

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51183-GFK
Chapter 7

Amy L. Trester,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); John A. Hedback, 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, December 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 Friday, December 3, 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, November 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 October 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 1999 Chevrolet Lumina, vehicle identification number 2G1WL52MXX9157168 (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 month of October 2004 totaling \$493.66 plus late charges, have not been made by the Debtor(s). No evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$7,504.73 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,250.00.

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, D. Wyant, 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: October 29, 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

Amy L. Trester,

Bky. No. 04-51183-GFK

Debtor(s).

Affidavit

I, Darin Wyant, 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"):

1999 Chevrolet Lumina VIN# 2G1WLS2MXX9157168.

2. \$7,504.73 is the outstanding balance under the contract.

3. \$493.66 is the amount of the existing delinquency under the contract.

4. \$4,250.00 is the fair market value of the Collateral.

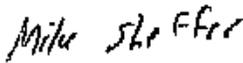
5. No appropriate insurance has been verified.

Further your affiant sayeth not.

Dated: 10/29/20


Darin Wyant
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on October 29, 2004


Notary



IDENTIFICATION OF PARTIES: Except where we indicate otherwise, we use the words you and your to mean the Borrowers 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.
4885 MILLER TRUNK HWY
HERMANTON, IN 46931

Account Number 18451740

Form with fields for Borrower Name (PRESTER, AMY L, ROBERT), Address (7632 INDUSTRIAL RD, SAGEVIEW, IN, 467700080), and a table with columns: Amount, Date, Rate, Term, Total, and Balance. Includes sections for 'ITEMIZATION OF AMOUNT FINANCED' and 'COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST'.

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 Annual Percentage Rate of Interest For 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.

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 accessories to and proceeds of the collateral. Accession of the goods included 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 replacement 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 according to the terms of the loan described above or if you break any promise made in this Note and Security Agreement.

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.

COLLATERAL OWNER'S GRANT OF A SECURITY INTEREST. In this collateral owner's Grant of a Security Interest, the grantor will become anyone who signs below. The words we and us refer to the Creditor. To create all the necessary legal effects under this Note and Security Agreement, you give us a security interest in the property you own described in the description of collateral on page 1 and you agree that you alone hold the collateral as provided by this Note and Security Agreement. You assume all personal responsibility for the payment of any amounts due under the Note and Security Agreement.

Page 1 of 3 18451740

10/20/02

ORIGINAL

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

01-22-01

Mrs. Gaus
LS. Photos
PAID
Permit No. 171
St. Paul, MN

MCQUADE ROBERT BRUCE OR
TRESTER AMY LYNN
7552 INDUSTRIAL RD
SAGINAW MN 55779

FT6411

1ST SECURED PARTY

LIEN HOLDER

Year 99	Make CHEV.	Model 4DL/S	Title No K0180N400
VIN 2G1WL52NXX9157168	Security Data 12/85/00	NO	Result

RETAIN THIS DOCUMENT - See reverse
side of this form for removal date.

WELLS FARGO FINANCIAL ACCEPT
4884 MILLER TRUNK HWY
HERMANTOWN MN 55811-1504

00411/1504

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-51183-GFK
Chapter 7

Amy L. Trester,

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 1999 Chevrolet Lumina with a vehicle identification number 2G1WL52MXX9157168 (the "Vehicle"). Payments due under the terms of the Contract for the months of October 2004 totaling \$493.66 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$7,504.73 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,250.00. 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 \$7,504.73 as of the date hereof. The fair market value of the Vehicle is approximately \$4,250.00. 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: October 29, 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:

Amy L. Trester

Debtor(s).

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Bky. No. 04-51183-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))
Walter W. Vasil
200 Board of Trade Building
Duluth, Minnesota 55802

(Trustee)
John A. Hedback
2855 Anthony Lane S., Ste. 201
St. Anthony, MN 55418

(Debtor(s))
Amy L. Trester
7532 Industrial Rd.
Saginaw, MN 55779

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

Date: October 29, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-51183-GFK
Chapter 7

Amy L. Trester,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Wednesday, December 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 1999 Chevrolet Lumina, vehicle identification number 2G1WL52MXX9157168 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