

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
 )  
JOSEPH L. MEARS, ) Bankruptcy Case No. 94-31168  
 )  
Debtor. )

OPINION

This matter having come before the Court on a Motion for Relief from Automatic Stay and Motion for Abandonment of Property filed by Creditor, Magna Bank of Illinois, and an Objection thereto filed by Creditor, Alice Joyce Mears; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Court finds that the material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On October 28, 1994, Joseph L. Mears filed for relief under Chapter 7 of the Bankruptcy Code.
2. The Debtor, Joseph L. Mears, listed on his bankruptcy petition, under Schedule B - Personal Property, a 1994 Mazda Protege with a market value of \$12,163.
3. The Debtor's Statement of Intentions indicated that the Debtor did not intend to reaffirm on the debt on the 1994 Mazda and that that vehicle would be surrendered to the Creditor, Magna Bank of

Illinois. Magna Bank of Illinois has a perfected security interest in the 1994 Mazda by virtue of a lien upon the title to said vehicle.

4. As of the date of the Debtor's bankruptcy filing, the Debtor was indebted to Magna Bank of Illinois in the approximate amount of \$21,953.68.

5. The Debtor has defaulted in the terms of his contract with Magna Bank of Illinois and, as of the date of hearing on this matter, there was nearly a \$2,000 arrearage in payments.

6. The Court further finds that the Debtor has not shown proof of insurance on the vehicle, nor is the Creditor, Magna Bank of Illinois, adequately protected in that the debt which is the subject of the lien on the vehicle far exceeds the present fair market value.

7. Prior to filing for bankruptcy, the Debtor obtained a divorce from his former spouse, Alice Joyce Mears, and, pursuant to a Property Settlement Agreement dated March 14, 1994, the Debtor agreed that Alice Joyce Mears would receive the 1994 Mazda Protege and that the Debtor would make all payments on the loan against the Mazda in addition to maintaining the vehicle at no expense to Alice Joyce Mears for five years following the Agreement.

8. Alice Joyce Mears has filed an adversary proceeding (Adv. No. 95-3004) seeking to have the Debtor's agreement to pay for the 1994 Mazda Protege determined to be a non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(5) and seeks to have this adversary proceeding used as a basis to deny the motion presently before the Court.

#### Conclusions of Law

Pursuant to 11 U.S.C. § 362(d):

(d) On request of a party in interest and after notice

and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay

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(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

In examining the motion of Magna Bank of Illinois in connection with 11 U.S.C. § 362(d), the Court finds that the Bank has clearly shown that it lacks adequate protection in its collateral in that the fair market value of the collateral is far less than the actual debt on the collateral and the collateral is of a type that depreciates with use. Furthermore, the Bank has shown that, without proof of insurance on the vehicle in question, there is an even greater possibility that the Bank is not adequately protected. In addition to showing that there is insufficient adequate protection under § 362(d)(1), the Court finds that the Creditor had also shown, under 11 U.S.C. § 362(d)(2), that the Debtor does not have any equity in the vehicle in question and that the vehicle in question is not necessary to an effective reorganization in that the Debtor herein is not attempting to reorganize his debts.

In objecting to the motion of Magna Bank of Illinois, Creditor, Alice Joyce Mears, the ex-wife of the Debtor, asserts that the Court should first determine whether the Debtor's Agreement to allow her to use the 1994 Mazda, while holding her harmless on the payments for that

vehicle is non-dischargeable in bankruptcy prior to making a determination to lift the automatic stay. The Objector does not and cannot argue that the requisite elements under both § 362(d)(1) and § 362(d)(2) have not been shown. Rather, the Objector asks the Court to withhold a decision on lifting the automatic stay and abandonment of the subject vehicle until it is determined whether the Debtor will be discharged from his obligation to pay for said vehicle. In considering this argument, the Court recognizes the difficult position of the Debtor's ex-wife; however, the Court must consider the interests of Creditor, Magna Bank of Illinois, and, in so doing, finds that the automatic stay must be lifted under the circumstances. The Court further finds that the presence or the absence of the vehicle in question will not affect the outcome of the adversary proceeding filed by Alice Joyce Mears against the Debtor. As such, the Court finds that the Motion for Relief from Automatic Stay and Motion for Abandonment of Property filed by Magna Bank of Illinois, on January 27, 1995, should be allowed.

ENTERED: February 23, 1995.

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/s/ GERALD D. FINES  
United States Bankruptcy Judge