

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Thomas Dale Hollingsworth,

Case No. 01-12576

Debtor.

Chapter 11

**MEMORANDUM OPINION AND ORDER RE
MOTION TO RECONSIDER ORDER LIFTING STAY IN FAVOR OF FIRST BANK**

The Court conducted a hearing on the Debtor's Motion to Reconsider Order Lifting Stay in Favor of First Bank on November 21, 2001. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

On October 11, 2001, First Bank filed a "Motion to Lift Automatic Stay" in the Debtor's Chapter 11 case. The debts and obligations owed by the debtor to First Bank were listed in the motion as follows:

<u>Note #1</u>	<u>Balance</u>	<u>Collateral</u>
6010205	\$54,299.00	Deed of Trust on 160 Thomas Lane, Paris, Tennessee, and a 1982 Mobile Home
6014623	\$23,162.00	1992 International Truck and a 1995 Harley Davidson
6015066	\$135,659.00	Second Mortgage on Business and UCC on Equipment and Fixtures and Sawmill
6004698	\$28,095.00	Deed of Trust on Real Estate Located at 1330 Highway 641 North, Paris, Tennessee.

As grounds for lifting the automatic stay, First Bank alleged that there was no equity in the collateral, that it was not necessary for an effective reorganization, there was no insurance coverage on the collateral, and that there was no adequate protection being provided. The Debtor filed an objection to First Bank's motion in which he alleged that all of the collateral was necessary for an effective reorganization.

First Bank's motion to terminate the automatic stay was heard by this Court on November 7, 2001. The debtor did not appear at the hearing and his attorney requested the hearing be reset for two weeks. The Court denied counsel's request for the continuance and granted First Bank's motion. First Bank repossessed the 1995 Harley Davidson Motorcycle on November 8, 2001.

In response to the repossession, the debtor filed a "Motion to Reconsider Order Lifting Stay in Favor of First Bank" on November 13, 2001. In his motion, the debtor alleged that he did not attend the November 7, 2001, hearing because his wife had failed to inform him of the date. The debtor also alleged in his motion that First Bank did not wait for the Order Lifting the Automatic Stay to become final before repossessing the Harley Davidson.

II. CONCLUSIONS OF LAW

Federal Rule of Bankruptcy Procedure 4001(a)(3) provides:

An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

FED. R. BANKR. P. 4001(a)(3). Pursuant to this rule, the protections of the automatic stay remain in effect for ten days after an order granting the lifting of the stay is entered. In the case at bar, the Court granted First Bank's motion to lift the stay on November 7, 2001. The order lifting the stay in favor of First Bank was not entered until November 15, 2001. When First Bank

repossessed the debtor's Harley Davidson on November 8, 2001, it violated the provisions of the § 362 automatic stay. The Court therefore finds that the appropriate remedy for this violation is two-fold. First, the Court finds that the November 15, 2001, order lifting the stay in favor of First Bank is set aside as it relates to all of the collateral listed in First Bank's October 11, 2001, motion, *with the exception of the Harley Davidson*. Second, the Court finds that although First Bank did technically violate the automatic stay on November 8, 2001, when it repossessed the Harley Davidson, the Harley Davidson is unnecessary to the Debtor's reorganization. As a result, the automatic stay is lifted as to the Harley Davidson and First Bank may proceed with the sale of this collateral.

III. ORDER

It is therefore **ORDERED** that the Debtor's Motion to Reconsider Order Lifting Stay in Favor of First Bank is **GRANTED IN PART** and **DENIED IN PART**:

As it relates to the 1995 Harley Davidson, the Order Lifting Stay in Favor of First Bank is **AFFIRMED**;

As it relates to the remaining collateral listed in First Bank's October 11, 2001, "Motion to Lift Automatic Stay," the Order Lifting Stay in Favor of First Bank is **HEREBY SET ASIDE**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: November 30, 2001