

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Jason C. Adams
Kristina M. Adams
Debtor(s).

Case No. Bky 04-44859-RJK
Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Jason C. Adams, 819 10th Ave, Howard Lake, Minnesota 55345, Kristina M. Adams, 819 10th Ave, Howard Lake, Minnesota 55345, Debtor and their attorney, Michael C. Mjoen, P.A., 7825 Washington Ave, #500, Minneapolis, MN 55439, and other entities specified in Local Rule 9013-3.

1. WFS Financial, of 375 Corporate Drive, #202, Seattle, WA 98188, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this matter at 2:00 p.m., on Thursday, October 28, 2004 in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, MN 55415.

3. Any response to this motion must be filed and delivered not later than Monday, October 25, 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, October 19, 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, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on September 14, 2004. The case is now pending in this court.

5. 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 9013-1 through 9013-3 and 9006-1. Movant requests relief with respect to: 1999 Jeep Grand Cherokee, Serial #1J4FF68S3XL657508.

6. Movant has a valid and perfected first security interest in the following collateral to secure the purchase price thereof: 1999 Jeep Grand Cherokee, Serial #1J4FF68S3XL657508.

7. A copy of the Retail Installment Contract whereby Debtor granted Movant a security interest in the aforesaid collateral is attached hereto as Exhibit A.

8. Movant has duly perfected its security interest in the aforesaid collateral as reflected on the Confirmation of Lien Perfection, a true and correct copy of which is attached hereto as Exhibit B.

9. The NADA retail value of the collateral at the time of the filing of the petition was \$13,725.00 while the amount of Movant's claim was \$10,832.88. The debtor is delinquent One Thousand One Hundred Eighty Eight and 40/100 Dollars, (\$1,188.40) for the monthly installments due on July 12, 2004 through September 12, 2004 .

10. Movant does not have, and has not been offered, adequate protection of its interest in the above collateral and the above collateral is not necessary for an effective reorganization.

11. A separate memorandum of facts and law is submitted with the motion.

WHEREFORE, WFS Financial by its undersigned attorney, moves the Court for an order or judgment that the automatic stay provided by 11 U.S.C. §362(a) be modified so as to permit WFS Financial to foreclose its security interest in the above collateral, and for such other relief as may be just and equitable.

Dated: September 28, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
Atty for WFS Financial
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

VERIFICATION

I, Shirley M. Steele, corporate representative of the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: Sept. 22, 2004

Shirley M. Steele
Shirley M. Steele

Local Rule Reference: 9013-2

b7.frm

594. 18110 AD

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

ADAMS JASON CHARLES
ADAMS KRISTINA MARIE
8070 ST HWY 55 #130
ROCKFORD MN 55373

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

*

DCP745

1ST SECURED PARTY

99	JEEP	4WCHK	B2820P017
Year	Make	Model	Title NR
1J4FF68S3XL657508		08/29/02	NO
VIN		Security Date	Rebuilt

LIEN HOLDER

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

WFS FINANCIAL INC
PO BOX 168048
IRVING TX 75016-8048

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Re: Jason C. Adams
Kristina M. Adams

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Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

WFS Financial moves the Court for an order modifying the automatic stay to permit WFS Financial to take possession of a 1999 Jeep Grand Cherokee presently in Debtor's possession. Movant has a security interest in the collateral pursuant to a Retail Installment Contract dated August 29, 2002, between Debtor and Forest Lake C/P Dodge, Inc., whose interest was subsequently assigned to WFS Financial. Movant's perfected security interest in the collateral is evidenced on the Confirmation of Lien Perfection for the vehicle.

The NADA retail value of the collateral at the time of the filing of the petition was \$13,725.00 while the amount of Movant's claim was \$10,832.88. The Debtor is delinquent One Thousand One Hundred Eighty Eight and 40/100 Dollars, (\$1,188.40) to the Movant.

Pursuant to 11 U.S.C. {362(d)(1), 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 collateral of such creditor." Debtor has defaulted on payments due under the Retail Installment Contract. Debtor has failed to provide WFS Financial with adequate protection for its interest in the collateral. This failure constitutes cause within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the stay.

In addition, pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate where the collateral is not necessary for an effective reorganization. In this case, Debtors do not need this collateral for an effective reorganization.

In conclusion, WFS Financial is entitled to an Order modifying the automatic stay and allowing it to pursue its state court remedies for cause, as defined under 11 U.S.C. §362(d), and due to the fact that the collateral is not necessary for Debtor's effective reorganization. Movant does not have adequate protection for its security interest and none has been offered.

WFS Financial respectfully requests that the above-named Court modify the automatic stay to allow Movant to pursue its remedies pursuant to state law in regard to this collateral to protect its interest in the collateral.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), WFS Financial requests that this Order shall be effective immediately.

Dated: September 28, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505
Derrick N. Weber, #241623
3033 Campus Drive
Suite 250
Plymouth, Minnesota 55441
Telephone (763) 548-7900

04-58165-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Jason C. Adams
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Debtor(s).

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ORDER

This matter is before the Court on WFS Financial's Motion for Relief from Stay. The Motion came on for hearing on Thursday, October 28, 2004 at 2:00 p.m., at Minneapolis, MN. Appearances are as noted in the record.

WFS Financial requested relief from the automatic stay to foreclose its security interest in a 1999 Jeep Grand Cherokee, Serial #1J4FF68S3XL657508. Movant holds a duly perfected security interest in the collateral. The Court being advised fully in the Premises, and upon the Affidavit and all files and records herein,

NOW ORDERS:

That the Automatic Stay provided by 11 U.S.C. §362(a) be modified so as to permit WFS Financial to foreclose its security interest in the above collateral, in accordance with state law. Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), this Order is effective immediately.

Dated: _____

BY THE COURT:

United States Bankruptcy Judge