

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: William J. Schmitz
Barbara K. Schmitz
Debtor(s).

Case No. Bky 04-45121-RJK
Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: William J. Schmitz, 320 Seventh St N, Kandiyohi, Minnesota 56251, Barbara K. Schmitz, 320 Seventh St N, Kandiyohi, Minnesota 56251, Debtor and their attorney, Raymond R. Waechter, 328 5th St SW, Willmar, MN 56201, and other entities specified in Local Rule 9013-3.

1. Affinity Plus, of 2730 Snelling Ave N, Saint Paul, MN 55113, 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:

2001 Alumacraft Tournament Pro, Serial #ACBX5214C101

2001 Mercury 150L Optimax, Serial #OT336470

2001 Boat Trailer, Serial #1MDUVAP151A159229.

6. Movant has a valid and perfected first security interest in the following collateral to secure the purchase price thereof:

2001 Alumacraft Tournament Pro, Serial #ACBX5214C101

2001 Mercury 150L Optimax, Serial #OT336470

2001 Boat Trailer, Serial #1MDUVAP151A159229.

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, Certificate of Title and UCC Financing Statement, true and correct copies of which are attached hereto as Exhibit B.

9. The total NADA retail value of the collateral at the time of the filing of the petition was \$18,875.00 while the amount of Movant's claim was \$28,793.78. The debtor is delinquent Seven Hunderd Thirty Four and 58/100 Dollars, (\$734, 58) for the monthly installments due on July 10, 2004 through September 10, 2004 .

10. Movant does not have, and has not been offered, adequate protection of its interest in the above collateral, Debtor has no equity in the 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, Affinity Plus 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 Affinity Plus to foreclose its security interest in the above collateral, and for such other relief as may be just and equitable.

Dated: September 29, 2004

MESSERLI & KRAMER, P.A.

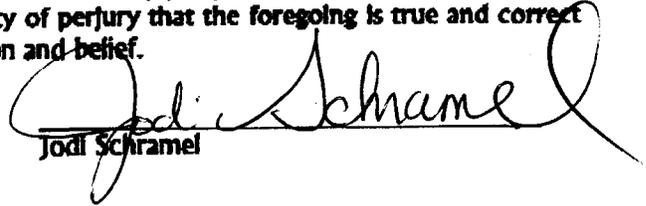
By: 

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

VERIFICATION

I, Jodi Schramel, 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: 9/27/04


Jodi Schramel

Local Rule Reference: 9013-2

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RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date <u>05-11-01</u>	Seller Source 1 Financial Services, Inc. 14500 Burnhaven Dr. Burnsville, MN 55306 "We" and "us" mean the Seller above, its successors and assigns.	Buyer WILLIAM JOHN & BARBARA KRISTIN SCHMITZ 320 N. 7TH ST. XANDYOPH, MN 56251 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.
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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 <u>2001</u>	VIN <u>9D8X3214010</u>	70F335470	Other: <u>01 R0924</u>
	Make <u>OLYMPIA/MERCUR</u>	Lic. No./Year <u>FIN / FIN</u>		VIN-1HDDWAAP31A0159207
	Model <u>TOURNAMENT/150 OPTIMA</u>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Used		

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 accessions, 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 \$ 26078.44, plus finance charges accruing on the unpaid balance at the rate of 9.99 % per year from today's date until paid in full. Finance charges accrue on a daily 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, nonrefundable 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 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	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of
<u>9.99</u> %	\$ <u>23749.56</u>	\$ <u>26078.44</u>	\$ <u>50826.40</u>	\$ <u>2751.00</u> \$ <u>53577.40</u>

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<u>180</u>	<u>282.30</u>	Monthly Beginning Jul. 10, 2001 and continuing until paid in full.

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 1% of payment or \$3.72 whichever is greater. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

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. \$ 1/4 Term _____

Credit Disability: Insured _____
 Single Joint Prem. \$ 1/4 Term _____

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ <u>1672.94</u>)	\$ <u>2751.00</u>
Service Contract, Paid to: <u>Seller</u>	\$ <u>1679.00</u>
Cash Price	\$ <u>26078.44</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>2751.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>2751.00</u>
b. Trade-In Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to:	
d. Net Trade-In (b. minus c.)	\$ <u>N/A</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>2751.00</u>
Down Payment (e.; disclose as \$0 if negative)	\$ <u>2751.00</u>

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

Number of Payments	Amount of Payments	When Payments Are Due
180	282.30	Monthly Beginning July 10, 2001 and continuing until paid in full.

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 2% of payment or \$4.00 whichever is greater. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

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. \$ 176 Term _____

Credit Disability: Insured _____
 Single Joint Prem. \$ N/A 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.

05-12-06
 Buyer _____ d/o/b _____ Buyer _____ d/o/b _____

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 \$ 500.00. If you get insurance from or through us you will pay \$ N/A for _____ of coverage.

This premium is calculated as follows:
 \$ _____ Deductible, Collision Coverage \$ N/A
 \$ _____ Deductible, Comprehensive Cov. \$ N/A
 Fire-Theft and Combined Additional Coverage \$ N/A
 _____ \$ N/A

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 above described goods

This Service Contract will be in effect for 60 months

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 1572.84) \$ 7740.00
 Service Contract, Paid to: seller * \$ 2700.00
Cash Price \$ 2574.00
 Manufacturer's Rebate \$ N/A
 Cash Down Payment \$ 721.30
 Deferred Down Payment \$ N/A
 a. Total Cash/Rebate Down \$ 721.30
 b. Trade-In Allowance \$ N/A
 c. Less: Amount owing \$ N/A
 Paid to:
 d. Net Trade-In (b. minus c.) \$ N/A
 e. Net Cash/Trade-In (a. plus d.) \$ 721.30

Down Payment (e.; disclose as \$0 if negative) \$ 721.30
Unpaid Balance of Cash Price \$ 2052.70
 Paid to Public Officials - Filing Fees \$ 100.00
 Insurance Premiums* \$ N/A
 Amount to Finance line e. (if e. is negative) \$ 2052.70
 To: _____ \$ _____
 To: _____ \$ _____
 To: _____ \$ _____
 To: _____ \$ _____
Total Other Charges/Amounts Pd. to Others \$ 100.00
 Less: **Prepaid Finance Charges** \$ 2052.70
Amount Financed \$ 2052.70

*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.

ASSIGNMENT: This Contract and Security Agreement is assigned to APPOINTY PLUS LEASING CO, the Assignee, phone _____ . 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: By _____ Date 05-11-01

Buyer: _____ Date _____
 Signature _____
 _____ Date _____
 Signature _____
 Seller: By _____

STATE OF MINNESOTA
CERTIFICATE OF TITLE
TO A WATERCRAFT

THIS TITLE IS PRIMA FACIE PROOF OF OWNERSHIP
KEEP IN A SAFE PLACE — ANY ALTERATION OR ERASURE VOIDS THIS TITLE

REGISTRATION NO. ACBNS214C101	MAKE ALUMACRAFT	YEAR 2003	LENGTH 17.00	MODEL III TOURNAMENT
LEAD NO. L-188-70004	NEW OR USED NEW	POPONAGE DATE 05/11/2001	FOR CENTRAL OFFICE USE ONLY 940185 L40	
MANUFACTURED 05/10/2001	HULL TYPE UTILITY	HULL MATERIAL ALUMINUM	REGISTRATION NUMBER 8422 MN	
ASSIGNMENT BY SELLER (TRANSFEROR)				
I HEREBY CERTIFY THAT THIS WATERCRAFT IS FREE FROM ALL SECURITY INTERESTS, WARRANTIES, AND REGISTRATION FEE PAID TO				
SELLER'S SIGNATURE X		BUYER'S SIGNATURE X		
SELLER'S NAME SCHMITZ, WILLIAM JOHN		BUYER'S NAME SCHMITZ, BARBARA KRISTIN		
SELLER'S ADDRESS 320 N 7TH ST KANDIYOHI MN 56251		BUYER'S ADDRESS 175 W LAFAYETTE ROAD SAINT PAUL MN 55107-1488		
CONTROL NO. 342219		AUTHORITY X		

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

SCHMITZ WILLIAM JOHN
SCHMITZ BARBARA KRISTIN
320 NORTH 7TH P O BX 74
KANDIYOHI MN 56251

01 Year	SHOR Make	TR Model	F1700N652 Title NR.
1MDUVAP151A159229 VIN	05/11/01 Security Date	NO Rebuilt	

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

940185 L40

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

*

H36516

1ST SECURED PARTY

LIEN HOLDER

AFFINITY PLUS FED CR UN
175 W LAFAYETTE RD
SAINT PAUL MN 55107-1488



940 100 LRU

STATE OF MINNESOTA UCC-1 FINANCING STATEMENT

For
Filing
Officer

(KANDIYOHI COUNTY RECORDER
JULIE BRAVLEY

165862

06-05-2001 8:30 AM

This statement is presented for filing pursuant to *Minnesota Uniform Commercial Code Minnesota Statutes Chapter 336.9-402* (Type in Black Ink)

1. Individual Debtor - Last Name		First Name	Middle I.
SCHMITZ		WILLIAM	J
Social Security #	Mailing Address		
470-92-5000	300 N. 7TH ST.		
City	State	Zip Code	
KANDIYOHI	MIN	56251	
2. Individual Debtor - Last Name		First Name	Middle I.
SCHMITZ		BARBARA	K
Social Security #	Mailing Address		
475-94-9430	300 N. 7TH ST.		
City	State	Zip Code	
KANDIYOHI	MIN	56251	
3. Business Debtor - Name			
Fed. ID #		Mailing Address	
City		State	Zip Code
4. Secured Party Name		5. Assignee of Secured Party	
Source 1 Financial Services, Inc.		AFFINITY PLUS FEDERAL CU	
Mailing Address		Mailing Address	
14500 Burnhaven Dr.		175 W LAFAYETTE RD	
City	State	City	State
Burnsville	MIN	ST PAUL	MIN
	55306		55107

6. This financing statement covers the following types or items of property.

01 ALUMACRAFT TOURNAMENT PRO 175 Boat
S/N-ACBX5214C101

01 MERCURY 150 OPTIMAX Boat Engine
S/N-OT336470

01 SHORELANDR R1824 Trailer
S/N-1HDUM6F1S16159229

Debtor is a transmitting utility
as defined by Minnesota Statutes Chapter 336.9 - 105

RETURN ACKNOWLEDGEMENT COPY TO: (name and address)

AFFINITY PLUS FEDERAL CU
175 W LAFAYETTE RD
ST PAUL, MN 55107

TERMINATION STATEMENT: This statement of Termination of Financing is presented to a Filing Officer pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

(Signature of Secured Party or Assignee of Record. Must be signed)

Date _____

Please do not type outside the bracketed area.

(3) Acknowledgment Copy (06920819 Rev 11/99) Standard Form Approved by Secretary of State

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Re: William J. Schmitz
Barbara K. Schmitz

Case No. Bky 04-45121-RJK
Chapter 7 Case

Debtor(s).

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

Affinity Plus moves the Court for an order modifying the automatic stay to permit Affinity Plus to take possession of a 2001 Alumacraft Tournament Pro, 2001 Mercury 150L Optimax and 2001 Boat Trailer presently in Debtor's possession. Movant has a security interest in the collateral pursuant to a Retail Installment Contract dated May 11, 2001, between Debtor and Source 1 Financial Services, Inc., whose interest was subsequently assigned to Affinity Plus. Movant's perfected security interest in the collateral is evidenced on the Confirmation of Lien Perfection, Certificate of Title and UCC Financing Statement for the vehicle.

The total NADA retail value of the collateral at the time of the filing of the petition was \$18,875.00 while the amount of Movant's claim was \$28,793.78. The Debtor is delinquent Seven Hundred Thirty Four and 58/100 Dollars, (\$734.58) 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 Affinity Plus 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 debtors have no equity in the collateral and the collateral is not necessary for

an effective reorganization. In this case, the balance due Affinity Plus exceeds the estimated value of the collateral, and therefore, no equity exists in the collateral. Debtors do not need this collateral for an effective reorganization.

In conclusion, Affinity Plus 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 lack of equity in the collateral and 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.

Affinity Plus 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), Affinity Plus requests that this Order shall be effective immediately.

Dated: September 29, 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

04-58516-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: William J. Schmitz
Barbara K. Schmitz

Case No. Bky 04-45121-RJK
Chapter 7 Case

Debtor(s).

ORDER

This matter is before the Court on Affinity Plus'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.

Affinity Plus requested relief from the automatic stay to foreclose its security interest in:
2001 Alumacraft Tournament Pro, Serial #ACBX5214C101
2001 Mercury 150L Optimax, Serial #OT336470
2001 Boat Trailer, Serial #1MDUVAP151A159229.

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 *Affinity Plus 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