

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**  
**Western Division**

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DESAI PROPERTIES, INC.

Bankruptcy No. 93-50509XS

Contested No. 7223

DESAI CORPORATION

Bankruptcy No. 93-50508XS

Contested No. 7222

Debtors.

Chapter 11

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**ORDERS RE: MOTIONS FOR RELIEF FROM STAYS**

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The matters before the court are the motions for relief from stay filed by First Federal Savings Bank of Siouxland (First Federal) in these proceedings. The motions (contested no. 7222 in Desai Corporation and contested no. 7223 in Desai Properties, Inc.) were filed, each bearing a joint caption, on November 24, 1993. Debtors resisted. Preliminary hearings were held by telephone on December 17, 1993. Movant waived its entitlement to have final hearing within the subsequent 30 days, and the parties agreed that final hearing would be held at the time of final confirmation hearings on the debtors' proposed joint plan. That hearing was held February 16, 1994.

First Federal alleged in its motions that its claim was secured by real property of the estates, that the debtors had no equity in the property, and that the property was not necessary to an effective reorganization. Movant thus sought relief under 11 U.S.C. § 362(d)(2). First Federal also sought relief under 11 U.S.C. § 362(d)(1) alleging that the debtors were in default on the note and mortgage and that the debtors had failed to pay delinquent real estate taxes.

The evidence submitted on the motions is included in the evidence introduced regarding confirmation. The real estate in question is the motel property operated by Desai Properties. The real estate is owned by Desai Corporation. First Federal has a first mortgage. The bank has an allowed claim which at the time of filing of the case was \$617,758.21. As of the date of the confirmation hearing in February, the claim was \$645,256.43.

In its decision regarding the joint plan, the court found that the plan adequately protected First Federal's security interest during the life of the plan, inasmuch as the court found that "if the plan is confirmed, the value of the real estate would be approximately \$790,000.00." Decision, April 29, 1994, page 11.

In determining the value of the property in light of confirmation, the court was dealing with a different issue than the "lack of equity" in the context of relief from stay litigation. Nonetheless, the valuation method used is still relevant to valuation in the latter context. The court has no basis to determine now that the property has less value than that determined by the court in its confirmation

findings. The movant, having failed to show lack of equity, cannot obtain relief based on 11 U.S.C. § 362(d)(2).

First Federal argues that cause exists to grant relief. It says that cause is shown by debtors' failure to make payments on the mortgage debt for 19 months, the fact that these are essentially single asset cases which have been pending since March 25, 1993, and that debtors have as yet failed to reorganize.

"Cause" warranting relief from the stay is not defined by the Code. It is a broad concept which requires determination on a case-by-case basis. "Cause" means more than just "any cause." In re Kerns, 111 B.R. 777, 789 (S.D. Ind. 1990). "In determining whether or not cause exists, the bankruptcy court must balance the inherent hardships on all parties and base its decision on the degree of hardship and the overall goals of the Bankruptcy Code." In re Opelika Mfg. Corp., 66 B.R. 444, 449 (Bankr. N.D. Ill. 1986).

The equity cushion in this case provides a measure of adequate protection. The length of time since the last pre-petition payment on the mortgage is not, standing alone, cause for granting relief in these cases. Nor will the court grant relief merely because this is essentially a single-asset case. That fact would be relevant to whether this was a good faith filing if these cases involved a single, overencumbered asset, and there were relatively few unsecured creditors. See In re Cedar Falls Hotel Properties Limited Partnership, Bankruptcy No. L-88-01146W, slip op. at 11-14 (Bankr. N.D. Iowa, Nov. 23, 1988). Here, although there is a single asset, there is equity in it for the debtor, and there are multiple creditors.

Here also, the debtors made a timely attempt to propose and obtain confirmation of a plan in order to reorganize to continue operations. The plan was not confirmed, but debtors seek time to file another plan based on the sale of the hotel property. There is evidence of at least one interested buyer. There is nothing in the Code which permits only one opportunity to present a plan.

The court concludes that cause has not been shown to warrant granting relief from the stays. Debtors should have the opportunity to present a revised plan. However, the court cautions the debtors that this opportunity is not open ended. The court is mindful that the equity cushion which protects First Federal and the equity of the debtors (these are two different amounts) are eroding. The court has found the value of the real estate to be \$790,000.00. As of June 21, 1994, the debt to First Federal, including principal and interest, is approximately \$664,247.00. There have been no payments of real estate taxes since September, 1992. Thus, there has accrued, without interest, approximately \$42,000.00 in taxes. There is an escrow account in the amount of \$26,691.00 to protect First Federal on some of the taxes. But the account is \$15,309.00 short of full protection, not including offsetting accruals of interest. Thus, as of June 21, 1994, the creditor's equity cushion is approximately \$110,444.00. (The debtors' equity is less as there is a contract balance of approximately \$45,000.00, not including interest, which is subordinate to First Federal's mortgage.) Under present circumstances, it will not take long for the creditor's protection to disappear. Interest accrues on its claim in the amount of \$151.92383 per day. Delinquent taxes also accrue interest. Furthermore, additional taxes will become delinquent, and those charges will draw interest. By September 30, 1994, the court estimates that additional taxes of approximately \$14,000.00 will become delinquent, and interest will accrue on First Federal's claim in the approximate amount of \$15,344.00. One can also reasonably estimate that First Federal's legal expenses and costs that are chargeable under the mortgage will be at least \$10,000.00 by that time. Thus, by September 30, 1994, the court estimates an equity cushion for the creditor of approximately \$71,000.00.

Assuming no increase in value to the property, the cushion will be gone by March, 1995, as more taxes become delinquent and interest on the claims of First Federal and the tax collector accrue. Also, it may be estimated that it will take First Federal at least two months to obtain a decree in foreclosure, and depending on the method of foreclosure, approximately two to six months to obtain a deed.

Debtors have known since the end of May that their previously proposed plan would not be confirmed. Perhaps they knew before then. Their time for obtaining confirmation of a new plan without First Federal's obtaining relief should be limited.

First Federal's motions seeking immediate relief from the stays will not be granted. However, relief from the stays will be granted by further order of this court if debtors have not obtained confirmation of a plan or plans by September 30, 1994, unless additional adequate protection of First Federal's interest in the real property is either accepted by First Federal or approved by the court. Accordingly,

IT IS ORDERED that the motion of First Federal Savings Bank of Siouxland is granted in part and denied in part as follows: First Federal shall have relief from the automatic stays effective September 30, 1994, unless debtors have obtained confirmation of a plan of reorganization prior to that date or unless First Federal has accepted or the court approves an offer of adequate protection of First Federal's interest in the real property covered by First Federal's mortgage. Judgment shall enter accordingly.

SO ORDERED ON THIS 23rd DAY OF JUNE, 1994.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order and judgments by U. S. mail to: A. Frank Baron, Jeffrey Poulson, U. S. Attorney and U. S. Trustee.