

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 02-90177-DDO
Chapter 13

Trent Ken Johnson,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Bank, N.A., 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, September 8, 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, September 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, August 30, 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 the codebtor stay of 11 U.S.C. § 1301 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 Bank, N.A. seeks relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 13 case was filed on January 25, 2002 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 Bank, N.A. holds a valid, perfected interest in a 1996 Acura Integra, vehicle identification number JH4DC4459TS022818 (the "Vehicle").

7. Copies of Wells Fargo Bank, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Bank, N.A.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Chapter 13 Plan requires payments to Wells Fargo Bank, N.A. The payments are to be made by the Trustee. On information and belief, a delinquency under the Plan exists for the months of June and July 2004 totaling at least \$1,000.00. No evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$7,425.46 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$2,925.00. Phay Samountry is a codebtor on the Contract.

10. The Chapter 13 Plan fails to pay the claim in full with interest and thus is also grounds for codebtor relief from stay.

11. The failure of the Debtor(s) to make payments pursuant to the Chapter 13 Plan or otherwise provide Wells Fargo Bank, N.A. 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 Bank, N.A. to relief from the stay.

12. Wells Fargo Bank, N.A. 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, C. Thompson, or some other representative of Movant, will testify on behalf of Wells Fargo Bank, N.A..

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 Bank, N.A. 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 Bank, N.A. respectfully moves the Court for an order: (i) modifying the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 so as to permit Wells Fargo Bank, N.A. 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 18, 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 13 Case

Trent K. Johnson,

Bky. No. 02-90177

Debtor(s).

Affidavit of Carmen Thompson

I, Carmen Thompson, of Wells Fargo Bank, N.A., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. Wells Fargo Bank, N.A. has a security interest in the following (the "Collateral"):
1996 Acura Integra Vin#JH4DC4459TS022818.
2. \$7,415.46 is the outstanding balance under the contract as of August 17, 2004.
3. \$7,415.46 is the amount of the existing delinquency under the contract.
4. \$2,915.00 is the fair market value of the Collateral.
5. No Appropriate insurance has been verified.
6. is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

Dated: 8/17/2004

Carmen Thompson

Carmen Thompson
Bankruptcy Specialist
Wells Fargo Bank, N.A.

Subscribed and sworn to before me on August
17, 2004

Jennifer Hartman
Notary





Combined Consumer Note and Security Agreement

Borrower's name

KENNY SAMOUNITY

Co-borrower's name

PHAY SAMOUNITY

NORWEST BANK MINNESOTA

NATIONAL ASSOCIATION

Bank's address

6445 NICOLLET AVENUE SOUTH

RICHFIELD MN 55423 1614

05/11/2000 3.06038484

In this agreement, I, ME, and MY refer to each borrower and co-borrower who signs this agreement. YOU and YOUR refer to the bank. This agreement contains my promise to repay my loan, and the conditions of the loan.

My Promise

I promise to pay to your order **EIGHTEEN THOUSAND AND 00/100** Dollars

(**\$ 18,000.00**) plus the interest or minimum Finance Charge described below:

Interest or Minimum Finance Charge

A minimum finance charge of \$ _____, if I do not pay my loan in full when it is due, you will charge me interest at the rate of _____ % a year on the unpaid balance of my loan from the date it is due until it has been paid in full.

Interest on the unpaid balance of my loan from **05/11/2000** until it has been paid in full at:

a fixed rate of **11.00** % a year.

a variable rate of _____ % plus the Index Rate. The Index Rate is defined in the Disclosure Statement. The interest rate as of the first date shown above is _____ % a year. However, the interest rate on my loan will never be less than _____ % a year or more than _____ % a year. It will be adjusted:

daily on the same day the Index Rate changes.

Starting _____, the rate for any given _____ will be calculated using the Index Rate in effect on the _____ business day of the _____

as follows: _____

Interest will be computed on the basis of the actual number of days elapsed in a **365** day year.

Payment Schedule

I will pay installments of principal and interest as follows:
• a first payment of \$ **467.4** on **06/28/2000**;
• **46** payments of \$ **467.74** each on the **28** day of each **MONTH** starting on **07/28/2000**;
• and a final payment on **05/28/2004**. If the interest rate on my loan does not change and I make all my payments on schedule, the final payment will be \$ **467.74**.

I will pay the entire principal on _____ I will pay interest:

when the loan is due.

every _____, starting on _____, and also on _____.

Variable Rate Payment Options

Increases in the interest rate on my loan will cause my final payment to increase. If this happens, I may either pay the full amount due or extend my payments for not more than _____ months. Any extension will be at the same variable rate terms described above, with the same regular payments of \$ _____. On _____, I will pay in full the amount due on this loan.

Increases in the interest rate on my loan will cause my periodic interest payments, if any, and my final payment to increase.

Increases in the interest rate on my loan will cause my final payment to increase.

Charge for Late Payments

I will pay a late charge of \$ **23.3** each time I am more than **10** days late in making a payment.

I will pay a late charge of _____ % of the unpaid payment each time I am more than _____ days late in making a payment.

Bank use: **00939 26498 05/10 2000 12:32**

Account number

Banker number

Renewal

This agreement renews Note No. _____ dated _____.

Prepaying My Loan

I may prepay my loan at any time. If I fully prepay my loan, I may

I will not have to pay a prepayment penalty of \$ _____ N/A minus the amount of interest that has been earned up to the date I prepay.

Security

No security is required.

To protect you if I default under this agreement (or any extension or renewal of it) I give you a security interest in:

Motor Vehicle (Year/Make/Serial Number)

1996 ACURA INTEGRA JH4DC4459TS022818

The following property: _____

I will keep the secured property insured if you require it, and pay all related property taxes when due.

This agreement (including extensions or renewals) is secured by a separate

assignment security agreement mortgage or deed of trust

See Reverse Side for Additional Terms Applicable to This Agreement

NOTICE TO CONSUMER
THIS IS A CONSUMER CREDIT TRANSACTION.
I understand that:
• I should not sign this agreement before I read the writing on both sides, even if otherwise advised.
• I should not sign this if it contains any blank spaces.
• I am entitled to an exact copy of this and any other agreement I sign.
• I have the right to prepay the unpaid balance due under this agreement at any time without penalty, and I may be entitled to receive a refund of unearned charges in accordance with the law.

Signature of Borrower and Co-borrower
I received and read a filled-in copy of this agreement before signing it. I understand and agree to all its terms, including the terms on the reverse side. I also received and read a filled-in copy of the Federal Truth in Lending Disclosure.

Borrower's Signature

X _____

Address **764 E OLD SHAKOPEE RD**

BLOOMINGTON MN 55420

Co-borrower's Signature

X _____

Address **764 E OLD SHAKOPEE RD**

BLOOMINGTON MN 55420

Owner of the Security

The person signing here owns an interest in the property securing this loan. By signing, he or she joins in granting the bank a security interest in that property. The owner is not personally responsible for payment of the loan.

Owner's Signature

X _____

Address _____

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

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

SAMOUITRY KENNY
764 E OLD SHAKOPEE RD
BLOOMINGTON MN 55420

765NLK

96 Year	ACUR Make	2HLS Model	H2290M592 Title NR.
JH4DC VIN	459TS022818	05/11/00 Security Date	NO Rebuilt

1ST SECURED PARTY

LIEN HOLDER

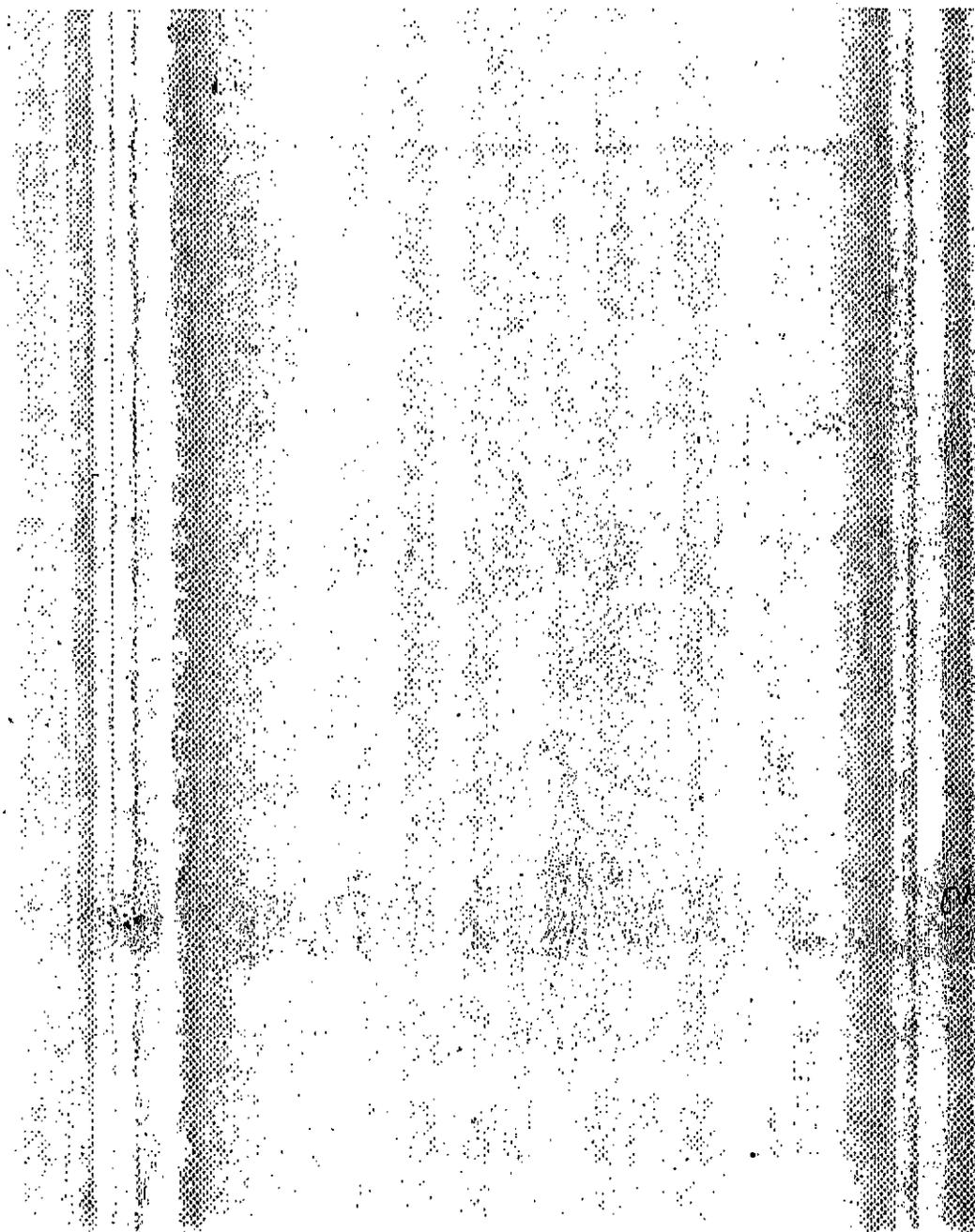
RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

NORWEST BANK MINN NA
6445 NICOLLET AV S
RICHFIELD MN 55423-1614

15



11



1-18-02
MWS
M.N. Lien Card
Clo Cont
Cred app

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
Trent Ken Johnson,
Debtor(s).

Case No.02-90177-DDO
Chapter 13

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

Wells Fargo Bank, N.A. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Bank, N.A. holds a perfected interest in a 1996 Acura Integra with a vehicle identification number JH4DC4459TS022818 (the "Vehicle"). Payments due under the terms of the Chapter 13 Plan totaling \$1,000.00 have not been made by the Debtor(s). The balance due under the Contract is \$7,425.46 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$2,925.00. Phay Samountry is a codebtor on the Contract. The Plan does not pay the claim in full plus interest (the plan provides for no interest to be paid). 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. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Chapter 13 Plan. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

Wells Fargo Bank, N.A. does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide Wells Fargo Bank, N.A. with the

indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Bank, N.A. to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

Relief from the codebtor stay is also appropriate where the obligation is not paid in full in the Plan. 11 U.S.C. Section 1301. In this case, the plan does not propose to pay any interest on the secured claim.

CONCLUSION

For all the reasons set forth herein, Wells Fargo Bank, N.A. is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Respectfully Submitted,

Dated: August 18, 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:

Trent Ken Johnson

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 02-90177-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))
Wayne G. Nelson
5500 Wayzata Blvd, Rm 1025
Minneapolis, MN 55416

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Trent Ken Johnson
635 Prairie Center Dr. Apt. 407
Eden Prairie, MN 55344-5361

(Co-Obligor)
Phay Samountry
764 E. Old Shakopee Road
Bloomington, MN 55420

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

Dated: August 18, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 02-90177-DDO

Chapter 13

Trent Ken Johnson,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Wednesday, September 8, 2004 at the motion of Wells Fargo Bank, N.A. seeking relief from the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301. 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 Bank, N.A. to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362 and the codebtor stay of 11 U.S.C. § 1301 is immediately terminated as to Wells Fargo Bank, N.A., and Wells Fargo Bank, N.A. is authorized to foreclose its interest in the subject 1996 Acura Integra, vehicle identification number JH4DC4459TS022818 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