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(INTERNAL REVENUE SERVICE)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: * **CASE NO. 08-35206-HDH-11**
*
JOHN NICHOLAS SHEETS, *
* **PRELIMINARY HEARING:**
DEBTOR. * **NOVEMBER 5, 2008 AT 1:30 p.m.**

**UNITED STATES OF AMERICA'S MOTION FOR RELIEF FROM
AUTOMATIC STAY, AND SUPPORTING BRIEF**

THE DEBTOR SHALL FILE A RESPONSE TO THIS MOTION FOR RELIEF FROM STAY WITHIN 12 DAYS FROM THE SERVICE OF THE MOTION. THE RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

TO THE HONORABLE HARLIN D. HALE, UNITED STATES BANKRUPTCY JUDGE:

The United States of America (Internal Revenue Service), files this motion for relief from the automatic stay for cause under Bankruptcy Code [11 U.S.C.] § 362(d), against the Debtor John Nicholas Sheets, to (1) continue the lawsuit against the Debtor, his wife Eleanor Mowery-Sheets,

and related entities; (2) continue IRS levies against the Debtor's wife and the Debtor; (3) foreclose on the personal residence of the Sheetses, legal title to which is held in The Mowery Sheets Estate Family Trust, because there is no equity in the property; and (4) permit the United States to pursue collection of the Debtor's \$537,000+ federal income tax debt from exempt assets, post-petition earnings, and post-petition real estate commissions, and other property which is not property of the bankruptcy estate, as follows:

1. The Debtor, a licensed Texas realtor, filed a petition seeking relief under Chapter 11

on October 8, 2008, without schedules or a statement of financial affairs, claiming assets of less than \$50,000. This is his **fourth** bankruptcy of which the United States is aware, as shown by the chart attached as **Government Exhibit 1**. No creditors in any of the Debtor's three previous bankruptcies were paid through the bankruptcies. Two of the bankruptcies were initially filed as Chapter 7 cases, in which the Debtor received a general Chapter 7 discharge. In his third bankruptcy, No. 01-31878-RCM, the Debtor originally filed a Chapter 11 bankruptcy but never had a disclosure statement approved or a Chapter 11 plan of reorganization confirmed, before the case was converted to a Chapter 7 on May 8, 2008, more than two years after it was filed. On September 10, 2007, the Debtor received a Chapter 7 discharge in his 2001 bankruptcy case.

2. The Internal Revenue Service is a secured creditor in this bankruptcy proceeding, and

will file a proof of claim in excess of \$537,000, for the Debtor's federal income (1040) tax liabilities for tax years 1997, 1998, 1999, 2000, 2005, and 2006. All of these tax assessments were made after the Debtor filed his 2001 bankruptcy, they were litigated by the Debtor in the United States Tax Court, and as a result of the entry of agreed Decisions, they are res judicata and cannot be relitigated herein. In addition, the United States expects the Debtor to owe 2007 income tax, since he informed

the United States that he had not filed this return or made any estimated tax payments for his 2007 income, although he and his wife recently placed an advertisement in *D Magazine* claiming that he and Mrs. Sheets, "sold over \$200 million in property in 2007". See article attached as **Government Exhibit 2**. During several years, the Debtor failed to file his federal income tax returns or failed to timely file his tax returns, and for tax years as to which the Debtor filed a tax return, he has underpaid his tax liabilities, and failed to disclose all of his income. See the chart of Debtor's undisputed income tax liabilities in his 2001 bankruptcy, attached as **Government Exhibit 3**.

3. In Debtor's 2001 bankruptcy, he filed amended schedules showing total assets of \$17,009 in personal property, and no real property.¹ The Debtor only filed his 2000 income tax return after being held in civil contempt by this Court on September 11, 2001 for his failure to comply with an agreed order compelling him to file his income tax returns.

4. The Debtor is employed by Coldwell Banker. He and his wife and business partner, Eleanor Mowery Sheets, operate a very profitable Dallas real estate firm. The Debtor and Mrs. Sheets contractually share their real estate commissions through Coldwell Banker. The value of the Debtor's residence is \$1.4 million, according to Dallas Central Appraisal District. The loan application given by the Sheeteses to Bridgmore Financial, Inc. and Amresco Residential Mortgage Corporation (attached **Government Exhibit 5**) when the Debtor purchased the commercial office building at 614 S. Harwood Street in downtown Dallas, that he failed to schedule in his 2001 bankruptcy, states that his residence is worth \$1 million. The property is encumbered by mortgage liens to IndyMac Bank and Town North Bank in the approximate amount of \$1.2 million. It is also

¹But see the attached **Government Exhibit 4**, which is a list of \$3 million in unsecured assets in which the Debtor had an interest as of his 2001 bankruptcy petition date.

encumbered by federal tax liens; there is no equity in the property, and it is not necessary for a

reorganization.

5. On July 31, 2008, the United States filed suit against the Debtor and his wife, two of

their companies, and their sham trust, to reduce to judgment over \$3 million in income and employment tax, and to force a judicial sale of their \$1.7 million residence titled to the trust. This

case is styled United States v. Eleanor Mowery Sheets, John Nicholas Sheets, The Mowery Sheets

Estate Family Trust, Dallas EMS, LLC, Town North Bank, Federal Deposit Insurance Corporation,

as Conservator for IndyMac Bank, and N-Search Consulting, Inc., formerly known as Eleanor

Mowery Sheets, Inc.; No. 3:08-1303-B; in the United States District Court for the Northern District

of Texas, Dallas Division, and a copy of the Amended Complaint (without exhibits) is attached as

Government Exhibit 6. All of the defendants have answered, but the Court has not yet filed a

scheduling order. The United States seeks relief from the automatic stay to proceed with this

lawsuit, since the Debtor claims no ownership interest in his residence that is the subject of that

lawsuit, that is titled to the Sheetses' bogus trust. This is the second district court lawsuit filed by

the United States against the Sheetses to foreclose on their residence as a result of the failure of the

Debtor to pay his federal taxes. The Sheetses transferred the residence to the trust after multiple Tax

Court decisions were entered against them that resulted in the millions of dollars in tax assessments

that are the subject of the 2008 District Court lawsuit.

6. A prior lawsuit against the Debtor, styled United States of America, Plaintiff, vs. John

Nicholas Sheets, Eleanor Mowery Sheets, Aurora Loan Services, Inc., and Town North Bank, NA,

Defendants ("the First Lawsuit"), No. 3:03-CV-1844-G, was settled. The First Lawsuit was brought

to reduce to judgment federal income (1040) tax assessments against Nicky Sheets that he failed to

pay through his 2001 bankruptcy settlement, to foreclose federal tax liens on his interest in the Sheets residence, and to obtain a sale of the property. Judge Joe Fish signed an agreed judgment in that case on November 26, 2003, and that judgment was eventually paid by the Debtor. A copy of that judgment is attached as **Government Exhibit 7**.

7. As a result of the Sheetses failure to pay millions of dollars in federal tax, in August and September of 2008, the Internal Revenue Service served notices of levy upon Coldwell Banker and a number of title companies where the Sheetses were closing real estate deals. As a result of these levies, on September 9, 2008, the Sheetses newest shell company, E-Residential, LLC, filed a wrongful levy suit against the United States, No. 3:08-1585. Around the same time, Langbert Financial, Inc., the Sheetses factoring company that does business as Commission Express (mentioned on the attached **Government Exhibit 2**), also filed a wrongful levy suit against the United States. On September 11, 2008, a telephonic hearing was held in both the E-Residential and Langbert Financial cases before Judge Ed Kinkeade, wherein the plaintiffs' motions for temporary restraining order were denied. The United States seeks relief from the automatic stay to proceed with these related lawsuits, and to file a lawsuit against Coldwell Banker for wrongful failure to honor levies served on it in connection with the Sheetses' unpaid income taxes.

7. The Debtor has engaged in a pattern of filing multiple bankruptcies in which no creditors are paid, failing to comply with bankruptcy laws, and failing to comply with orders of this Court, that demonstrates extreme bad faith on the part of the Debtor. He has also engaged in fraudulent transfers and concealment of assets, and in 2005, while he was a debtor in his 2001 bankruptcy, the Debtor and his wife fraudulently transferred to a bogus trust with the assistance of the Debtor's brother, Martin Sheets, who is currently a debtor in his second Chapter 13 bankruptcy in Florida.

Argument and Authorities

9. Section 105(a) of the Bankruptcy Code empowers this Court to enter any order that

is necessary or appropriate to carry out the provisions of the Bankruptcy Code.

10. The Debtor should not be allowed to receive the special and equitable benefits afforded by Title 11 of the United States Code, and the benefits of the automatic stay, while steadfastly ignoring the duties and responsibilities imposed by Title 26 of that Code. See In re Koval, 205 B.R. 72 (Bkrtcy. N.D. Tex. 1996).

11. Under Bankruptcy Code [11 U.S.C.] Section 362(d), the Court shall grant relief from

the automatic stay for cause. In his prior Chapter 11 bankruptcy, the Debtor never had a Chapter 11 plan confirmed to reorganize anything. Quite clearly the Debtor intends to pay no creditors in this bankruptcy, as he has demonstrated in his three bankruptcy cases.

9. In re MacDonald, 755 F.2d 715 (9th Cir. 1985), sets forth the general rules regarding

lifting the automatic stay in bankruptcy court. There the Court indicated that a decision to lift the automatic stay under 11 U.S.C. § 362 is within the discretion of the bankruptcy judge and will only be reviewed for an abuse of discretion. Id. at 716. The Court also noted that § 362(d) and Bankr. Proc. Rule 401(d) explicitly authorize the bankruptcy court to lift the stay "for cause shown." Id. at 717. Because there is no clear definition of what constitutes "cause", discretionary relief from the stay must be determined on a case-by-case basis. 2 Collier Bankruptcy Manual § 362.06 (3d ed. 1979), MacDonald at 717. The United States can show cause why it should be granted.

10. In I.R.S. v. Bacha, 166 B.R. 611 (Bkrtcy. D.Md. 1993), the Court found "cause" existed

for lifting the stay to allow the IRS to proceed with a tax foreclosure sale, based on the debtor's abuse of the bankruptcy process in repeatedly filing for Chapter 11 relief on the eve of two

successive, scheduled tax sales, on debtor's failure to take any significant steps necessary to formulating and filing a plan of reorganization, and on debtor's failure to file tax returns. In the case at bar, Sheets has filed at least three prior bankruptcies in which no creditors were paid; in his 2001 case, he never had a plan of reorganization confirmed or a disclosure statement approved, and he has a history of failing to timely file income tax returns and to pay income taxes for most of the last 15 years, despite earning millions of dollars. In his 2001 bankruptcy, the Debtor violated several of this Court's orders (to produce documents and file his 2000 income tax return). For these reasons, the Court should lift the automatic stay and allow the United States to proceed against the Debtor outside bankruptcy, to proceed with the lawsuits, and to pursue exempt assets and the Debtor's post-petition earnings, through levies and other administrative procedures.

11. There are a number of factors present in this case that other courts have found justified lifting the automatic stay, such as bad faith [Capital Communications Federal Credit Union v. Boodrow, 197 B.R. 409 (Bkrtcy. N.D.N.Y. 1996), aff'd, 126 F.3d 43 (2d Cir. 1997), cert. denied, 118 S.Ct. 1055]; serial filing [In re Knight Jewelry, 168 B.R. 199 (W.D. Mo. 1994)]; single-asset debtor (Debtor's primary asset is his interest in his \$1.7 million residence titled to a bogus trust); [Manhattan King David Restaurant, Inc. v. Levine, 163 B.R. 36 (S.D.N.Y. 1993)]; misconduct of the debtor [Farmers & Merchants Bank & Trust of Watertown v. Trail West, Inc., 28 B.R. 389 (D.C.S.D. 1983); and In re Lippolis, 228 B.R. 106 (E.D. Pa. 1998)]; and property not necessary for debtor's effective reorganization [In re Prestonwood, 185 B.R. 358 (M.D. Ala. 1995)].

12. In In re Wilson, 206 B.R. 808 (Bkrtcy.W.D.N.C. 1996), the IRS was granted relief from the automatic stay to permit it to exercise rights it had against a debtor's retirement plan, which was

not an asset of the bankruptcy estate. Clearly there are overwhelming facts in this case supporting

a Court ruling to lift the automatic stay for cause.

For these reasons, the United States requests that this motion be granted; that this Court enter an order lifting the automatic stay, allowing the United States to proceed with the above-mentioned lawsuits, levies against exempt assets and post-petition earnings, foreclosure on the Debtor's residence outside bankruptcy, and other relief as this Court deems appropriate. The United States also requests that the preliminary hearing on this motion be the final hearing.

RICHARD B. ROPER
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CERTIFICATE OF CONFERENCE

I hereby certify that, prior to filing this motion, I had a conversation with Martin Thomas, attorney for the Debtor, regarding the motion. Agreement could not be reached. Therefore, it is presented to the Court for a determination.

/s/ Ramona S. Notinger
RAMONA S. NOTINGER