

**FILED**

at \_\_\_ O'clock & \_\_\_ min \_\_\_ M

**IN THE UNITED STATES BANKRUPTCY COURT**

**AUG 27 2007**

**FOR THE DISTRICT OF SOUTH CAROLINA**

**United States Bankruptcy Court  
Columbia, South Carolina (7)**

IN RE:

Henry Edward Withrock and  
Kay Taylor Withrock,

Debtors.

C/A No. 02-07460-JW

Chapter 13

**JUDGMENT**

**ENTERED**

**AUG 27 2007**

**S. R. P.**

Based on the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Manufacturers and Traders Trust Company's Motion for Relief from Stay is denied.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
August 27, 2007

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IN RE:

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Chapter 13

**ENTERED**

**ORDER**

**AUG 27 2007**

Debtors.

**S. R. P.**

This matter comes before the Court upon the Motion for Relief from Automatic Stay pursuant to 11 U.S.C. § 362 ("Motion") filed by Manufacturers and Traders Trust Company ("Movant"). A hearing on the Motion was held on August 9, 2007.<sup>1</sup> The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). Pursuant to Fed. R. Civ. P. 52, made applicable to this proceeding by Fed. R. Bankr. P. 7052, the Court makes the following Findings of Fact and Conclusions of Law.<sup>2</sup>

**FINDINGS OF FACT**

1. Debtors filed for relief under chapter 13 of the Bankruptcy Code on June 24, 2002.
2. Debtors have been making direct contractual mortgage payments to Movant pursuant to a confirmed plan since August 27, 2002.
3. On June 22, 2007, Movant filed the Motion, asserting that Debtors had failed to make the February 1, 2007 payment and all subsequent payments. The records attached to the Motion indicated that three of Debtors' payments were NSF payments.

<sup>1</sup> This hearing was a continued hearing on the Motion as the parties were previously given time to attempt to work through their payment dispute. Counsel for Movant, Counsel for Debtors and Debtors appeared at this hearing.

<sup>2</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

4. On June 27, 2007, Debtors filed an Objection to the Motion.
5. At the hearing on August 9, 2007, Debtors presented financial records regarding the payments made on the account with Movant, including copies of cleared checks. The financial evidence presented by Debtors indicates that, at the time Movant filed the Motion, Debtors were due for the May 27, 2007 obligation to Movant, which they subsequently paid on July 3, 2007. The records further indicate that none of the payments were returned as NSF. Movant presented no evidence at the hearing.

#### CONCLUSIONS OF LAW

The moving party has the initial burden of proof in connection with a motion for relief from the automatic stay to demonstrate the grounds alleged in its motion. See In re R. F. Cunningham & Co., Inc., 355 B.R. 408, 412 (Bankr. E.D.N.Y. 2006). Absent an initial showing of cause, relief from the stay will be denied. Id. (citing In re Mazzeo, 167 F.3d. 139, 142 (2d Cir. 1999)). In this case, Movant did not present a witness or representative at the hearing and did not present sufficient evidence demonstrating that Debtors failed to make the required payments. As the hearing on this matter was previously continued so that the parties could resolve the payment dispute, Movant had ample notice that Debtors objected to the motion because they asserted their post petition mortgage payments were current. In light of Movant's failure to present sufficient evidence of Debtors' nonpayment in support of the Motion, the Court denies Movant's motion for relief under 11 U.S.C. § 362(d).

Based upon Debtor's request and considering all of the circumstances before the Court, the Court further finds that Movant shall not charge Debtors' account for any of the attorney's fees or costs associated with this Motion. The Court notes that an Order Granting Debtors' Motion for Hardship Discharge was entered on August 9, 2007 without objection and finds that

Debtors have complied with their Chapter 13 plan and that the Trustee has satisfied all pre-petition obligations owed to Movant, its predecessors or assigns. It further appears that, at the time of the hearing, Debtors were current with all post-petition contractual payments including the May and June 2007 contractual payment, and Debtor's counsel advised the Court that the July 2007 payment had been sent in by Debtors.

Debtors requested attorney's fees in their response to the Motion. At the hearing, Debtors presented no evidence regarding attorney's fees. Accordingly, Debtor's request for attorney's fees is denied.

Based on the foregoing, it is therefore

ORDERED that Manufacturers and Traders Trust Company's Motion for Relief from Stay is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina,  
August 27, 2007

  
UNITED STATES BANKRUPTCY JUDGE