

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-50793-GFK  
Chapter 7

Sarah Lee Tillman,

Debtor(s).

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

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TO: Debtor(s) and Attorney for Debtor(s); Robert R. Kanuit, 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 **1:30 pm on Wednesday, September 8, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 2, at the U.S. Courthouse, 515 West First Street, Duluth, Minnesota 55807.

3. Any response to this motion must be filed and delivered not later than Thursday, September 2, 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 Friday, August 29, 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 July 12, 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 Dodge Neon, vehicle identification number 1B3ES46C7YD532246 (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 April through July 2004 totaling \$1,845.90 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$7,278.52 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,125.00.

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 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. Hansen, 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: August 23, 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

Sarah L. Tillman,

Bky. No. 04-50793

Debtor(s).

Affidavit

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 Dodge Neon VIN# 1B3ES46C7YD532246.

2. \$7,278.52 is the outstanding balance under the contract.

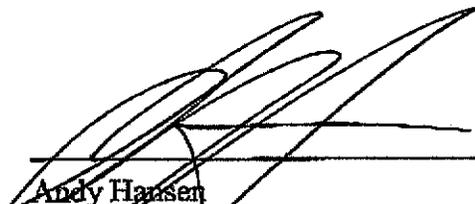
3. \$1,845.90 is the amount of the existing delinquency under the contract.

4. \$4,125.00 is the fair market value of the Collateral.

5. Yes appropriate insurance has been verified.

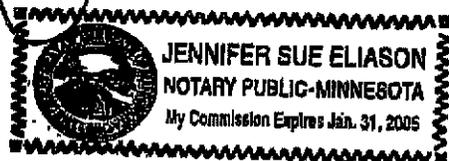
Further your affiant sayeth not.

Dated: 8/23/2004

  
\_\_\_\_\_  
Andy Hansen  
Bankruptcy Specialist  
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on August  
23, 2004

  
\_\_\_\_\_  
Notary



JUL-15-2004 THU 11:08 AM WELLS FARGO FINANCIAL

FAX NO. 2187275732

P. 05

IDENTIFICATION OF PARTIES: Except where we indicate otherwise, we use the words you and your to mean the Borrower and anyone else who signs this Note and Security Agreement. The words we, us, and our refer to the Creditor. YOUR ACCOUNT IS PAYABLE TO THE CREDITOR SHOWN BELOW. WELLS FARGO FINANCIAL ACCEPTANCE, INC. 4888 MILLER TRUNK HWY VERMONTOWN, MN 55611

Account Number Type 18758788 0

Main form containing borrower information (TILLMAN, SARAH L., 807 JEFFERSON STREET, DULUTH, MN, 55812), payment schedule table, finance charge details, and itemization of amount financed.

Closed By [Signature]

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 charges shown above in the Itemization of Amount Financed box. You'll pay the Total of Payments to us at our office in 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 in 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:

- (a) All of the household goods and sports/recreation equipment of every kind now located at the Borrower's residence address shown above, except those items prohibited by the Federal Trade Commission's Credit Practices Rule (captioned in the Appendix on page 3 titled "Credit Practices Rule") and except the following property which is exempt under Minnesota's Uniform Consumer Security Act (Minn. Stat. § 325A.37): one vehicle, vehicle, recreational, photographic, all radios and televisions, musical instruments and
(b) The following property located at the Borrower's residence address indicated above:
(1) Motor vehicle(s) described as follows: Year: 2000 Make: DODGE Model: NEON Serial Number: 1995S4867Y0532246

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 and COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST section.

JUL-19-2004 MON 08:59 AM WELLS FARGO FINANCIAL

FAX NO. 2187275732

P. 01

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

TILLMAN SARAH LEE  
1907 JEFFERSON ST  
DULUTH MN 55812

JAN 05 2004  
First Class  
U.S. Postage  
PAID  
Permit No. 171  
St. Paul, MN

00 Year	DODG Make	4DNSE Model	K365DR206 Title NR.
1B3ES46C7YD532246 VIN		10/29/03 Security Date	NO Rebuilt

CLZ858

1ST SECURED PARTY

LIEN HOLDER

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

WELLS FARGO FIN ACCEPT  
4886 MILLER TRUNK HWY  
HERMANTOWN MN 55811-1504

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Acct # 16756768

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:  
Sarah Lee Tillman,  
Debtor(s).

Case No.04-50793-GFK  
Chapter 7

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

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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 Dodge Neon with a vehicle identification number 1B3ES46C7YD532246 (the "Vehicle"). Payments due under the terms of the Contract for the months of April through July 2004 totaling \$1,845.90 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$7,278.52 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,125.00.

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 \$7,278.52 as of the date hereof. The fair market value of the Vehicle is approximately \$4,125.00. 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: August 23, 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:

Sarah Lee Tillman

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-50793-GFK

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))  
Joseph V. Ferguson, III  
230 W. Superior St. Suite 800  
Duluth, MN 55802

(Trustee)  
Robert R. Kanuit  
4815 W. Arrowhead Road  
Suite 230  
Hermantown, MN 55811

(Debtor(s))  
Sarah Lee Tillman  
2226 West 5th Street  
Duluth, MN 55806

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

Date: August 23, 2004

Signed: /e/ Bradley J. Halberstadt

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:  
Sarah Lee Tillman,  
Debtor(s).

Case No. 04-50793-GFK  
Chapter 7

**ORDER GRANTING  
MOTION FOR RELIEF FROM STAY**

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The above-entitled matter came before the Court for hearing on Wednesday, September 8, 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 Dodge Neon, vehicle identification number 1B3ES46C7YD532246 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gregory F. Kishel  
United States Bankruptcy Judge