

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-44461-RJK
Chapter 7

Gwendolyn Ann Barton and Neal Authur Barton, Jr.,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Julia Christians, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), 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 at **2:00 pm on Thursday, October 7, 2004**, before the Honorable Robert J. Kressel, in Courtroom No. 8 West, at the 300 South Fourth Street, Minneapolis, Minnesota 55415.
3. Any response to this motion must be filed and delivered not later than Monday, October 4, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Tuesday, September 28, 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 motion arises under 11 U.S.C. §362 and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on August 11, 2004 and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2001 Chrysler Sebring, vehicle identification number 1C3AL56U61N559936 (the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference. Wells Fargo Financial Acceptance purchased the interest of Capital One Auto Finance.

8. Payments due under the terms of the Contract for the months of May through August 2004 totaling \$1,398.32 plus late charges, have not been made by the Debtor(s). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$13,088.91 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$10,300.00.

10. Wells Fargo Financial Acceptance's interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning

of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

12. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, A. Howard, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: September 10, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Gwendolyn A. and Neal A. Barton Jr.,

Bky. No. 04-44461

Debtor(s).

Affidavit

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2001 Chrysler Sebring VIN# 1C3AL56U61N5599362001 Chrysler Sebring
VIN# 1C3AL56U61N559936.

2. \$13,088.91 is the outstanding balance under the contract.

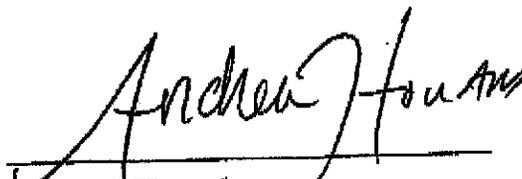
3. \$1,398.32 is the amount of the existing delinquency under the contract.

4. \$10,300.00 is the fair market value of the Collateral.

5. No appropriate insurance has been verified.

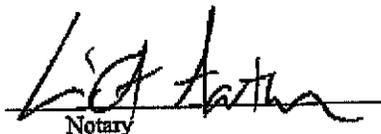
Further your affiant sayeth not.

Dated: 9/9/2004



Andrew J. Howard
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 9, 2004


Notary

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date JULY 16th, 2003	Seller: R.L. BROOKDALE MOTORS, INC. dba BROOKDALE HONDA 6801 BROOKLYN BOULEVARD BROOMFIELD CENTER MN 55438 We and our interest in the above, its successors and assigns.	Buyer: NEAL ARTHUR BARTON 9635 ENSIGN CIRCLE BLOOMINGTON MN 55438 You and your interest in the above, its guarantor, jointly and individually.
	SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the usual accessories and attachments.	

Description of Motor Vehicle Purchased: Year 2001, Make CHRYSLER, Model SEBRING, VIN 1C3L8A1E1N53936, Lt. No./Year 725 712, Other: _____

Description of Trade-In: _____

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 13739.89, plus finance charges according to the unpaid balance at the rate of 17.75 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

LOAN ADMINISTRATION FEE: You agree to pay an additional, non-refundable loan administration fee of \$25.00 that will be paid in cash. paid pro rata over the contract term. withheld from the proceeds (if the fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase of credit, including your down payment of cash.
17.75 %	\$ 7235.71	\$ 13739.89	\$ 20574.89	\$ 1000.00 \$ 21574.89

Payment Schedule: Your payment schedule will be _____ When Payments Are Due

Number of Payments	Amount of Payments	When Payments Are Due
68	345.58	MONTHLY, BEGINNING AUGUST 30th, 2003

Security: You are giving a security interest in the Motor Vehicle purchased.

Late Charge: If a payment is more than 10 days late, you will be charged _____ This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.05.

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

If you pay off this Contract early, you will not be entitled to a refund of part of the loan administration fee.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life Insured: _____

Single Joint. Prem. \$ _____ Term _____

Credit Disability Insured: _____

Single Joint. Prem. \$ _____ Term _____

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer: _____

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ _____, if you get insurance from or through us you will pay \$ _____ of coverage.

This premium is calculated as follows:

\$ _____ Deductible, Collision Coverage \$ _____

\$ _____ Deductible, Comprehensive Cov. \$ _____

Fire-Theft and Combined Additional Coverage \$ _____

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

MOTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover _____

This Service Contract will be in effect for _____

ASSIGNMENT: This Contract and Security Agreement is assigned to _____ This assignment is made under the terms of a separate agreement. under the terms of the ASSIGNMENT BY SELLER on page 2. This assignment is made with recourse.

Seller: _____ Date: 02/16/2003

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ _____)	\$ 16658.34
Service Contract, Paid in Cash	\$ _____
Cash Price	\$ 16658.34
Manufacturer's Rebate	\$ _____
Cash Down Payment	\$ 1000.00
Deferred Down Payment	\$ _____
a. Total Cash/Rebate Down	\$ 1000.00
b. Trade-In Allowance	\$ _____
c. Lease Amount owing	\$ _____
Paid to:	
d. Net Trade-In (b. minus c.)	\$ _____
e. Net Cash/Trade-In (a. plus d.)	\$ 1000.00
Down Payment (a.; disclose as 50 if negative)	\$ 1000.00
Unpaid Balance of Cash Price	\$ 13658.34
Paid to Public Officials - Filing Fees	\$ 23.75
Insurance Premiums*	\$ _____
Amount to Finance line e. (if c. is negative)	\$ _____
To: _____	\$ 25.00
To: _____	\$ _____
To: _____	\$ _____
Total Other Charges/Amounts Pd. to Others	\$ 48.75
Less: Prepaid Finance Charges	\$ _____
Amount Financed	\$ 13739.89

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT! THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: _____ Date: 07/16/2003

Signature: NEAL ARTHUR BARTON

Signature: _____ Date: _____

Seller: _____ Date: 02/16/2003

6621720

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

BARTON NEAL ARTHUR
9635 ENSIGN CIRC
BLOOMINGTON MN 55438

*

FZS712

1ST SECURED PARTY

LIEN HOLDER

01 Year	CHRY Make	4DSLI Model	H2590R118 Title NR.
1C3AL56U61N559936 VIN		07/16/03 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

CAPITAL ONE AUTO FINANCE
PO BOX 255605
SACRAMENTO CA 95865-5605

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-44461-RJK
Chapter 7

Gwendolyn Ann Barton and Neal Authur Barton, Jr.,
Debtor(s).

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

Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 2001 Chrysler Sebring with a vehicle identification number 1C3AL56U61N559936 (the "Vehicle"). Payments due under the terms of the Contract for the months of May through August 2004 totaling \$1,398.32 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$13,088.91 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$10,300.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. Section 362(d)(1). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Financial Acceptance has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. United

Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.),
484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$13,088.91 as of the date hereof. The fair market value of the Vehicle is approximately \$10,300.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: September 10, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt
Bradley J. Halberstadt (#215296)
Attorneys for Movant
430 Oak Grove Street, Ste. 200
Minneapolis, Minnesota 55403
(612) 870-4100

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Gwendolyn Ann Barton and Neal Authur Barton, Jr.

Debtor(s).

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Bky. No. 04-44461-RJK

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

United States Trustee
Suite 1015
300 South 4th Street
Minneapolis, MN 55415

(Attorney for Debtor(s))
A Rhett Taber
Olive Taber & Owens, PA
5270 W 84th St. Ste 300
Bloomington, MN 55437

(Trustee)
Julia Christians
120 S. 6th St, Suite 2500
Minneapolis, MN 55402

(Debtor(s))
Gwendolyn Ann Barton
4019 Meadowbrook Ln
St. Louis Park, MN 55426

Neal Authur Barton, Jr.
560 Gorman St. No. 101
Shakopee, MN 55379

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

Date: September 10, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-44461-RJK
Chapter 7

Gwendolyn Ann Barton and Neal Authur Barton, Jr.,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Thursday, October 7, 2004 on the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2001 Chrysler Sebring, vehicle identification number 1C3AL56U61N559936 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge