

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

IN RE:

TIFFINEY RENEE BARNETT
TIMOTHY ANDRA BARNETT,

Case No. 96-20171-WHB
Chapter 13

Debtors.

**ORDER ON MOTION TO DISMISS OR IN THE ALTERNATIVE
TO LIFT AUTOMATIC STAY TO PERMIT REPOSSESSED
VEHICLE TO BE SOLD**

This cause came on to be heard on the 19th day of March, 1996, upon the motion of Valley National Financial ("Valley") to dismiss the debtors' petition or, in the alternative, to lift the automatic stay to permit Valley's collateral to be sold.

Based upon the pleadings and statements of counsel, it appears to the Court that it is undisputed that Valley holds an approximate claim of \$12,439 against only one of the joint debtors, Timothy Andra Barnett, which claim is secured by a 1994 Chevy C15 SID light truck as noted on the Kansas "Title and Registration Application" attached as an exhibit to the motion. Tiffiney Renee Barnett did not sign the note and her name is not on the title. It further appears that prior to commencement of this case, Valley repossessed the collateral vehicle due to the obligor's default on payments, and that the obligor/debtor, Mr. Barnett, is presently incarcerated in a Wisconsin penal institution and has no immediate need for the vehicle nor means of providing adequate protection of the movant's interest. Mr. Barnett can not force a turnover of the vehicle when he has no present ability to use it. 11 U.S.C. § 542(a). Notwithstanding that the other debtor, Tiffiney Renee Barnett, who is not contractually obligated to pay for this vehicle, contests the relief sought by Valley and contends that she needs the vehicle for her successful reorganization and that she

intends to pay for the arrearage and the ongoing payments through the chapter 13 plan, the Court concludes that Valley is entitled to the requested relief from the automatic stay pursuant to 11 U.S.C. §362(d).

To hold that Tiffiney Renee Barnett should be allowed to recover or retain the automobile would force a noncontractual obligation with a third party upon the lender and would permit a third party to use collateral without the consent of the lender when, given the above circumstances, the debtor who is the actual obligor would not be entitled to turnover and retention of the collateral vehicle. The debtors' argument that Timothy Barnett owes his spouse a support obligation to provide her a vehicle can not be used to coerce Valley into being the provider of that support.

IT IS THEREFORE ORDERED that the motion of Valley National Financial for relief from the automatic stay is granted and Valley may proceed to exercise its state law remedies to the collateral. This debtor shall be removed as a secured claim from the debtors' proposed plan, without prejudice to Valley's filing an unsecured deficiency claim or the debtors' objection to such claim.

SO ORDERED this 21st day of March, 1996.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

cc:

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