

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:Michael R. Colletti

**Debtor: Chapter 7 Case
Case No. BKY 04-44913-RJK.**

NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY

TO: The Debtor; Attorney for Debtor; Chapter 7 Trustee; United States Trustee; and other parties in interest as specified in Local Rule 9013-3(a)(1):

1. Mitsubishi Motors Credit of America, Inc., a secured creditor of the Debtor herein, 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 p.m. on October 28, 2004 before the Honorable Robert J. Kressel in Courtroom No. 8 West, at United States Courthouse, 300 South Fourth Street, Minneapolis, MN, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than October 25, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 19, 2004, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2, and Movant seeks relief from the automatic stay with respect to certain property owned by the Debtor and subject to Movant's lien. The petition commencing this Chapter 7 case was filed on September 2, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. Section 362(d) and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 1201-1215. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding. Movant requests relief with respect to certain personal property owned by the debtor and subject to Movant's valid perfected security interest.

6. Movant holds a valid, perfected security interest in a 2003 Mitsubishi Eclipse GTS E2 ID# 4A3AC74H83E195905 ("Collateral"). The Collateral is in the possession of the Debtor herein.

7. Copies of Movant's Security Agreement (the "Contract") and Minnesota Lien Card, respectively evidencing creation and perfection of Movant's security interest, are attached to the supporting affidavit.

8. Pursuant to the supporting affidavit, the debtor is in default and there is little or no equity in the property.

9. Movant's security is depreciating and that Debtor continues to utilize the Collateral, subjecting the same to wear, while failing to make payments.

10. Debtor has no equity in the Collateral and is in default of post-petition payments. Thus, the Movant is not being provided with adequate protection of its interest in the Collateral.

11. Debtor's failure to make the payments to Movant or otherwise provide Movant with adequate protection of its interest in the Collateral, constitutes cause, within the meaning of 11 U.S.C. Section 362(d)(1) entitling Movant to relief from the stay to allow Movant to pursue its remedies under state law.

This Notice of Motion and Motion will constitute notice of default to Debtors as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W. 2d 232 (Minn. 1980). If the default is not cured prior to the hearing, Mitsubishi Motors Credit of America, Inc. will commence repossession under Minnesota law and for such other relief as may be just and equitable.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. Section 362(a) of the Bankruptcy Code and authorizing Movant to foreclose its security interest in the Collateral and for such other relief as may be just and equitable.

Dated: October 2, 2004

PETERSON, FRAM & BERGMAN, P.A.

/e/ Michael T. Oberle
Michael T. Oberle, #130126
Attorney for Movant
Suite 300, 50 East Fifth Street
St. Paul, MN 55101
(651) 291-8955

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

IN RE:

**MICHAEL R. COLLETTI
SSN:XXX-XX-7862**

DEBTOR

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§
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§

**CASE NO. 04-44913-RJK
CHAPTER 7**

AFFIDAVIT OF CHRIS RADVANSKY

Chris Radvansky, being duly sworn to oath, deposes and states:

1. That he/she is the custodian of records of Mitsubishi Motors Credit of America, Inc..
2. Mitsubishi Motors Credit of America, Inc. is now the holder and/or servicing agent of a loan on collateral in which the Debtor has an interest. The Debtor's indebtedness is evidenced by that certain Retail Installment Contract - Minnesota, Loan Number xxxxxxxx9511, dated May 12, 2004, executed by Michael Robert Colletti. The collateral is described as follows, to-wit:

2003 Mitsubishi Eclipse GTS E2, VIN: 4A3AC74H83E195905

3. That he/she has reviewed the account records relating to Colletti loan, account no. xxxxxxxx9511.
4. That as of September 29, 2004, the following amounts were owing on this account:

Principal Balance and Accrued Unpaid Interest	\$ 25,386.37
	<hr style="width: 20%; margin-left: auto; margin-right: 0;"/>
Total	\$ 25,386.37

5. That the loan is delinquent for monthly payments for the months of July 2004, August 2004, September 2004.
6. Mitsubishi Motors Credit of America, Inc. has had to obtain counsel to represent it in bringing this Motion and will incur additional legal expenses and attorney fees.

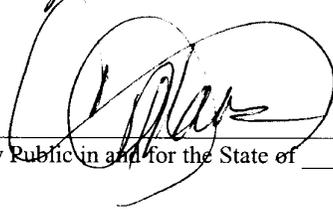
7. This affidavit is given in support of the Motion of Mitsubishi Motors Credit of America, Inc. for relief from the automatic stay.

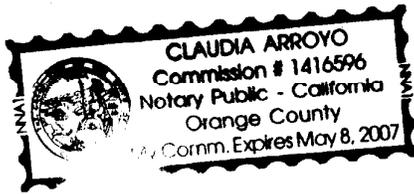
The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

Mitsubishi Motors Credit of America, Inc.

By: 
Chris Radvansky
Case Manager

SUBSCRIBED AND SWORN TO BEFORE ME on Sept 23, 2004.


Notary Public in and for the State of California



6539-N-1715
conmraf3

Finance Charge and Payment Assents. The Finance Charge is figured on a daily basis at the Annual Percentage Rate ("APR") on the unpaid part of the Amount Financed outstanding from time to time until it is paid in full. The APR and the original Amount Financed are shown on the front of this contract. The amounts shown on the front of this contract for Finance Charge, Total of Payments and the Total Sale Price assume that you make each payment in full on the day it is due. Your first payment will equal all amounts you owe on the date you make the payment. That amount may differ from the amount shown on this contract if (1) you pay early or late, (2) you pay more or less than the scheduled payment or (3) Creditor adds amounts to the amount you owe for any of the reasons stated below. Creditor may apply any payments it receives first to Finance Charges that are due and then to the unpaid part of the Amount Financed, or in another order Creditor chooses.

Ownership and Right of Lien. You agree to pay the Creditor all you owe under this contract even if the vehicle is damaged, destroyed or missing. Unless you first have received Creditor's written consent, you may not take the vehicle out of the state of your residence for more than 30 days. Under no circumstances will you be permitted to remove the vehicle from the United States, except to Canada and then only for a period of 30 days or less. You agree not to expose the vehicle to misuse or confiscation. You agree to keep the vehicle repaired and in good condition. You agree that the vehicle will not be used in any manner contrary to any law. You will make sure the Creditor's security interest (lien) on the vehicle is shown on the title. You agree to keep the vehicle free of all liens and encumbrances except the Creditor's. You agree not to sell, rent, lease or otherwise transfer any interest in the vehicle or this contract without the Creditor's permission. If the Creditor pays any repair bills, storage bills, taxes, fines, or other charges on the vehicle following notice to you of your non-payment, you agree to repay the amount when the Creditor asks for it. You agree to comply with all registration, licensing, tax and title laws applicable to the vehicle.

Security Interest. You are giving the Creditor a security interest in the vehicle being purchased and any accessories, equipment and replacement parts installed in the vehicle. The security interest also covers (1) insurance premiums and charges for protection plans returned to the Creditor (2) proceeds of any insurance policies or protection plans on the vehicle and (3) proceeds of any insurance policies on your life or health which are financed in this contract. This security interest covers all amounts you owe in this contract and in any transfer, renewal, extension or assignment of this contract. The security interest also secures all promises you make in this contract.

Prepayment. You may prepay the unpaid balance of the Amount Financed in full or in part at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of payment.

Required Physical Damage Insurance. You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. At any time during the term of this contract, if you do not have physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor will send you a written notice of your failure to insure and give you a reasonable time in which to provide the required insurance.

If you do not provide the required insurance within a reasonable time, the Creditor does not have an obligation to buy any insurance, but may do so if it desires if the Creditor does not buy physical damage insurance which covers both interests in the vehicle. If it does, it decides, buy insurance which covers only the Creditor's interest. If the Creditor buys either of these coverages, it will let you know what type it is and the charge you must pay. The Creditor may either request immediate reimbursement from you for the cost of such insurance or may add the insurance premium to the unpaid balance on this contract. If the insurance premium is added to the unpaid balance of this contract, interest will be charged on the insurance premium at the Annual Percentage Rate disclosed in this contract, and you agree to pay the insurance premium with interest in actual installments along with the payments shown on the payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any insurance settlement either to repair the vehicle or to apply to your debt.

Late Payment. Acceptance of a late payment does not excuse your late payment or mean that you can keep making payments after they are due.

Optional Insurance or Protection Plans. This contract may contain charges for optional insurance or protection plans. If the vehicle is repossessed, you agree that the Creditor may claim benefits under these coverages and terminate them to obtain refunds for unexpired charges.

Insurance or Protection Plan Charges Returned to Creditor. If any charge for required insurance is returned to the Creditor, it may be credited to your account or used to buy similar insurance or insurance which covers only the Creditor's interest in

NOTE: ANY NUMBER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SELLER'S ASSIGNMENT

Seller sells and assigns to MITSUBISHI MOTORS CREDIT OF AMERICA, INC. (MMCA) all of its right, title and interest in this contract.

Seller warrants and represents: (1) The contract arose from the sale of the property described on the face of the contract; (2) Seller transferred good title to the property at the time of sale free of any liens; (3) All disclosures required by the law were properly made to the Buyer prior to the Buyer signing the contract; (4) All insurance documentation will be delivered to the Buyer within the time required by law; (5) To the best of Seller's knowledge, the Customer's Statement attached is accurate; (6) The downpayment received by Seller is exactly as stated; (7) The contract is enforceable; (8) Seller is licensed as required by law; and (9) Seller has complied with all applicable requirements of the FTC Used Motor Vehicle Trade Regulation Rule.

