

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

JOHN BRETT VALENTINE and CHAREEN ELES
VALENTINE

Bankruptcy No. 94-51413XS

Contested No. 6040

Debtors.

Chapter 13

ORDER RE: MOTION FOR RELIEF FROM STAY

Boatmen's Bank Iowa, N.A. (Boatmen's) moves for relief from the stay of 11 U.S.C. 362. Hearing was held May 10, 1996 in Sioux City. Jeffrey L. Poulson, Esq. appeared for Boatmen's; Craig H. Lane, Esq. appeared for debtors John and Chareen Valentine. This is a core proceeding under 28 U.S.C.

157(b)(2)(G).

This is Boatmen's fourth effort to obtain relief from the stay. Boatmen's is claimant under three secured loans to debtors. One loan is secured by debtors' homestead; a second is secured also by the homestead; and the third is secured by inventory and other business assets from debtors' gift shop in LeMars. Debtors filed a "Second Amended Plan" (docket no. 80) which was confirmed October 27, 1995 (docket nos. 92 and 93). All three of Boatmen's claims were treated as fully secured. The plan provided for direct payment to Boatmen's on each of the loans over 36 months. Debtors were to pay \$436.00 monthly on the homestead loan, \$135.00 monthly on the second mortgage, and \$612.00 monthly on the business asset loan.

Unfortunately, the plan did not specify the dates of payments. Boatmen's filed a motion for relief because debtors did not commence plan payments timely (contested matter 9156, docket no. 94). I denied relief but entered an order specifying the timing of payments (December 11, 1995 Order, docket no. 100). On February 8, 1996, Boatmen's again filed for relief (contested matter 6015, docket no. 102) because of late payments in January and February. Debtors resisted, explaining that they had misunderstood the court's time requirements for making the payments, but they had tendered the late payments. I entered an order March 19, 1996, denying relief, again specifying the payment dates, and requiring debtors to pay Boatmen's legal costs associated with the motion (docket no. 110).

The pending motion for relief, Boatmen's fourth, was filed April 16, 1996 because debtors' \$138.58 payment on their second home mortgage, received by Boatmen's on April 3, was dishonored. Payments were made as required on the other two loans. Because of the dishonor, Boatmen's rejected the tender of May payments. Mrs. Valentine waited for the dishonored check to be presented a second time, as deposits would have made it good. Boatmen's did not present it again. To correct the default, Mrs. Valentine obtained a money order or traveler's check and mailed it to Boatmen's Des Moines office where it was accepted, perhaps inadvertently.

The cause of the dishonored check was explained by Mrs. Valentine. The checking account on which the second mortgage payment check was written is subject to automatic withdrawal of \$40 or \$50 to pay a monthly health insurance premium. This automatic withdrawal has been in place for three or four years. The withdrawal is to be made on the 7th or 8th of each month. For April 1996, it was made early, on the 4th. The early withdrawal, coupled with presentation of other checks, including the one to Boatmen's, caused the account to be overdrawn by about \$20.00. Mrs. Valentine approached her banker to find out the cause of the early withdrawal. It could not be explained. Debtors made

a deposit to the account in excess of \$700.00 which would have cured the dishonor if the check had been presented again.

Because of the default in payment on the second mortgage caused by the dishonor of the second mortgage check, Boatmen's seeks relief to proceed against debtors on all three loans, despite the fact that the payments on the other two loans were tendered timely. To obtain relief, Boatmen's must show cause.

11 U.S.C. 362(d)(1).

Cause has not been shown. Boatmen's has proven no cause for relief as to the business loan or the first mortgage homestead loan. In this case, as to the second mortgage loan, cause should relate either to the fault of the debtors, to their inability to pay, or, absent fault, to some cognizable harm to Boatmen's security interest because of the late payment.

It is uncontested that debtors had and still have the ability to remain current on the loan, that the dishonor and resulting default was caused by irregular circumstance, not the fault of the debtors. There is no showing that as a result of the default, even if cured, there would be damage or endangerment to the value of Boatmen's interest in the real estate. As cause has not been proven, the motion for relief will be denied.

IT IS ORDERED that Boatmen's motion for relief from the automatic stay is denied.

SO ORDERED THIS 22nd DAY OF MAY 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U.S. mail to: Debtors, Craig Lane, Jeffrey Poulson, Carol Dunbar, 2002 List and U.S. Trustee.