

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35132 -GFK

William S. McClure,

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

Debtor.

TO: ROBERT J. HOGLUND, ESQ. P.O. BOX 130938, ROSEVILLE, MINNESOTA, 55113

1. D.H. Gustafson Company, d/b/a Sunny Acres MHP (“**Movant**”), the landlord of the Debtor by its undersigned attorney, moves the Court for relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 27, 2004, at 10:30 a.m., before the Honorable Gregory F. Kishel, Courtroom No.228B, 200 Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

3. Any objection to the relief requested herein must be delivered not later than September 22, 2004, which is three days before the time set for the hearing, or filed and served by mail not later than September 16, 2004 which is seven days before the set date of the hearing, not including intermediate holidays or Saturdays and Sundays. **PURSUANT TO LOCAL RULE 1202(a), UNLESS A WRITTEN RESPONSE IS TIMELY SERVED AND FILED, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT A HEARING.**

4. This Motion is filed pursuant to Bankruptcy Rules 4001 and 9013 and Local Rule 1202, and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property in the possession of the Debtor.

5. Movant is the owner of the mobile home park known as Sunny Acres MHP located in the City Burnsville in the County of Dakota, State of Minnesota.

6. On or about April 1, 2001, the premises located within Sunny Acres at 417 West 158th Street, Burnsville, in the County of Dakota, State of Minnesota, was leased to the Debtor.

7. Debtor has failed to pay pre-petition and post-petition lot rent pursuant to his lease obligations.

8. On September 1, 2004, Debtor had filed his petition commencing a case under Chapter 13 of Title 11 of the United States Code with the Clerk of the United States Bankruptcy Court in Minneapolis, Minnesota.

9. Movant desires to proceed with an unlawful detainer action in Minnesota state court to recover possession of the leased premises. Movant obtained notice of Debtor's Chapter 13 bankruptcy filing on September 1, 2004.

10. The instant Chapter 13 proceeding is the third Chapter 13 proceeding commenced by the Debtor since April 4, 2002. Movant is informed and believes that the two previous Chapter 13 proceedings (Case Nos. 02-31335 and 03-35966) were dismissed without confirmation of a plan.

11. Both the instant and the April 4, 2002, Chapter 13 filings were filed mere days in advance of hearings in Minnesota state court on unlawful detainer proceedings instituted by Movant to recover possession of the subject real property due to Debtor's continued non-payment of his

rental obligations. Movant has not recovered any of the rental arrearages acknowledged by Debtor in any of his bankruptcy filings.

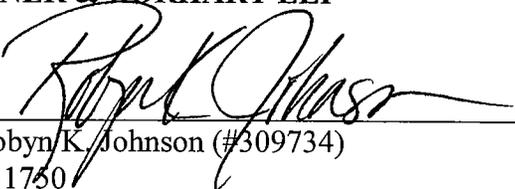
12. The Debtor's obligations under the lease and the storage fees incurred by Debtor are unsecured obligations. Under the circumstances of Debtor's repeated bankruptcy filings and his history of non-payment of his unsecured obligations, no adequate security exists that this debt will be paid. Movant should be permitted to exercise its remedies under Minnesota state law with respect to the leased premises.

WHEREFORE, Movant respectfully moves the Court for an Order:

1. Modifying the automatic stay of 11 U.S.C. §362 so as to permit Movant to pursue all remedies available to it under state law with respect to the premises leased to the Debtor located in Sunny Acres at 417 West 158th Street, Burnsville, Minnesota 55306; and,
2. Awarding Movant judgment for its costs and disbursements herein.

Dated: September 9, 2004.

BONNER & BORHART LLP

By 

Robyn K. Johnson (#309734)

Suite 1750

220 South Sixth Street

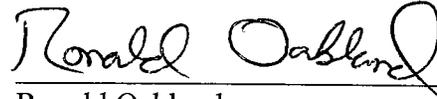
Minneapolis, MN 55402

612- 313-0711

Attorneys for Movant

VERIFICATION

I, Ronald Oakland, Community Manager of Movant, verify that the foregoing is true and correct, to the best of my knowledge, information and belief.



Ronald Oakland

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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William S. McClure,

Debtor.

**AFFIDAVIT OF
RONALD OAKLAND**

Ronald Oakland, being duly sworn, on oath deposes and states as follows:

1. I am the manager for Sunny Acres (“**Movant**”), and I have personal knowledge of the matters set forth herein.
2. Movant is the owner of a manufactured home community located at 15800 Buck Hill Road, Burnsville, Minnesota 55306 in the County of Dakota, State of Minnesota.
3. On or about April 1, 2001, Movant leased and demised to Debtor the premises located within Sunny Acres at 417 West 158th Street, Burnsville, MN 55306.
4. Debtor has failed to pay pre-petition and post-petition lot rent pursuant to his lease obligations.
5. On September 1, 2004, Debtor had filed his petition commencing a case under Chapter 13 of Title 11 of the United States Code with the Clerk of the United States Bankruptcy Court in Minneapolis, Minnesota.
6. Movant obtained notice of Debtor’s most recent Chapter 13 bankruptcy filing on September 1, 2004.
7. This Chapter 13 proceeding is the third Chapter 13 proceeding commenced by the Debtor since April 4, 2002. Both the instant and the April 4, 2002, Chapter 13 filings were filed a few days in advance of hearings in Minnesota state court on unlawful detainer proceedings instituted

by Movant to recover possession of the subject real property due to Debtor's continued non-payment of his rental obligations. Movant has not recovered any of the rental arrearages acknowledged by Debtor in any of his bankruptcy filings.

FURTHER THE AFFIANT SAITH NOT.

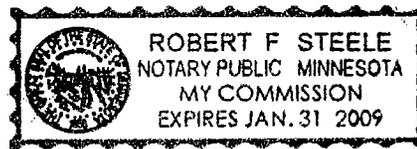
Ronald Oakland

Ronald Oakland

Subscribed and sworn to before me
this 9th day of September, 2004.

Robert Steele

Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Debtor.

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

Sunny Acres (“Movant”) submits this memorandum of law in support of its motion for relief from the automatic stay of 11 U.S.C. §362 in the above-entitled matter.

FACTS

Movant is the owner and landlord of the mobile home park known as Sunny Acres, located in the City of Burnsville, in the County of Dakota, State of Minnesota. (Oakland Affidavit ¶2). On or about April 1, 2001, the premises located in Sunny Acres at 417 West 158th Street, Burnsville, Minnesota 55306, was leased to the Debtor. (Oakland Affidavit ¶3).

Due to Debtor’s failure to pay his lot rent in accordance with the terms of his lease, Movant commenced an unlawful detainer action against him pursuant to Minnesota state law. Thereafter, Movant received notice that Debtor had filed his petition commencing a case under Chapter 13 of the United States Code on September 1, 2004, with the Clerk of the United States Bankruptcy Court in Minneapolis, Minnesota. (Oakland Affidavit ¶ 5-6). Debtor has failed to pay pre-petition and post-petition lot rent pursuant to his lease obligations. (Oakland Affidavit ¶ 4).

This Chapter 13 proceeding is the third Chapter 13 proceeding commenced by the Debtor since April 4, 2002. (Oakland Affidavit ¶ 7). Both the instant and the April 4, 2002, Chapter 13 filings were filed a few days in advance of hearings in Minnesota state court on unlawful detainer proceedings instituted by Movant to recover possession of the subject real property due to Debtor’s

continued non-payment of his rental obligations. *Id.* Movant has not recovered any of the rental arrearages acknowledged by Debtor in any of his bankruptcy filings. *Id.*

ARGUMENT

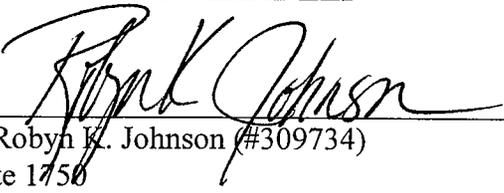
Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a party in interest “for cause, including lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. §362(d)(1). Other than the lack of adequate protection, “cause” is not defined by the Bankruptcy Code. Matter of Schewe, 94 B.R. 938, 949 (Bkrcty. W.D. Mich. 1989). “Cause” is to be determined on a case by case basis. In re Bunke, 172 B.R. 63, 66 (Bkrcty. D. S.D. 1994). In a bankruptcy case, “cause” has been held to exist where a landlord desires to continue a pre-petition Unlawful Detainer action, and therefore, to permit relief from the automatic stay imposed pursuant to Section 362 of the Bankruptcy Code under Section 362(d)(1). In re Touloumis, 170 B.R. 825, 828 (Bkrcty. S.D.N.Y. 1994); see also Matter of Cardone, 103 B.R. 504 (Bkrcty. D. Del. 1989).

Here, it is undisputed that absent the Debtor’ Chapter 7 case, the Movant would be permitted to pursue all available state law remedies in order to obtain restitution of the premises. Therefore, under 11 U.S.C §362(d)(1), “cause” exists to lift the stay to permit Movant to proceed. An order from this Court granting Movant relief from the automatic stay is appropriate.

Based on the foregoing, Movant respectfully requests that this Court grant Movant relief from the automatic stay to allow it to proceed against the Debtor pursuant to its rights under applicable state law.

Dated: September 9, 2004.

BONNER & BORHART LLP

By 
Robyn K. Johnson (#309734)

Suite 1750
220 South Sixth Street
Minneapolis, MN 55402
(612) 313-0711
Attorneys for Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Debtor.

**ORDER GRANTING
MOTION FOR RELIEF
FROM STAY**

The above-entitled matter came before the Court for hearing on the motion of D.H. Gustafson Company, d/b/a Sunny Acres ("Sunny Acres") seeking relief from the automatic stay of Section 362 of the Bankruptcy Code. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Sunny Acres to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of Section 362 of the Bankruptcy Code is immediately terminated and Sunny Acres, and/or its assignees and/or successors in interest, is hereby authorized to pursue all remedies available to it under state law with respect to the premises leased to the Debtor located in Sunny Acres at 417 West 158th Street, Burnsville, Minnesota 55306.

Dated: _____, 2004.

The Honorable Gregory F. Kishel
United States Bankruptcy Judge