Each of these warranties and representations is material to MMCA's acceptance of this contract. If any of them is breached or is erroneous, Seller unconditionally promises to accept assignment of this contract and to pay MMCA, upon demand, the full amount of the unpaid balance under this contract. Seller also agrees to indemnify MMCA to the full extent of all losses or expenses incurred by MMCA as a result of such breach or error.

Seller agrees to indemnify MMCA for any judicial effort or loss suffered as a result of a claim or defense of Buyer against Seller.

MMCA-100-01 (2/79)

the vehicle. Any refund on optional insurance or protection plans obtained by the Creditor will be credited to your account.

Repossession in Full Before the Scheduled Date. If you fail to pay any payment according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor can demand that you pay all you owe on this contract at once. If:

Repossession of the Vehicle for Failure to Pay. If you fail to pay according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor shall have the right in accordance with state law to enter onto property without breach of the peace and take the vehicle in which it has a security interest (repossession). The Creditor may exercise this right without notice to you. If there are any personal belongings in the vehicle, such as clothing and tools, the Creditor will hold them only to the extent the law may require. Any accessories, equipment or replacement parts will remain with the vehicle.

Setting the Vehicle Back After Repossession. If the Creditor repossesses the vehicle, you have the right to get it back (redeem) by paying the entire amount you owe on the contract (not just past due payments) plus the cost of repossessing and storing the vehicle and other expenses that the Seller or the Creditor has had. Your right to redeem will end when the vehicle is sold.

Sale of the Repossessed Vehicle. The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not redeem the vehicle by the date on the notice, the Creditor can sell the vehicle. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

The net proceeds of sale will be figured this way: Any charges for taking and storing the vehicle, clearing and advertising, etc., and any reasonable attorney fees will be subtracted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone else. However, the Creditor may be required to pay a lender who has given you a loan and also taken a security interest in the vehicle.

Unless otherwise provided by law, if you owe more than the net proceeds of sale, you will pay the Creditor the difference between the net proceeds of sale and what you owe when the Creditor asks for it. If you do not pay this amount when asked, you may also be charged interest at the highest lawful rate until you do pay, all that you owe to the Creditor.

Attorney Fees. You agree to pay Creditor's reasonable attorney fees, up to 15% of the amount due under this contract, after default and referral to an attorney who is not a salaried employee of the Creditor or its assignee.

Delay in Enforcing Rights and Changes of this Contract. The Creditor can delay or refrain from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without extending others. Any change in terms of this contract must be in writing and signed by the Creditor. No oral changes are binding. If any part of this contract is not valid, all other parts will remain enforceable.

Warranty of Title. If this is a used vehicle to which the FTC Used Motor Vehicle Trade Regulation Rule applies, see your vehicle form for any applicable warranties. In the case of all other vehicles, you understand that the Creditor is not offering any warranties and that there are no implied warranties of merchantability, of fitness for a particular purpose, or any other warranties, express or implied by the Creditor, covering the vehicle unless it is of a type obtained primarily for personal, family, or household use. If the Creditor extends a written warranty or protection plan within 90 days from the date of this contract.

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Creditor has reason to know the particular purpose for which you require the vehicle and you rely on the Creditor's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

Assignment of Creditor. The word "Creditor" includes the original Seller and also includes any person or organization to whom this contract may be sold or assigned.

Governing Law. You and the Creditor agree that this transaction is subject to the laws of the state of Minnesota.

MMCA-100-01 (2/79)

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

COLLETTI MICHAEL ROBERT
2123 OLD SCHOOL RD
MOUND MN 55364

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

040-5409511

MRR421

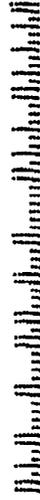
05 Year	MI TS Make	2HGTS Model	02090S138 Title NR.	NO Rebuilt
4A3AC74H83E195905	05/12/04 Security Date			

1ST SECURED PARTY

LIEN HOLDER

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

MMCA
P O BOX 6014
CYPRESS CA 90630-0014



PS 2701-03

STATE OF MINNESOTA

CERTIFICATE OF LIEN RELEASE
TO A MOTOR VEHICLE



This security interest is hereby released on _____ Date

2

Signature of Authorized Agent _____ Title

IMPORTANT - DO NOT DESTROY

This Certificate of Lien Release must be attached to the original Certificate of Title to establish clear ownership.

**Vehicle Summary With NADA Values
N.A.D.A Official Used Car Guide
Thursday, September 16, 2004**

Guide Edition: Midwest Used Car Guide - September 2004

Vehicle Description: 2003 MITSUBISHI
ECLIPSE-V6 CPE 2D GTS

VIN: 4A3AC74H83E195905 **Weight:** 3241
Stock #: **MSRP:** \$24,197

N.A.D.A. Base Values: **Retail:** \$16,450 **Trade:** \$14,000 **Loan:** \$12,600

Mileage Value (N/A Miles) N/A
Accessories Values \$0 \$0 \$0

N.A.D.A Adjusted Values: **Retail:** \$16,450 **Trade:** \$14,000 **Loan:** \$12,600

Appraiser Adjustment Value \$0

Adjusted Values: **Retail:** \$16,450 **Trade:** \$14,000 **Loan:** \$12,600

Accessories:

	Retail	Trade	Loan
Alum/Alloy Wheels	w/body	w/body	w/body
Infinity Stereo Sys	w/body	w/body	w/body
Leather Seats	w/body	w/body	w/body
Power Seat	w/body	w/body	w/body
Power Sunroof	w/body	w/body	w/body

Appraiser Adjustments:

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Michael R. Colletti

Debtor : Chapter 7 Case
Case No. BKY 04-44913-RJK.

MEMORANDUM OF FACTS AND LAW IN SUPPORT
OF MOTION FOR RELIEF FROM STAY

Mitsubishi Motors Credit of America, Inc. submits this Memorandum of Law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a 2003 Mitsubishi Eclipse GTS E2. On the date this case was filed, Debtors were delinquent under the terms of their contract with Movant. Debtors have made no payments to Movant since this case was filed and are presently in default under the contract in the amount of \$1,452.00. The vehicle subject to Movant's security interest is depreciating with use.

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). Debtors have failed to make the payments required by their contract with Movant and have otherwise failed to provide adequate protection of Movant's interest in the vehicle. Such circumstances constitute cause, within the meaning of Section 362(d)(1), justifying relief from the stay. In Re Video East, Inc., 41 B.R. 176 (Bkrtcy. E.D. Pa. 1984); See also, In Re Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtors have no equity in the subject vehicle and vehicle is not necessary to an effective reorganization. 11 U.S.C. Section 362(d)(2). See, In Re Gellert, 55 B.R. 970 (Bkrtcy. D. N.H. 1983). In the present case the balance due Movant on the contract is \$25,386.37. The replacement value of the vehicle is approximately \$16,450.00. Clearly, Debtors have no equity in the vehicle.

Further, due to the debtors failure to make post-petition payments as provided in their Chapter 7 plan, the Movant's interest in the vehicle is not being adequately protected.

Accordingly, Movant is entitled to an order terminating the automatic stay, and authorizing it to take possession of and foreclose its security interest in the vehicle.

Dated: October 2, 2004

PETERSON, FRAM & BERGMAN, P.A.

/e/ Michael T. Oberle
Michael T. Oberle, #130126
Attorney for Movant
Suite 300, 50 East Fifth Street
St. Paul, MN 55101
(651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Michael R. Colletti

**Debtor: Chapter 7 Case
Case No. BKY 04-44913-RJK**

UNSWORN DECLARATION FOR PROOF OF SERVICE

Michael T. Oberle employed by Peterson, Fram & Bergman, Professional Association, Attorneys at Law, licensed to practice law in this Court, with office address of 50 East Fifth Street, Suite 300, St. Paul, Minnesota, 55101, declares that on October 1, 2004, I served the annexed Motion for relief from stay with required documents on the parties referred to below by mailing to each of them a copy thereof by enclosing the same in an envelope with first class postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

United States Trustee
300 South Fourth St. #1015
Minneapolis, MN 55415-1329

Michael R. Colletti
2123 Old School Rd
Mound, MN 55364

Julia Christians
Chapter 7 Trustee
120 So. 6th Street #2500
Minneapolis, MN 55402

Richard J. Pearson
P.O. Box 120088
New Brighton, MN 55112

And I declare under penalty of perjury, that the foregoing Unsworn Declaration for Proof of Service consisting of 1 page(s) is true and correct.

Signed: /e/ Michael T. Oberle

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Michael R. Colletti

**Debtor: Chapter 7 Case
Case No. BKY 04-44913-RJK**

ORDER

The above-entitled matter came before the Court on October 28, 2004, upon the motion of Mitsubishi Motors Credit of America, Inc. seeking relief from the automatic stay of Section 362(a) of the Bankruptcy Code. Appearances were noted on the record. Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. Section 362(a) is immediately terminated as to Movant, it's successors and assigns, and Movant is authorized to take possession of and foreclose its security interest in the subject 2003 Mitsubishi Eclipse GTS E2, ID# 4A3AC74H83E195905.

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

Dated _____

Robert J. Kressel
United States Bankruptcy Judge