

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35477-DDO
Chapter 7

Harry J. Weigand and Linda M. Weigand,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Mary Jo A Jensen-Carter, Chapter 7 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 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 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on September 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. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2000 Cadillac Catera, vehicle identification number W06VR54R1YR006612 (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. Payments due under the terms of the Contract for the months of May through September 2004 totaling \$2,974.38 plus late charges, have not been made by the Debtor(s). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$22,611.24 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,675.00.

10. Wells Fargo Financial Acceptance's interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle 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.

12. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, A. Howard, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

14. 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.

15. 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 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle 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

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

In re: Chapter 7 Case
Harry J. and Linda M. Weigand, Bky. No. 04-35477
Debtor(s). Affidavit

I, Andrew J. Howard, 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 Cadillac Catera VIN# W06VR54R1YR0066122000 Cadillac Catera VIN# W06VR54R1YR006612.
2. \$22,611.24 is the outstanding balance under the contract.
3. \$2,974.38 is the amount of the existing delinquency under the contract.
4. \$13,675.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

Further your affiant sayeth not.

Dated: 9/22/2004

Andrew J. Howard

Andrew J. Howard
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 22, 2004

[Signature]

Notary



ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to review the terms and conditions of this contract and security agreement... You agree to pay the amount of the debt...

2. Except when provided by law, we may use any and all information you provide to us to do as we see fit... You agree to pay the amount of the debt...

NAME AND LOCATION: The name and address indicated on this contract and security agreement shall be the name and address of the debtor...

REPAYMENT: The debt payable under this contract and security agreement shall be repaid by the debtor in accordance with the terms of the contract...

- A. You will pay the debt in accordance with the terms of the contract... B. You will pay the debt in accordance with the terms of the contract... C. You will pay the debt in accordance with the terms of the contract...

3. You will pay the debt in accordance with the terms of the contract... You agree to pay the amount of the debt... You will pay the debt in accordance with the terms of the contract...

THIRD PARTY AGREEMENT

The debtor hereby agrees to indemnify and hold the creditor harmless from and against all claims, damages, losses, and expenses...

4. You agree to indemnify and hold the creditor harmless from and against all claims, damages, losses, and expenses...

ASSIGNMENT BY BANKER

5. The creditor hereby assigns to the debtor the right to receive payments from the debtor... The debtor agrees to pay the amount of the debt...

6. The debtor hereby agrees to pay the amount of the debt to the creditor... The debtor agrees to pay the amount of the debt...

NOTICE - ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT

7. If you are buying a used vehicle, the information on this contract is subject to the terms and conditions of the vehicle purchase agreement... The debtor agrees to pay the amount of the debt...

8. The debtor hereby agrees to pay the amount of the debt to the creditor... The debtor agrees to pay the amount of the debt...

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

5524990

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

WEIGAND LINDA MARGARET
WEIGAND HARRY JOSEPH
8417 79TH ST S
COTTAGE GROVE MN 55016

LBM277

1ST SECURED PARTY

00 Year	CADI Make	4DCTR Model	H1530R740 Title NR
WD6VR54R1YR006612 VIN	05/07/03 Security Date		NO Rebuilt

LIEN HOLDER

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

WELLS FARGO FIN ACCEPT
MN INC
PO BOX 250
ESSINGTON PA 19029-0250

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-35477-DDO
Chapter 7

Harry J. Weigand and Linda M. Weigand,
Debtor(s).

***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 Cadillac Catera with a vehicle identification number W06VR54R1YR006612 (the "Vehicle"). Payments due under the terms of the Contract for the months of May through September 2004 totaling \$2,974.38 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$22,611.24 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$13,675.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

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). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Financial Acceptance has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. United

Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.),
484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$22,611.24 as of the date hereof. The fair market value of the Vehicle is approximately \$13,675.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

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 authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 22, 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

In re:

Harry J. Weigand and Linda M. Weigand

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-35477-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))
Richard J. Pearson
PO Box 120088
New Brighton, MN 55112

(Trustee)
Mary Jo A Jensen-Carter
1339 E. County Rd D
Vadnais Heights, MN 55109

(Debtor(s))
Harry J. Weigand
8417 79th Street South
Cottage Grove, MN 55016

Linda M. Weigand
8417 79th Street South
Cottage Grove, MN 55016

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

Date: September 22, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Harry J. Weigand and Linda M. Weigand,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Wednesday, October 20, 2004 on the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. §362. 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 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2000 Cadillac Catera, vehicle identification number W06VR54R1YR006612 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