

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

JAMES F. HUSBANDS and
MARGARET M. HUGHES-HUSBANDS,

Debtors.

ORDER RE: MOTION FOR RELIEF
FROM STAY BY PROVIDENT
FUNDING ASSOCIATES, L.P.

BKY 04-50570

At St. Paul, Minnesota, this 6th day of August, 2004.

This Chapter 7 case came on before the Court on August 4, 2004, for hearing on the motion of Provident Funding Associates, L.P. for relief from the automatic stay of 11 U.S.C. § 362(a). Jacob J. Baker appeared on behalf of the movant. Daniel R. Bina appeared on behalf of the Debtors. John H. Bray appeared on behalf of the Trustee.

Both the Trustee and the Debtors had filed responses to the motion. They objected to relief from stay being granted before the value of the subject collateral was determined, before an adjudication on the Trustee's pending objection to the Debtors' claim of homestead exemption to the subject real estate, and before a ruling on the question of whether the "equity cushion" in the property, if any, would give adequate protection to the movant if rulings on the other two matters recognized the bankruptcy estate as having an interest of value in the property.¹

¹

The Debtors are scheduled to receive a discharge under Chapter 7 on or after August 30, 2004. If no party in interest timely objects to discharge, the automatic stay will terminate then, as to the Debtors and their interest in the property. 11 U.S.C. § 362(c)(2)(C). Since the bankruptcy estate has a pending claim to an interest in the subject real estate, absent a grant of relief under § 362(d) the stay will continue as to the estate until its claim is resolved adversely to the Trustee, or until the interest in the real estate is no longer property of the estate. 11 U.S.C. § 362(c)(1).

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 08/06/04 Lori Vosejpk, Acting Clerk, By jrb

To provide for the coordinated litigation and presentation of both matters that concern the subject real estate,

IT IS HEREBY ORDERED:

1. Pending further order of the Court, the automatic stay shall continue to restrain and enjoin Provident Funding Associates, L.P. from foreclosing its mortgage against the subject real estate, as to the bankruptcy estate and its claim to an interest in that property.

2. The automatic stay will terminate as to the Debtors' interest in the property, by operation of 11 U.S.C. § 362(c)(2)(C).

3. The motion of Provident Funding Associates, L.P. for relief from stay and the Trustee's objection to the Debtors' claim of homestead exemption shall come on for a joint hearing on *September 9, 2004, at 9:30 a.m.* At that time, the Court will receive evidence as to the value of the property, and on all other issues raised in both proceedings. At the hearing, the parties shall be prepared to stipulate to the amount of the secured claim of Provident Funding Associates, L.P., in principal, interest, and recoverable costs as of that date, and to the amount of the daily interest accrual on the principal amount of the debt.

4. No later than *September 3, 2004*:

- a. All parties who will present testimony on the value of the subject real estate shall serve and file a written identification of their expert witness(es) and shall exchange copies of the written reports of appraisal or valuation that they will offer at the hearing.
- b. All parties shall serve and file supplemental briefs on the issues of law going to adequate protection that were identified at the preliminary hearing, in particular on the argument of Provident Funding Associates, L.P. that the costs of

foreclosure and a post-foreclosure disposition of the property must be deducted from the valuation of the property in calculating the amount of an “equity cushion,” and its argument that an equity cushion of less than a specified fraction of value does not afford adequate protection within the contemplation of 11 U.S.C. § 361.

BY THE COURT:

Handwritten signature of Gregory F. Kishel in black ink, written in a cursive style. The signature includes the initials "1E1" at the beginning.

GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

I, Judy Brooks, hereby certify that I am judicial assistant to Gregory F. Kishel, Chief Bankruptcy Judge for the District of Minnesota; that on August 6, 2004, true and correct copies of the annexed:

ORDER

were placed by me in individual official envelopes, with postage paid; that said envelopes were addressed individually to each of the persons, corporations, and firms at their last known addresses appearing hereinafter; that said envelopes were sealed and on the day aforesaid were placed in the United States mails at St. Paul, Minnesota, to:

OFFICE OF THE U.S. TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

KANUIT, ROBERT R
4815 W ARROWHEAD RD STE 230
HERMANTOWN MN 55811

BRAY, JOHN H
4815 W ARROWHEAD RD, STE 230
HERMANTOWN MN 55811

HUSBANDS, JAMES F
HUGHES-HUSBANDS, MARGARET M
4178 COUNTY ROAD 77
TOWER MN 55790-8132

BINA, DANIEL R
1639 MAIN ST N STE 1
PINE CITY MN 55063

GESKE, JAMES ESQ
WILFORD & GESKE
7650 CURRELL BLVD., SUITE 300
WOODBURY MN 55125

BAKER, JACOB J
HANFT FRIDE PA
130 W SUPERIOR STREET, #1000
DULUTH MN 55802-2094

and this certificate of service was made by me.

/s/ Judy Brooks
Judy Brooks

Filed on August 6, 2004 Lori Vosejka, Acting Clerk By jrb, Deputy Clerk
