

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34788-DDO

Chapter 13

Utopia V. Davis,

Debtor(s).

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

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 **9:30 am on Wednesday, October 20, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than Friday, October 15, 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 Monday, October 11, 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 the codebtor stay of 11 U.S.C. § 1301 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 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on August 16, 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 Ford Explorer, vehicle identification number 1FMZU83P9YZC44137 (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. No evidence has been provided to verify insurance coverage on the Vehicle. In addition, the Chapter 13 Plan does not propose to pay in full the outstanding balance.

9. The balance due under the Contract is \$17,801.44 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$12,075.00. Jefferey A. Bettin is a codebtor on the Contract

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. The failure of the Debtor(s) to provide for payment in full of the obligation constitutes cause for codebtor relief from stay within the meaning of 11 U.S.C. §1301.

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, A. Hansen, 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 and the codebtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law and pursue the codebtor to the extent payment is not provided for in the Chapter 13 plan, (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 28, 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

Chapter 13 Case

In re:

Bky. No. 04-34788-DDO

Utopia V. Davis,

Affidavit of Andy Hansen

Debtor(s).

I, Andy Hansen, 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 Ford Explorer VIN# 1FMZU83P9YZC44137.
2. \$17,801.44 is the outstanding balance under the contract as of September 27, 2004.
3. \$573.00 is the amount of the existing delinquency under the contract.
4. \$12,075.00 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.

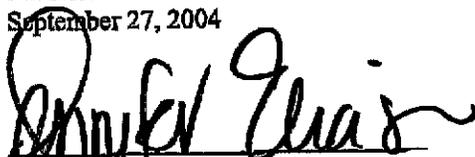
Further your affiant sayeth not.

Dated: 9/27/2004

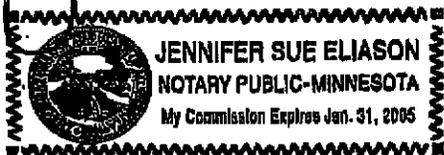


 Andy Hansen
 Bankruptcy Specialist
 Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 27, 2004



 Notary



and anyone else who signs this Note and Security Agreement. The words we, us, and our refer to the Creditor.

WELLS FARGO FINANCIAL ACCEPTANCE, INC.
4128 WEST COUNTY ROAD 12
RAVAGE, MN 55378

Form containing loan details: Borrower (Davis, Utopia V. Jeffrey), Address (12802 Nicollet Avenue AP, Burnsville, MN), Loan Terms (17.24% APR, \$718.61 PMT), and Itemization of Amount Financed (Total \$21,422.42).

Closed By MAD

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 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 installed in or attached to the collateral. Proceeds are money or property due to you from the loss, destruction or sale of the collateral. You also give us a security interest in any amount due to you under any credit insurance and extended service 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:



Vehicle information fields: Make (Ford), Model (Explorer), Serial Number (1FHZUB3P9YZC44137).

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.

Signature lines for Borrower and Lender, and a section for Collateral Owner's Grant of a Security Interest.

08/23/2004 12:52 9529950025

WELLS FARGO ACCEPTAN

PAGE 00

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

8/19/03

DAVIS UTOPIA VIRGINIA
BETTIN JEFFREY ALLEN
12952 NICOLLET AVE #101
BURNSVILLE MN 55337

EYA900

00 Year	FORD Make	4WEPR Model	B2260R712 Title NR.
1FMZU83P9Y2C44137 VIN		07/02/03 Security Date	NO Rebuilt

1ST SECURED PARTY

LIEN HOLDER

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

WELLS FARGO FINANCIAL ACCEPT
PO BOX 247
SAVAGE MN 55378-0247

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
Utopia V. Davis,
Debtor(s).

Case No.04-34788-DDO
Chapter 13

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

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 Ford Explorer with a vehicle identification number 1FMZU83P9YZC44137 (the "Vehicle"). The balance due under the Contract is \$17,801.44 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$12,075.00. Jefferey A. Bettin is a codebtor on the Contract. No evidence has been provided to verify insurance coverage on the Vehicle. The Chapter 13 Plan does not propose to pay in full the obligation.

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). In this case, 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).

Relief from the codebtor stay is also appropriate when the Chapter 13 plan does not propose to pay in full the obligation. In this case, the Chapter 13 plan proposes to cram down the balance owed.

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 the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle and pursue the codebtor in accordance with Minnesota law.

Respectfully Submitted,

Dated: September 28, 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:

Utopia V. Davis

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34788-DDO

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))
Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

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

(Debtor(s))
Utopia V. Davis
1851 Stella Lane, Apt. 537
Fort Walton Beach, FL 32548

(Co-Obligor)
Jefferey A. Bettin
12952 Nicollet Ave #101
Burnsville, MN 55337

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

Dated: September 28, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34788-DDO

Chapter 13

Utopia V. Davis,

Debtor(s).

***ORDER GRANTING
MOTION FOR RELIEF FROM STAY***

The above-entitled matter came before the Court for hearing on Wednesday, October 20, 2004 at the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. 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 and the codebtor stay of 11 U.S.C. § 1301 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2000 Ford Explorer, vehicle identification number 1FMZU83P9YZC44137 and pursue the codebtor to the extent not provided for in the Chapter 13 plan in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge