DOCKET NUMBER: 94-12055
ADV. NUMBER:
JUDGE: M. A. Mahoney
PARTIES: Mary Elizabeth Bryant
CHAPTER:
ATTORNEYS: R. M. Galloway, D. A. Boyett, II, B. A. Friedman
DATE: 1/25/95
KEY WORDS:
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

MARY ELIZABETH BRYANT, Case No. 94-12055-MAM

Debtor.

ORDER GRANTING AMSOUTH BANK OF ALABAMA'S RELIEF FROM THE STAY

Robert M. Galloway, Mobile, AL for Debtor
David A. Boyett, II, Mobile, AL for AmSouth Bank of Alabama
Barry A. Friedman, Trustee

This matter came before the Court upon the motion of AmSouth Bank of Alabama ("AmSouth") to lift the automatic stay pursuant to 11 U.S.C. § 362. The Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Proper notice of the hearing was given and appearances were as noted in the record. Based upon the reasoning below, the Court is granting AmSouth's motion.

Debtor, Ms. Bryant, executed two promissory notes in favor of AmSouth. The first note was executed on July 23, 1993 ("First Note"). The First Note is an unsecured loan which is now in default. As of November 25, 1994, the outstanding balance on the First Note was $8,436.86. Although the First Note does not specifically describe any collateral, it does provide that it would be secured by all other property "(except household goods or except any consumer's principal dwelling unless the agreement creating our lien on the dwelling specifically refers to this agreement) that secured any other sum you owe us now or later." (Exhibit A of AmSouth).

On August 2, 1993, Debtor executed the second note ("Second Note") which is secured by a 1992 Oldsmobile Cutlass automobile, VIN 1G3WH54T5ND346372. AmSouth submits that

the automobile also secures the First Note by virtue of "cross-collateralization" and "cross-default" provisions contained in the Second Note.[1] The cross-collateralization provision in the Second Note is as follows:

> **Security Agreement**. To protect us if you fail to (1) repay your loan or any interest or other costs or charges under this agreement, or any extension or renewal of your loan, or (2) keep all your promises under this agreement, or (3) pay any other sum you owe us now or later, you give us title and security interest in all of the following (the "collateral"):
>
> 1992 Olds Cutlass
> 1G3WH54T5ND346372

(Exhibit B of AmSouth).

Further, in the section of the Second Note titled "**Termination of Security Interest**" the following provision is included:

> We do not have to return or release the collateral to you until you have paid everything you owe us, whether under this agreement or otherwise.

(Exhibit B of AmSouth).

The cross-default provision found in both the First Note and the Second Note states in relevant part:

> **Default**. Without advance notice we have the right to require that the entire balance of your loan, including interest and other charges, plus any other debt you have to us, be repaid at once if any of the following happen:
>
> - You fail to pay this loan when it is due.
> - You break any of the promises you have made under this agreement or any other agreement you have with us now or later.
>
> . . .

(Exhibits A and B of AmSouth).

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[1]It is not uncommon for the terms "dragnet clause" or "cross-security clause" to be used when referring to such provisions.

On October 5, 1994, Debtor filed a voluntary petition for protection under Chapter 7 of the Bankruptcy Code. To date, no discharge has been entered in this case. As of November 15, 1994, the balance on the Second Note was $7,634.67.

Cross-collateralization and cross-default provisions are enforceable according to their terms under Alabama law. The United States Supreme Court has long recognized the right of states to regulate such transactions. Butner v. United States, 440 U.S. 48, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). In Dixie Ag. Supply, Inc. v. Nelson, 500 So. 2d 1036 (Ala. 1986), the Alabama Supreme Court concluded:

> It is Alabama law, however, that a dragnet clause which, although not itemizing the existing indebtedness, does by clear and unequivocal terms, reference and include a specific and identifiable antecedent debt, extends the coverage of the security agreement to that antecedent debt. The dragnet clause, therefore, may be given the full effect of its terms.

Id. at 190.

Further, upholding the validity of cross-security clauses, the court, in Badie v. First Capital Mortgage Corp., 576 So. 2d 191 (Ala. 1991), cited Ala. Code 7-9-204 (1975) which allows this type of open-ended security agreement. In Badie, the court determined that "such clauses may secure the debts between the parties to the agreement other than the debt that is specified in the agreement." Id. at 191. See also Ex parte Chandler, 477 So. 2d 360 (Ala. 1985). In the immediate case, therefore, the cross-collateralization and cross-default provisions are valid. Consequently, the automobile used to secure the Second Note also serves as security for the First Note. Because of several missed payments, the Debtor is in default on the First Note.

According to Schedule B of the Debtor's bankruptcy petition, the 1992 Oldsmobile Cutlass is worth $9,000. AmSouth claims the automobile would fetch $9,500 if it were repossessed and sold. The total outstanding balance of the combined notes as of November 25, 1994 was $16,071.53. Given this, regardless of which valuation estimate is applied, Debtor has

no equity in the automobile. This is the sole issue upon which AmSouth bears the burden of proof in this matter. 11 U.S.C. § 362(g). Debtor must show that the property is necessary for an effective reorganization and that AmSouth is adequately protected. 11 U.S.C. §§ 362(d)(1) and (2) and § 362(g).

The Court was not presented with evidence as to whether or not the automobile was necessary for a successful reorganization of Debtor's financial affairs. Debtor did not offer any adequate protection as to the First Note.

At oral argument, counsel for the Debtor offered In re Calhoun, No. 94-11156 (Bankr. S.D. Ala. Nov. 15, 1994), as authority on this issue. Although Calhoun is a recent ruling from this district on a relief from stay motion, the situation is clearly distinguishable. In Calhoun, the question was whether one cross-collateralized security agreement could be reaffirmed without also reaffirming the other. Calhoun is one step removed from the issue in this case.

Even if there is no default in the Second Note, there can be grounds for relief from stay if the payments offered by Debtor fall short of adequate protection of both the First and Second Notes, or if there is no equity in the property and the property is not necessary to effectively reorganize. Here, the cross-collateralization and cross-default clauses in the Second Note establish that there is a default on the entire indebtedness to AmSouth. Debtor did not offer to pay the First Note as adequate protection. Without adequate protection, "cause," pursuant to 11 U.S.C. § 362(d)(1) for the lifting of the stay, is established. There was also no evidence proffered that the property was necessary to a reorganization under 11 U.S.C. § 362(d)(2). Therefore, Debtor has not sustained her burden.

Dated: January 25, 1995

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE