property and establish our new home. Please contact me regarding the required format and timing to forward a formal offer to purchase.

Sincerely,

Brian L. Hennessy



UNITED STATES BANKRUPTCY COURT  
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**TRUSTEE'S MEMORANDUM OF FACTS AND LAW IN OBJECTION TO  
MOTION FOR RELIEF FROM STAY OF TOWN & COUNTRY CREDIT CORP.**

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Paul W. Bucher, the trustee of the bankruptcy estate of Geraldine L. Collum, debtor, hereby submits this Memorandum of Facts and Law in Opposition to the Motion for Relief from Stay of Town & Country Credit Corp. filed in this case.

FACTS

Town & Country Credit Corp. appears to hold a valid perfected mortgage on real property owned by the debtor, Geraldine L. Collum, and her husband, Calvin Collum. The trustee does not dispute that payments may be delinquent on the mortgage. The property appears to have a saleable value of at least \$328,000.00 based on the one offer the trustee has received to this point. The trustee has not yet had an opportunity to conduct a Meeting of Creditors with the debtor and believes there is an adequate equity cushion to protect the interest of Town & Country Credit Corp. in the property.

LAW

The court may grant relief from the automatic stay on request of a party in interest and after notice and a hearing “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. §362(d)(1). In addition to the means of adequate

protection provided in Section 361 of the United States Bankruptcy Code, adequate protection can also be provided by an “equity cushion” in the property. See, In re Johnson, 90 B.R. 973 (Bankr. D. Minn. 1988). An equity cushion is the value in the property above the amount owed to the creditor with the secured claim that will protect the creditor’s secured interest from decreasing in value during the period that the automatic stay remains in effect. Id. at 979. Based on the information in the trustee’s hands on this date, the property has a value of approximately \$328,000.00 less approximately \$264,000.00 owed to Town & Country Credit Corp., leaving equity of about \$64,000.00.

Alternatively, Town & Country Credit Corp. argues that it is entitled to relief from the automatic stay on the ground that the debtor does not have any equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). The trustee does not dispute that the second prong of the test does not apply here since no reorganization is being attempted. However, as set forth above, there clearly is equity in this property. Furthermore, it should be noted that the party requesting relief from the automatic stay has the burden of proof on the issue of the debtor’s equity in the property. Id. at §362(g)(1).

#### CONCLUSION

The trustee respectfully requests that the Court deny the motion for relief from stay brought by Town & Country Credit Corp. on the ground that there is adequate protection of its interest in the property.

Dated: September 22, 2004

Respectfully submitted,

DUNLAP & SEEGER, P.A.

By: /e/ Paul W. Bucher

Paul W. Bucher

Attorney License No. 123237

Attorneys for Trustee

206 South Broadway, Suite 505

P.O. Box 549

Rochester, Minnesota 55903-0549

(507) 288-9111

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: GERALDINE L. COLLUM,

Case No. BKY 04-34580  
Chapter 7 Case

Debtor.

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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

Debra A. Stanton, employed by Dunlap & Seeger, P.A., attorneys licensed to practice law in this Court, with office address at 206 South Broadway, Suite 505, P.O. Box 549, Rochester, Minnesota 55903-0549, declares that on September 22, 2004, I served the annexed

1. Trustee's Response to Motion for Relief from Stay of Town & Country Credit Corp.
2. Trustee's Memorandum of Facts and Law in Objection to Motion for Relief from Stay of Town & Country Credit Corp.
3. Order Denying the Motion for Relief of Stay of Town & Country Credit Corp.

to each person referenced below, by serving a copy via facsimile transmission to the fax number listed adjacent to each person referenced below:

U.S. Trustee  
1015 U.S. Courthouse  
300 S 4th St  
Minneapolis MN 55415  
Fax (612) 664-5516

Mark C. Halverson  
Attorney at Law  
600 South Second Street  
PO Box 3544  
Mankato MN 56002-3544  
Fax (507) 345-6407

Shapiro & Nordmeyer, L.L.P.  
Nancy A. Nordmeyer  
7300 Metro Boulevard #390  
Edina MN 55439-2306  
Fax (952) 831-4734

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

Dated: September 22, 2004



Debra A. Stanton

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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In Re:

GERALDINE L. COLLUM,

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**ORDER DENYING THE MOTION FOR RELIEF  
OF STAY OF TOWN & COUNTRY CREDIT CORP.**

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This matter came on for hearing before the Court on September 27, 2004, on the motion of Town & Country Credit Corp. seeking an order for relief from the automatic stay under 11 U.S.C. §362. Appearances were noted of record. Based on the proceedings, the arguments of counsels, and all the files and records in this case,

IT IS HEREBY ORDERED that:

Town & Country Credit Corp.'s motion for relief from the automatic stay is hereby denied.

Dated: \_\_\_\_\_, 2004

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Judge of Bankruptcy Court