

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Michael J. Raw

Mike J. Raw

SSN XXX-XX-5917

Debtor.

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**CASE NO. 04-44421 RJK**

**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Triad Financial Corporation (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 5, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 9, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$19,690.54, as evidenced by that certain Motor Vehicle Contract dated October 11, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a contract on personal property in which Debtor has an interest as evidenced by that certain Motor Vehicle Contract dated October 11, 2003, executed by Michael Jon Raw, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is legally described as follows to-wit:

2003 Buick Regal LS-V6, VIN #2G4WB52K531140985.

Secured Creditor is now the holder of said Motor Vehicle Contract and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 27, 2004, Debtor is delinquent in the making of monthly payments for the months of April, 2004 through September, 2004, inclusive, in the amount of \$405.71 each; accruing attorneys fees and costs. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow repossession pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its

rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence repossession proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 27th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

AUG. 19. 2004 6:11AM BANKRUPTCY

NO. 597 P. 4/9

**RoadLoans - A Division of Triad Financial Corporation**  
**DISCLOSURES PURSUANT TO THE TRUTH IN LENDING ACT**

2363168

73124

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate. <b>13.99 %</b>	The dollar amount the credit will cost you. <b>\$9,520.58</b>	The amount of credit provided to you or on your behalf. <b>\$19,690.54</b>	The amount you will have paid when you have made all scheduled payments. <b>\$29,211.12</b>

**Your Payment Schedule Will Be:**

Number of Payments	Amount of Payments	When Payments Are Due
71	\$405.71	Monthly, beginning 11/15/2003
1	\$405.71	10/15/2009

**Security:** You are giving a security interest in the Vehicle being purchased or refinanced with the loan proceeds.

**Prepayment:** If you pay off this loan early, you will not have to pay a penalty.

**Filing Fee:** You agree to pay any lien filing fees.

**Insurance:** Property Insurance is required. You may obtain property insurance from anyone that is acceptable to the holder of this Note.

**Late Charge:** If all or any portion of any payment is not received within 10 days after it is due, you will pay us a late charge of \$10.00

**Other Terms:** See the terms and conditions of this Note for any additional information about nonpayment, default, any required repayment in full before the schedule due date, and prepayment refunds and penalties.

**ITEMIZATION OF AMOUNT FINANCED**

You authorize us to pay the following amounts on your behalf.

- 1. Amount given to you directly \$ \_\_\_\_\_
- 2. Amount paid on your account [ \_\_\_\_\_ ] \$ \_\_\_\_\_
- 3. Other Charges including amounts paid to others on your behalf
  - (A) Amount paid to [ POLAR CHEVROLET MAZD ] for [ Vehicle ] \$ 19,191.54
  - (B) Amount paid to [ Hartford Insurance ] for [ GAP ] \$ 499.00
  - (C) Amount paid to [ \_\_\_\_\_ ] for [ \_\_\_\_\_ ] \$ \_\_\_\_\_
  - (D) Amount paid to [ \_\_\_\_\_ ] for [ \_\_\_\_\_ ] \$ \_\_\_\_\_
- Total Other Charges (sum of items 3A through 3D) \$ 19,690.54
- 4. Less: Prepaid Finance Charge \$ \_\_\_\_\_
- 5. Amount Financed (1 + 2 + 3 - 4) \$ 19,690.54

\* Lender may retain a portion of these amounts

Vehicle	Year: 2003	Make: BUICK	Model: REGAL LS-V6	Vehicle Identification Number 2G4WB62K531140065
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RL-FIL-F3P 2.0] 03/08/2003

**EXHIBIT**     A

SEP. 14, 2004 9:47AM

BANKRUPTCY

NO. 859

P. 3/3

73124

Dt. tide

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
443 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTON - DEBTOE NAME AND ADDRESS

RAW MICHAEL JON  
11105 ANDERSON LAKES PKWY #315  
EDEN PRAIRIE MN 55344

Frank Owsen  
U.S. Postoffice  
PAID  
Permit No. 71  
St. Paul, MN

Year	03	DUIC Model	4DRLS Model	Q3390R575 Title No.	NO Plate No.
VEI	264MB52K531140905		10/11/03 Registry Date		

LMPB03  
1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse  
Side of this form for returning this item.

ROAD LOANS  
PO BOX 4459  
HUNTINGTON BEACH CA 92605-4459

1 4  
Mf... ..

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Michael J. Raw  
Mike J. Raw  
SSN XXX-XX-5917

**CASE NO. 04-44421 RJK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 27, 2004, Debtor is delinquent for monthly payments for the months of monthly payments for the months of April, 2004 through September, 2004, in the amount of \$405.71 each; accruing attorneys fees and costs.

2. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

. . .

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 27th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

148  
73121

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA  
MINNEAPOLIS DIVISION**

**IN RE:**

**Michael J. Raw  
Debtor**

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**CASE NO. 04-44421-RJK**

**CHAPTER NO. 7**

**AFFIDAVIT**

**STATE OF CALIFORNIA**

§  
§  
§

**COUNTY OF ORANGE**

Before me, the undersigned authority, on this day personally appeared the undersigned Affiant, who being by me duly sworn, on her oath stated:

1. "My full name is Barbara Miller and I am at least eighteen (18) years old."

2. "I am employed by RoadLoans ('Creditor') and I have the care, custody, and control of all records ('Records') concerning the account of Michael J. Raw ("Debtor"). All facts recited herein are within my personal knowledge and are true and correct."

3. "The Records reflect acts, events, conditions, or opinions made at or near the time by, or from information transmitted by, a person with knowledge in the course of a regularly conducted business activity, and it was the regular practice of the business activity to make the record."

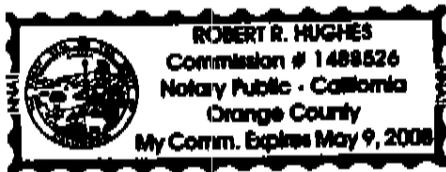
4. "The Records indicate that by virtue of a Motor Vehicle Contract & Security Agreement ('Agreement'), entered into by Creditor and Debtor who financed the purchase of a 2003 BUICK REGAL LS-V6, VIN # 2G4WB52K531140985 ("Vehicle"). True and correct copies of the Agreement and Certificate of Title indicating Creditor's lien on the Vehicle are attached hereto as Exhibits 'A' and 'B', respectively."

5. "The Records indicate that as of August 27, 2004, the amount owed to Creditor under the Agreement was \$19,947.94. Debtor's payments under the Agreement are \$405.71 per month and Debtor is due for April 15, 2004 and all subsequent payments for a total delinquency of \$2,049.97."

FURTHER, AFFIANT SAYETH NAUGHT.

*Barbara Miller*  
Barbara Miller  
RoadLoans

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of September, 2004.



*Robert R. Hughes*  
NOTARY PUBLIC IN AND FOR THE  
STATE OF California

My Commission Expires: May 9th 2008 Printed Name: Robert R. Hughes

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Michael J. Raw  
Mike J. Raw  
SSN XXX-XX-5917

**CHAPTER 7 CASE**

**CASE NO. 04-44421 RJK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 27, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Barbara Miller, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Michael J. Raw  
11185 Anderson Lakes Pkwy  
Apt 312  
Eden Prairie, MN 55344

Timothy D. Moratzka  
901 Marquette Ave Ste 1400  
Minneapolis, MN 55402

Robert J. Hoglund  
PO Box 130938  
Roseville, MN 55113

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 27th day of September, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Michael J. Raw  
Mike J. Raw  
SSN XXX-XX-5917

**CHAPTER 7 CASE**

**CASE NO. 04-44421 RJK**

Debtor.

**ORDER**

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The above entitled matter came on for hearing upon motion of Triad Financial Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 14, 2004, at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain Motor Vehicle Contract dated October 11, 2003, executed by Michael Jon Raw, covering personal property legally described as follows, to-wit:

2003 Buick Regal LS-V6, VIN #2G4WB52K531140985

and may proceed to take possession of the vehicle and sell, lease or dispose of the vehicle in a commercially reasonable manner. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court