

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>90-11275</u>
DEBORAH CASSANDRA HOLDEN)	
)	
Debtor)	
<hr/>		
FIRST NATIONAL BANK OF ATLANTA)	FILED
)	at 2 O'clock & 11 min. P.M.
Movant)	Date: 1-11-91
)	
vs.)	
)	
DEBORAH CASSANDRA HOLDEN)	
)	
Respondent)	

ORDER

First National Bank of Atlanta ("First Atlanta") seeks relief from the automatic stay of 11 U.S.C. §362(a) in order to complete foreclosure of its security interest in the debtor's automobile, one (1) 1984 Cadillac, Manufacturer's ID No. 1G6AM6980E9071872. The debtor opposes the relief. Prior to the debtor filing this case, First Atlanta executed a self-help repossession of its collateral. Prior to the expiration of the period for redemption authorized under Official Code of Georgia

(O.C.G.A.) §11-9-506¹ and §10-1-36², the debtor sought relief

¹O.C.G.A. §11-9-506 states:

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Code Section 11-9-504 or before the obligation has been discharged under Code Section 11-9-505(a) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

²O.C.G.A. §10-1-36 states:

When any motor vehicle has been repossessed after default in accordance with Part 5 of Article 9 of Title 11, the seller or holder shall not be entitled to recover a deficiency against the buyer unless within ten days after the repossession he forwards by registered or certified mail to the address of the buyer shown on the contract or later designated by the buyer a notice of the seller's or holder's intention to pursue a deficiency claim against the buyer. The notice shall also advise the buyer of his rights of redemption, as well as his right to demand a public sale of the repossessed motor vehicle. In the event the buyer exercises his right to demand a public sale of the goods, he shall in writing so advise the seller or holder of his election by registered or certified mail addressed to the seller or holder at the address from which the seller's or holder's

under

Chapter 13 of Title 11 United States Code. The commencement of the case under Title 11 by the filing of a petition creates an estate and such estate is comprised of all legal or equitable interests of the debtor in property held as of the commencement of the case. 11 U.S.C. §541(a)(1)³. The debtor's right to redeem the motor vehicle pursuant to applicable state law represents a legal and equitable interest of the debtor in property and such property interest is property of the estate. In re: Saylor, 869 F.2d 1434 (11th Cir. 1989). The filing for relief under Chapter 13 operates as a stay against the commencement or continuation of any action against the debtor, any act to exercise control over property of the estate, or any act to enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case. 11 U.S.C.

notice emanated within ten days after the posting of the original seller's or holder's notice.

³11 U.S.C. §541(a)(1) states in pertinent part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

§362(a)(1)(3) & (5).⁴ First

Atlanta is stayed from any further act to divest the debtor's interest in her automobile. First Atlanta seeks relief from the automatic stay in order to complete its self-help repossession and foreclose its security interest pursuant to 11 U.S.C. §362(d)⁵.

⁴11 U.S.C. §362(a) provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities of

(1) the commencement or continuation, including the issuance or employment process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have commenced before he commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate of property from the estate or to exercise control over property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title.

⁵11 U.S.C. §362(d) states:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay

Pursuant to 11

U.S.C. §362(g)⁶, the party opposing the relief from stay bears the burden of proof on all issues other than debtor's equity in property. Regarding the "for cause" basis for relief under §362(d)(1), First Atlanta contends its interests are not adequately protected because the debtor has allowed her insurance coverage on the automobile to lapse post repossession. The debtor acknowledges the cancellation of the insurance following repossession, but insists that she is in a position to provide full coverage automobile insurance with First Atlanta listed as loss payee prior to regaining possession. As it pertains to First Atlanta's request for relief under 362(d)(1), the debtor has carried the burden of proof as to her ability and willingness to provide adequate protection of the interest of First Atlanta.

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property; a
(B) such property is not necessary to an effective reorganization.

⁶11 U.S.C. §362(g) states:

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

Regarding First Atlanta's basis for relief under §362(d)(2), First Atlanta has shown by the debtor's schedules and proposed plan that it is an undersecured creditor. Therefore, by

the debtor's own schedules First Atlanta has established that the debtor lacks equity in the property. 11 U.S.C. §362(d)(2)(A); §362(g)(1). At hearing, the debtor testified that the automobile in question represents her sole form of reliable transportation to and from work and is therefore necessary to an effective reorganization. From the evidence presented, the debtor has carried the burden of proof necessary to defeat First Atlanta's motion for relief from stay under §362(d)(2)(B).

It is therefore ORDERED that motion for relief from stay is denied. This court having ordered confirmation of the debtor's proposed plan, upon delivery of a policy of full coverage insurance with First Atlanta listed as loss payee, the interest of First Atlanta is adequately protected.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 11th day of January, 1991.