

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-44806-RJK
Chapter 7

Robert E. Buck and Dana L. Buck,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); John R. Stoebner, 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 26, 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 2002 Mercury Sable, vehicle identification number 1MEFM55S42G622504 (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.

8. Payments due under the terms of the Contract for the months of June through August 2004 totaling \$1,706.07 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 \$22,333.16 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,500.00.

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 15, 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

Robert E. and Dana L. Buck,

Bky. No. 04-44806

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.

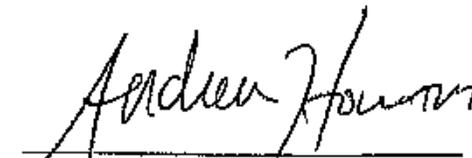
1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2002 Mercury Sable VIN# 1MEFM55S42G6225042002 Mercury Sable VIN# 1MEFM55S42G622504.

2. \$22,333.16 is the outstanding balance under the contract.
3. \$1,706.07 is the amount of the existing delinquency under the contract.
4. \$17,500.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

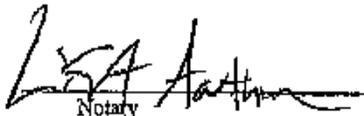
Further your affiant sayeth not.

Dated: 9/14/2004



Andrew J. Howard
Bankruptcy Specialist
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on
September 14, 2004



Notary



459740 26991

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT		WHITE BEAR LINCOLN MERCURY 3426 W. HONDAY ST WHITE BEAR LAKE, WY. 86110 "We" and "us" mean the Seller above, its successors and assigns.	ROBERT EARL BUCK 1934 W. HONDAY ST BROOKLYN PARK, MN 55441 "You" and "your" mean both Buyer above, and guarantor, jointly and severally.
No. _____	Date 07 AUG 2002		

WARRANTY: You agree to purchase from us, over title, the Motor Vehicle (Vehicle) and accessories described below. Your purchase is subject to the terms and conditions of this contract and security agreement (THIS CONTRACT). The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year Make Model	VIN	Liab. No./Year	Color
	02 MERCURY SABLE	1MEFD6542G622604	N/A	Other
<input type="checkbox"/> New <input type="checkbox"/> Used				

Definition of Trade-In: 1997 FORD EXP.

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, appurtenances, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also agree to use only give us a security interest in proceeds and maximum refunds of any insurance that remain deemed beneficial to us in the Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay the principal amount of \$ 27900.23 in 72 monthly payments beginning on the first business day of the month of SEP 2002 at the rate of 13.49 % 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 TABLE below. 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 this fee is withheld from the proceeds, the amount included in the principal amount).

DOWN PAYMENT: You also agree to pay, or apply in the Cash Price, over the term of this sale, any cash, money and net profit in form identified 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 total 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 on credit, including your nonpayment of cash)
13.49 %	\$ 12077.45	\$ 27900.23	\$ 40990.60	\$ 30846.66

Payment Schedule: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
72	568.69	MONTHLY BEGINNING ON SEP 2002

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

Grace Period: If a payment is more than _____ days late, you will be charged _____.

Default: If you do not make a payment when due, you will be in default.

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 notices before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and sickness), and any other insurance coverage offered to you, 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), and the covering policy ONLY the coverages you have chosen to purchase.

ITEMIZATION OF AMOUNT FINANCED:

Vehicle Price (net sales tax of \$ 831.73)	\$ 24446.73
Service Contract, Paint for FORD MUSTANG CO.	\$ 1260.00
Cash Price	\$ 26886.73
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ 4600.00
Deferred Down Payment	\$ N/A
a. Total Cash/Down	\$ 4600.00
b. Total Amount Financed	\$ 27900.23
c. Total Amount Owed	\$ 27900.23
d. Net Interest to be paid	\$ 12077.45
e. Net Cash/Trade-In (plus d.)	\$ -
Down Payment (as defined in (c) minus (e))	\$ 0
Unpaid Balance of Cash Price	\$ 26886.73
Trade-In Allowance - Final Phase	\$ 0
Amount Financed	\$ 27900.23
For: CURRUKY TAX	\$ 207.00
Total Other Charges/Amounts Paid to Others	\$ 2271.50
Less: Prepaid Finance Charge	\$ N/A
Amount Financed	\$ 27900.23

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 policy coverage deductible may not exceed \$ _____ if you get insurance from or through us you will pay \$ _____ for _____ of coverage.

This premium is calculated as follows:

<input type="checkbox"/> <u>N/A</u> Deductible, Collision Coverage	\$ _____
<input type="checkbox"/> <u>N/A</u> Deductible, Comprehensive Cov.	\$ _____
<input type="checkbox"/> <u>N/A</u> Fire-Theft and Comping Additional Coverage	\$ _____
<input type="checkbox"/> <u>N/A</u> _____	\$ _____

LIABILITY INSURANCE: Coverage for bodily injury and property damage caused to others is not provided in this Contract unless checked and indicated.

ROTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover **SEE SERVICE CONTRACT POLICY DETAILS**.

This Service Contract will be in effect for 72 months.

ASSIGNMENT: This Contract and Security Agreement is assigned to WELLS FARGO ACCEPT. This assignment is made under the terms of a separate agreement. Under the terms of the ASSIGNMENT BY DEED on page 2. This assignment is made with Maturity.

Seller: By [Signature] Date 07 AUG 2002

Buyer: [Signature] Date 07 AUG 2002

Seller: [Signature] Date 07 AUG 2002

WELLS FARGO VEHICLE SERVICE CONTRACT AND SECURITY AGREEMENT

SMITH VEHICLE - NOT FOR MANUFACTURER'S USE

459 2940

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

BUCK ROBERT EARL
BUCK DANA LEE
7944 GIRARD CT N
BROOKLYN PARK MN 55444

JPR730

02 Year	MERC Make	4DSL Model	D2690P029 Title NR.
1NEFN55S42G622504 VIN		08/07/02 Security Date	NO Rebuilt

1ST SECURED PARTY

LIEN HOLDER

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

WELLS FARGO FINANCIAL ACCEPT
PO BOX 250
ESSINGTON PA 19029-0250

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-44806-RJK
Chapter 7

Robert E. Buck and Dana L. Buck,
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 2002 Mercury Sable with a vehicle identification number 1MEFM55S42G622504 (the "Vehicle"). Payments due under the terms of the Contract for the months of June through August 2004 totaling \$1,706.07 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$22,333.16 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$17,500.00. 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 \$22,333.16 as of the date hereof. The fair market value of the Vehicle is approximately \$17,500.00. 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 15, 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:

Robert E. Buck and Dana L. Buck

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-44806-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))
Robert J. Hoglund
PO Box 130938
Roseville, MN 55113

(Trustee)
John R. Stuebner
120 S. 6th St., Rm. 2500
Minneapolis, MN 55402

(Debtor(s))
Robert E. Buck
8031 Dupont Court North
Brooklyn Park, MN 55444

Dana L. Buck
8031 Dupont Court North
Brooklyn Park, MN 55444

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

Date: September 15, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-44806-RJK
Chapter 7

Robert E. Buck and Dana L. Buck,

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 2002 Mercury Sable, vehicle identification number 1MEFM55S42G622504 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