

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Chapter 13  
Case No. 04-60879-DDO

Anne Elizabeth Gore,

Debtor.

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

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TO: Debtor and Other Entities Specified in Local Rule 1204(a).

Consumer Portfolio Services, Inc. ("CPS") moves the Court for the relief requested below and gives notice of hearing.

1. This Court will hold a hearing on this motion on October 26, 2004 at 1:00 p.m., United States Bankruptcy Court, Courtroom 2, 118 South Mill Street, Fergus Falls, Minnesota 56537.

2. Any response to this motion must be filed and delivered no later than October 21, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 15, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. The 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 13 case was filed on July 22, 2004. The case is now pending in this Court.

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 and 9017-1. Movant requests relief from the automatic stay with respect to debtor's interest in an automobile described as follows: 2001 Mitsubishi Eclipse, VIN 4A3AC34G11E162788 ("Automobile").

5. On or about October 8, 2002, debtor purchased the Automobile from McKay's Family Dodge, Inc. ("McKay's") pursuant to a Retail Installment Contract and Security Agreement ("Contract"). A true copy of which and evidence of perfection is attached hereto and incorporated herein. The Contract was assigned to CPS. As of the date of the filing of the Petition, debtor was in arrearage for two payments in the sum of \$849.00. Debtor is currently in default after the date of filing in the amount of \$1,679.88. The total amount owed to CPS as of September 9, 2004 was \$14,341.11. The Automobile has a value of \$6,700.00 and continues to depreciate. Currently debtor has the Automobile.

6. This notice of motion and motion also serves as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d (Minn. 1980). If the default is not cured before the hearing, movant will repossess the property promptly upon the Court signing the Order.

8. If any testimony is necessary on any facts relative to this motion, testimony will be given by Joshua Garcia of CPS, whose address is Post Office Box 57071, Irvine, California 92619-7071.

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

WHEREFORE, movant moves the Court for an Order terminating the automatic stay of 11 U.S.C. § 362 so that it may proceed to recover and dispose of the Automobile pursuant to state law, and for such other and further relief as the Court deems just and equitable.

Dated: September 28, 2004.

GLASSMAN LAW FIRM

By /s/ Richard A. Glassman  
Richard A. Glassman  
Attorney Reg. No. 146274  
701 Fourth Avenue South, Suite 500  
Minneapolis, Minnesota 55415  
Telephone: (612)337-9559

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b> No. _____ Date <b>OCTOBER 08th, 2002</b>	<b>Seller</b> <b>HEWLEY'S FAMILY DODGE, INC.</b> <b>2008 DIVISION STREET</b> <b>WHITE PINE MN 55391</b> <small>"We" and "us" mean the Seller above, its successors and assigns.</small>	<b>Buyer</b> <b>ROSE ELIZABETH BONE</b> <b>1616 GRYB BROOK RD 6385</b> <b>ST. CLOUD MN 56301</b> <small>"You" and "your" mean each Buyer above, and their heirs, assigns, jointly and severally.</small>
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**SALE:** You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and accessories 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 maintenance and accessories.

Description of Motor Vehicle Purchased Year: <b>2001</b> Make: <b>HITACHI</b> Model: <b>EXL 1700R</b>	VIN: <b>40202B4911E362788</b> U.C. No./Year: _____ <input type="checkbox"/> New Equipment	Other: <b>#8946733</b>
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**Description of Trade-in**

**SECURITY:** To assure 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 agree 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 \$ **16232.84** plus finance charges starting on the unpaid balance at the rate of **17.99** % per year from today's date until paid in full. Finance charges are on a **360** 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 the Contract.

**LOAN ADMINISTRATION FEE:** You agree to pay an additional, non-refundable loan administration fee of \$45.00 that will be  paid in cash.  Add this fee over the contract term.  Withheld from the proceeds if this fee is withheld from the proceeds, the amount is included in the principal amount.

**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 CHARGES	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate. <b>17.99 %</b>	The dollar amount of credit provided to you or on your behalf. <b>\$ 16232.84</b>	The amount of credit provided to you or on your behalf. <b>\$ 16232.84</b>	The amount you will have paid when you have made all scheduled payments. <b>\$ 22112.88</b>	The total cost of your purchase on credit, including your down payment of cash. <b>\$ 22112.88</b>

Payment schedule for your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
<b>60</b>	<b>\$ 413.88</b>	<b>MONTHLY, BEGINNING: NOVEMBER 22nd, 2002</b>

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

Late Charge: If a payment is more than \_\_\_\_\_ days late, you will be charged \_\_\_\_\_ (This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.00.)

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 requirement before the scheduled date, and payment methods and periods.

**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 optional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverage you have chosen to purchase.

**Credit Life Insured:**  
 Single  Joint Term \$ \_\_\_\_\_ M/R Term \_\_\_\_\_ M/R  
**Credit Disability Insured:**  
 Group  Joint Term \$ \_\_\_\_\_ M/R Term \_\_\_\_\_ M/R

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

**BUYER:** ROSE ELIZABETH BONE  
**PROPERTY INSURANCE:** You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably accessible to us. The common coverage deductible may not exceed \$ \_\_\_\_\_ M/R. If you get insurance from or through us you will pay \$ \_\_\_\_\_ M/R of coverage.

This premium is calculated as follows:  
 \$ \_\_\_\_\_ Deductible, Collision Coverage \$ \_\_\_\_\_ M/R  
 \$ \_\_\_\_\_ Deductible, Comprehensive Cov. \$ \_\_\_\_\_ M/R  
 Fire-Then and Combined Additional Coverage \$ \_\_\_\_\_ M/R

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

**NOTOR VEHICLE SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover \_\_\_\_\_ M/R.  
 This Service Contract will be in effect for \_\_\_\_\_.

**ASSIGNMENT:** This Contract and Security Agreement is assigned to \_\_\_\_\_ (the Assignee), phone \_\_\_\_\_ (the Assignee's phone). This assignment is made  under the terms of the assignment or  under the terms of the assignment by Seller on page 2.  This assignment is made with recourse. Signed by \_\_\_\_\_ Date \_\_\_\_\_

**BUYER'S SIGNATURE:** \_\_\_\_\_  
 ROSE ELIZABETH BONE  
 Buyer

**SELLER'S SIGNATURE:** \_\_\_\_\_  
 HEWLEY'S FAMILY DODGE, INC.  
 Seller

**DATE:** \_\_\_\_\_



8946733

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
443 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

GORE ANNA ELIZABETH  
1616 DAK GROVE RD #305  
ST CLOUD MN 56301

JZW433

Year 01	Make NITS	Model 2HERS	VIN H32Z0P259
VIN 6A3AC34G11E16278B			Expiry Date 12/08/02
			Product NO

1ST SECURED PARTY

LIEN HOLDER

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

CPS INC  
PO BOX 57071  
IRVINE CA 92619-7071

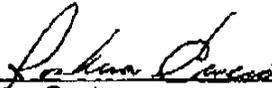
32619#1011



**VERIFICATION**

I, Joshua Garcia, Bankruptcy Representative of Consumer Portfolio Services, Inc., the moving party named in the foregoing Notice of Hearing and Motion for Relief from the Automatic Stay, declare under the penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: 9/22/04

  
\_\_\_\_\_  
Joshua Garcia  
Consumer Portfolio Services, Inc.  
Post Office Box 57071  
Irvine, California 92619-7071

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Anne Elizabeth Gore,

Debtor.

Chapter 13

Case No. 04-60879-DDO

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

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Consumer Portfolio Services, Inc. ("CPS"), by and through its attorneys, submits the following memorandum in support of its motion for relief from the automatic stay.

On or about October 8, 2002, debtor entered into that certain Retail Installment Contract and Security Agreement ("Contract") in order to purchase a vehicle. The Automobile was purchased from McKay's Family Dodge, Inc. ("McKay's"), which later assigned its interest to CPS. The Automobile that was purchased was a 2001 Mitsubishi Eclipse, VIN 4A3AC34G11E162788 ("Automobile"). As of the date of the petition, debtor owed to CPS the amount of \$849.00, post-petition, and is in arrearage in the amount of \$1,679.88. The total owed to CPS as of September 9, 2004 is the amount of \$14,341.11. Interest continues to accrue and the vehicle continues to depreciate. The Automobile has a value of \$6,700.00.

**ARGUMENT**

The Court should terminate the stay of 11 U.S.C. § 362(a). Section 362(d) of the Code provides that the Court shall grant relief from the automatic stay provided under subsection (a) as follows:

- (1) For cause, including the lack of adequate protection of an interest in property of such party in interest;



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**UNSWORN CERTIFICATE**  
**OF SERVICE**

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I, Richard A. Glassman, declare under penalty of perjury, that on September 28, 2004, I mailed copies of the attached Notice of Motion and Motion for Relief from Automatic Stay, Memorandum in Support of Motion and proposed Order by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

Anne Elizabeth Gore  
1615 Goettens Way, #203  
St. Cloud, Minnesota 56301

William P. Kain  
Schmidt & Lund  
13 South Seventh Street  
St. Cloud, Minnesota 56301

Michael J. Farrell  
Post Office Box 519  
Barnesville, Minnesota 56514

Dated: September 28, 2004.

/s/ Richard A. Glassman  
Richard A. Glassman

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Chapter 13  
Case No. 04-60879-DDO

Anne Elizabeth Gore,

**ORDER**

Debtor.

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The above-entitled matter came on for hearing before the above Court and the undersigned Judge on \_\_\_\_\_, upon the verified notice of hearing and motion for relief from the automatic stay of Consumer Portfolio Services, Inc. (“CPS”). Richard A. Glassman of Glassman Law Firm appeared on behalf of CPS, and other appearances were noted of record. It appears that notice of the hearing on the motion was adequate, and the Court, being fully advised of the premises, and based upon the verified motion, all of the files and records in this case, and the arguments of counsel:

IT IS HEREBY ORDERED that the stay imposed by 11 U.S.C. § 362 is modified as it applies to CPS, and it is entitled to proceed to recover and dispose of the following Automobile pursuant to state law: 2001 Mitsubishi Eclipse, VIN 4A3AC34G11E162788.

BY THE COURT:

Dated: \_\_\_\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge