

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-60934-DDO

Chapter 7

Jeffrey Paul Friesen and Debra Ann Friesen,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); David G. Velde, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One, N.A., 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 **1:00 pm on Tuesday, September 28, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 2, at the 204 U.S. Courthouse, 118 South Mill Street, Fergus Falls, Minnesota 56537.

3. Any response to this motion must be filed and delivered not later than Thursday, September 23, 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 Friday, September 17, 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. Bank One, N.A. 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 10, 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. Bank One, N.A. holds a valid, perfected interest in a 2000 Ford F150, vehicle identification number 1FTRX18LXNYA19564 (the "Vehicle").

7. Copies of Bank One, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One, N.A.'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 April through August 2004 totaling \$2,151.91 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$19,489.40 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$12,000.00.

10. Bank One, N.A.'s interest is depreciating, while Debtor(s) are failing to make payments. Bank One, N.A. 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 Bank One, N.A. with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Bank One, N.A. to relief from the stay.

12. Bank One, N.A. 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, T. Johnson, or some other representative of Movant, will testify on behalf of Bank One, N.A..

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, Bank One, N.A. 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, Bank One, N.A. respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Bank One, N.A. 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: August 24, 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:

Case No. 04-60934-DDO

Chapter 7

Jeffrey Paul Friesen and Debra Ann Friesen,

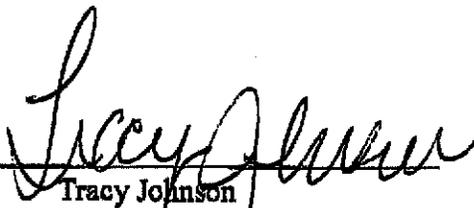
Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One, N.A. declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated:

8/24/04



Tracy Johnson
Bankruptcy Specialist
Bank One, N.A.

BANK ONE ARIZONA

Fax: 602-674-7194

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RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date _____	Seller FREEMAY FORD, INC. 9700 LYNDALE AVE S. BLOOMINGTON, MN 55420 <small>We and us mean the Seller above, its successors and assigns.</small>	Buyer JEFFREY PAUL FRIESEN 51932 GRACE DR DETROIT LAKES MN 55501 <small>You and your mean each Buyer above, and guarantor, jointly and individually.</small>
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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: 2000 Make: FORD Model: F SERIES	VIN: _____ Lic. No./Year: _____ <input type="checkbox"/> New <input checked="" type="checkbox"/> Used	Other: _____
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Description of Trade-in: **1997 FORD TRUCK F150 1FTEX1B14VKC06424**

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, 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 \$ 23300.50, plus finance charges accruing on the unpaid balance at the rate of 6.99 % 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 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 The cost of your credit as a yearly rate. <u>6.99</u> %	FINANCE CHARGE The dollar amount the credit will cost you. \$ <u>5376.38</u>	AMOUNT FINANCED The amount of credit provided to you or on your behalf. \$ <u>23300.50</u>	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments. \$ <u>28676.88</u>	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of \$ <u>580.00</u> \$ <u>29256.88</u>
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Payment Schedule: Your payment schedule will be _____ When Payments Are Due

Number of Payments	Amount of Payments	When Payments Are Due
72	398.29	MONTHLY, BEGINNING, JANUARY 7th, 2003

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 66.24 OR 6% 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 ... ITEMIZATION OF AMOUNT FINANCED

BANK ONE ARIZONA

Fax: 602-674-7194

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

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

Buyer: [Signature] d/w/b Buyer

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

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

This Service Contract will be in effect for 12 MOS./12000 MILES

ASSIGNMENT: This Contract and Security Agreement is assigned to BANK ONE, NA the Assignee, phone (800) 288-8887. This assignment is made under the terms of a separate agreement. This assignment is made with recourse. Seller: By [Signature] Date 2002

MINNESOTA RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
© 1992, 1996 Bankers Systems, Inc., St. Cloud, MN Form RB-2141V-MN 1/93/2001

Table with financial details: Vehicle Price (incl. sales tax of \$ 747.50) \$ 22247.50, Service Contract, Paid to: FORD ESP PREM \$ 995.00, Cash Price \$ 23242.50, Manufacturer's Rebate \$ N/A, Cash Down Payment \$ N/A, Deferred Down Payment \$ N/A, a. Total Cash/Rebate Down \$ 10000.00, b. Trade-In Allowance \$ 9420.00, c. Less: Amount owing \$ 580.00, d. Net Trade-In (b. minus c.) \$ 580.00, e. Net Cash/Trade-In (a. plus d.) \$ 580.00, Down Payment (e.; disclose as \$0 if negative) \$ 22662.50, Unpaid Balance of Cash Price \$ 118.00, Paid to Public Officials - Filing Fees \$ N/A, Insurance Premiums* \$ N/A, Amount to Finance Line a. (if a. is negative) \$ N/A, To: FREEWAY FORD, INC. \$ 25.00, To: GAP COVERAGE* \$ 495.00, Total Other Charges/Amounts Pd. to Others \$ 638.00, Less: Prepaid Finance Charges \$ N/A, Amount Financed \$ 23300.50

*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.

Buyer: [Signature] 2002
Signature: JEFFREY PAUL FRIESEN Date

Seller: By [Signature] Date

MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

BANK ONE ARIZONA

Fax: 602-674-7194

Aug 19 2004 15:48

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MINNESOTA DEPARTMENT OF PUBLIC DRIVER & VEHICLE SERVICES DIVISION
443 MINNESOTA ST., ST. PAUL, MN 551
CONFIRMATION OF LIEN PERFECTION - DE

042000518580 00 9811
e125034 OPEN
2000 FORD TRUCK F150 PICKUP-V8
JEFFREY PAUL FRIESEN

1/8/2003

FRIESEN JEFFREY PAUL
51932 GRACE DR
DETROIT LAKES MN 5650.

KLA259

Year 00	FORD	4CCDF	H362DF653
VIN JFTRX18LXYNA19564	SECURITY DATE 11/23/02	REG NO	

1ST SECURED PARTY

LIEN HOLDER

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

BANK ONE NA
PO BOX 11686
LEXINGTON KY 40576-1606

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-60934-DDO
Chapter 7

Jeffrey Paul Friesen and Debra Ann Friesen,
Debtor(s).

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

Bank One, N.A. submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Bank One, N.A. holds a perfected interest in a 2000 Ford F150 with a vehicle identification number 1FTRX18LXNYA19564 (the "Vehicle"). Payments due under the terms of the Contract for the months of April through August 2004 totaling \$2,151.91 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$19,489.40 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$12,000.00.

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 Bank One, N.A. 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 Bank One, N.A. 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 \$19,489.40 as of the date hereof. The fair market value of the Vehicle is approximately \$12,000.00. 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, Bank One, N.A. 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: August 24, 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:

Jeffrey Paul Friesen and Debra Ann Friesen

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-60934-DDO

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))
Rolf H. Nycklemoe
106 E. Washington
Fergus Falls, MN 56537-0936

(Trustee)
David G. Velde
1118 Broadway
Alexandria, MN 56308

(Debtor(s))
Jeffrey Paul Friesen
51932 Grace Drive
Detroit Lakes, MN 56501

Debra Ann Friesen
51932 Grace Drive
Detroit Lakes, MN 56501

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

Date: August 24, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Chapter 7

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Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Tuesday, September 28, 2004 on the motion of Bank One, N.A. 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 Bank One, N.A. 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 Bank One, N.A., and Bank One, N.A. is authorized to foreclose its interest in the subject 2000 Ford F150, vehicle identification number 1FTRX18LXNYA19564 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge