

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

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U.S. BANKRUPTCY COURT

In re:

Case Number:

WILLIAM H. HENDRICKS
NORA J. HENDRICKS

WF11-84-01773

Debtors.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER OF RELIEF FROM STAY

General Motors Acceptance Corporation, by Robert W. Dernbach, S.C., having filed a Request for Relief from Stay; and a hearing having been held; and GMAC appearing by Attorney Michael C. Koehn; and Debtors William H. and Nora J. Hendricks appearing in person and by Attorney Bruce Evan Zito; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. On April 13, 1984, William H. Hendricks purchased a 1984 Oldsmobile Toronado automobile under a retail installment contract which was assigned to General Motors Acceptance Corporation (hereinafter GMAC).

2. The contract provided for a \$16,509.51 debt to be paid in 48 monthly installments of \$438.82 (principal and interest). The first payment was due May 14, 1984.

3. Mr. Hendricks paid the first installment but has made no subsequent payment.

4. On September 20, 1984, Debtors William H. and Nora J. Hendricks filed for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtors' schedules show that they own at least 5 motor vehicles.

6. On October 3, 1984, GMAC filed a request for relief from the automatic stay

7. At the hearing on said request the Debtors offered a resumption of payments as adequate protection of GMAC's interest, conceded that they had no equity in the Toronado and offered no evidence that the Toronado was necessary for their reorganization (the Debtors' Reply Brief states that Ms. Hendricks uses the Toronado "extensively as transportation to and from various medical facilities" but does not indicate why she could not use one of the Debtors' four other motor vehicles for this purpose). See generally 11 U.S.C. sec. 362(g) (burden of proof in relief from stay proceedings).

8. A creditor may obtain relief from the automatic stay under 11 U.S.C. sec. 362(d)(1) (cause) or sec. 362(d)(2) (no debtor equity in property which is not necessary to an effective reorganization). Nazareth Nat. Bank v. Trina-Dee, Inc., 731 F.2d 170 (3rd Cir. 1984), In re Faires, 34 B.R. 549, 553, 11 B.C.D. 332, 334 (Bankr.W.D.Wash 1983).

CONCLUSION OF LAW

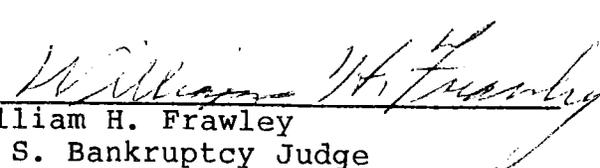
GMAC's request should be granted.

ORDER

IT IS ORDERED THAT the 11 U.S.C. sec. 365(a) automatic stay in this proceeding be, and the same hereby is, terminated to permit General Motors Acceptance Corporation to proceed against the Debtors' 1984 Oldsmobile Toronado.

Dated: February 11, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge