

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

IN RE:

Ella L. Cole

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) **Case No. 01-81042C- 13**
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**ORDER DENYING REQUEST FOR RELIEF FROM STAY, FOR RELIEF
FROM CO-DEBTOR STAY AND REQUEST FOR ATTORNEYS' FEE**

This matter came on for hearing before the undersigned Bankruptcy Judge on June 14, 2001, in Durham, North Carolina, after due and proper notice, upon the Motion by Wells Fargo Financial Acceptance, Inc. (herein "Wells Fargo") for Relief from Stay, for Relief from Co-Debtor Stay, to waive Rule 4001(a)(3) and to file a deficiency claim, or in the alternative, for Adequate Protection; and for Attorney Compensation in reference to a 1998 Ford Explorer. Appearing before the Court were Neil M. O'Toole, on behalf of the Debtor, Pamela P. Keenan, on behalf of Wells Fargo, and Richard M. Hutson, II, Standing Trustee.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. §157 (b)(2)(A) and (G) which this court may hear and determine.

After reviewing the file and considering the arguments of counsel, this Court makes the following findings of fact and conclusion of law:

The Debtor filed a petition for relief on or about April 12, 2001, under Chapter 13 of the United States Bankruptcy Code. At the time of the filing the Debtor was in possession of a 1998 Ford Explorer, VIN #1FMZU34E7WUA38535 (herein the "Vehicle"). Wells Fargo holds a

senior perfected first lien on the Vehicle. After the filing of the petition, on or about April 26, 2001, Wells Fargo contacted Debtor's counsel requesting that the Debtor provide proof of continuing comprehensive and collision insurance coverage on the Vehicle to the Creditor. Wells Fargo followed up on the request on May 5, 2001, again contacting Debtor's counsel. When the Creditor did not receive a response, on May 15, 2001, Wells Fargo filed this motion for relief from stay, or in the alternative adequate protection and the motion for attorneys' fees. For the reasons set forth herein the motion for relief from stay, relief from the co-debtor stay and the motion for attorneys' fees are DENIED.

At the hearing, the Debtor provided evidence of continuing comprehensive and collision insurance coverage on the Vehicle. At all times the Creditor or its predecessor has been listed as loss payee on the policy. The insurance coverage on the Vehicle has never lapsed. Wells Fargo is a partially secured creditor in this Chapter 13 proceeding as the debt to the Creditor exceeds the value of the collateral. The Debtor has the right to propose to treat Wells Fargo as a partially secured and partially unsecured creditor. Wells Fargo is not seeking attorneys' fees under 11 U.S.C §506(b) as an over secured creditor but is seeking attorneys' fees under 11 U.S.C. §§105 and 362 contending that the Court can fashion adequate protection payments to include attorneys' fees. Wells Fargo seeks to tax the Debtor with the cost of this motion seeking attorneys' fees of \$450.00.

Pursuant to the Local Bankruptcy Rules of the Middle District of North Carolina Local Rule 4001-1 in Chapter 13 cases, affected allowed secured creditors may inquire of the debtor in writing of the following:

1. the status of insurance coverage on property used as collateral;
2. whether insurance premiums are paid directly by the debtor;
3. the location, inspection, and appraisal of the collateral; and
4. the status of direct payments.

Wells Fargo made no attempt to contact the Debtor directly about information regarding the insurance coverage. The Court is uncertain if the Debtor was aware of the request from Wells Fargo. It would be unequitable to add the requested sum of \$450.00 to the Debtor's Chapter 13 plan when there is no evidence before the Court that the Debtor failed to respond to a request for information about the insurance on the vehicle.¹

Therefore, it is **ORDERED, ADJUDGED AND DECREED** that Wells Fargo is adequately protected under the provisions for payment in the proposed plan and by being listed as loss payee on the insurance policy. It is further ordered that the Motion to Lift Stay, Co-Debtor Stay and for Attorneys' Fees is **DENIED**.

This the 11, day of July.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge

¹The Court notes that the "American Rule" provides that the prevailing party to litigation is not entitled to recover attorneys' fees and costs absent a specific statute for the same. While in some instances attorney fees might be appropriate under 11 U.S.C. §§105 and 362 such circumstances do not exist in this case.