

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Charles V. Smith III

And In Re:

Kari L. Smith a/k/a Kari L. Lee a/k/a Kari L. Sutherland

CASE NO. 04-60968 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: The Debtor, Charles V. Smith III, Debtor's Attorney, John F. Hedtke, Trustee, David G. Velde, U.S. Trustee and other interested parties as shown on the attached service list.

1. Green Tree Loan Company f/k/a Conseco Finance Loan Company (hereinafter "Green Tree"), 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 October 26th, 2004 at 1:00 p.m. or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom No. 2 at the U.S. Bankruptcy Court, 205 U.S. P.O. Bldg., 118 S. Mill St., Fergus Falls, MN 56537.

3. Any response to this motion must be filed and delivered not later October 21, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays of holidays) or filed and served by mail not later than October 15th, 2004, which is seven (7) days before the time set for the hearing. **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. Sections 157 and 1334, Fed. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this Chapter 7 case was filed on August 16, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. 362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief with respect to property subject to Green Tree's valid security interest.

6. The Movant hereby requests that the Court waive the ten-day stay period provided for by Bankruptcy Rule 4001(a)(3).

7. That Green Tree is entitled to lift the stay and seek the immediate possession of certain personal property that is described as follows:

1990, Homark 16' x 76' manufactured home, Detroit model, serial number MNHM8909131A, including but not limited to a stove, refrigerator and dryer.

8. That cause exists, including lack of adequate protection of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay.

9. That the Debtor has no equity in the property and the property is not necessary to an effective reorganization.

10. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.

11. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Green Tree, by its undersigned attorney, moves the court for an order for judgment that the automatic stay provided by 11 U.S.C. Sec. 362(a) and be terminated so to permit the movant to enforce its interest in the mobile home under applicable Minnesota law and for such other relief as may be just and equitable.

Dated this 21st day of September, 2004.

STEPHENSON & SANFORD PLC

By: /e/ James A. Sanford
James A. Sanford
Attorney ID # 0177970
Attorneys for Secured Creditor
Suite 220
1905 East Wayzata Blvd.
Wayzata, MN 55391
(952) 404-2100

**UNITED STATES BANKRUPTCY COURT
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Kari L. Smith a/k/a Kari L. Lee a/k/a Kari L. Sutherland

CASE NO. 04-60968 DDO

Debtors.

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

FACTS

On or about March 12, 2002, the Debtor, Charles V. Smith III, executed a Manufactured Home Retail Installment Contract and Security Agreement with Conseco Finance Loan Company for the purchase of a 1990, Homark 16' x 76' manufactured home, Detroit model, serial number MNHM8909131A, including but not limited to a stove, refrigerator and dryer. The Seller's interest in the above-described contract was assigned to the movant, Green Tree Loan Company f/k/a Conseco Finance Loan Company ("Green Tree"). The contract provides that the failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.

On or about August 16, 2004, Debtor filed for relief under Chapter 7 of Title 11, U.S. Code. Debtor is currently in default for the monthly payments for June (\$106.32), July (\$232.10) and August (\$232.10) 2004, plus \$247.07 in insurance and/or other contractual charges and \$15.00 in late charges. The total default under the contract is \$832.59. Debtor has failed to reaffirm the debt. The market value of the mobile home is approximately \$17,500.00. As of September 9, 2004, the net balance due on the contract is \$21,840.74.

LAW

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

On request of a party in interest and after notice and hearing the court shall grant relief from the stay for cause, including the lack of adequate protection of an interest in the property of such

party in interest. 11 U.S.C. 362(d)(1). Pursuant to 11 U.S.C. Section 362(g) the burden is on the Debtor to prove the absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where:

1. Debtor filed Chapter 7 Bankruptcy on or about August 16, 2004.
2. The Debtor is delinquent for monthly contract installment payments for the months of June (\$106.32), July (\$232.10) and August (\$232.10) 2004, plus \$247.07 in insurance and/or other contractual charges and \$15.00 in late charges totaling \$832.59.
3. The Debtor has failed to reaffirm the debt with Green Tree.
4. The mobile home continues to depreciate in value.
5. The Debtor has failed to make any offer of adequate protection.

Accordingly, Green Tree is entitled to relief from the stay by reason of lack of adequate protection of its interest in the mobile home.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) WHERE (1) THE DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under Section 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The current N.A.D.A. valuation of the property is approximately \$17,500.00. It is subject to Secured Creditor's interest in a net amount of \$21,840.74.

CONCLUSION

The Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. The Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(2) where the Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

The Secured Creditor has met its burden as discussed above and respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 21st day of September, 2004.

STEPHENSON & SANFORD PLC

By: /e/ James A. Sanford
James A. Sanford
Attorney ID # 0177970
Attorneys for Secured Creditor
Suite 220, 1905 East Wayzata Blvd.
Wayzata, MN 55391, (952) 404-2100

VERIFICATION

I, Tina Gaikowski, the bankruptcy administrator of Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a/ Green Tree Financial Servicing Corporation a/f/k/a Green Tree Financial Corporation named in the foregoing notice of hearing and motion, declare under penalty of perjury the that foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 9-15-04

Signed: 
Tina Gaikowski

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CASE NO. 04-60968 DDO

Debtor.

AFFIDAVIT OF TINA GAIKOWSKI

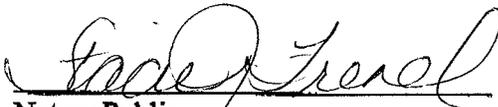
Tina Gaikowski, being first duly sworn on oath deposes and states:

1. That Affiant is the Bankruptcy Administrator for Green Tree Loan Company f/k/a Conseco Finance Loan Company ("Green Tree").
2. That Affiant has reviewed the account records relating to Charles V. Smith III and the Manufactured Home Retail Installment Contract and Security Agreement loan account.
3. That on or about March 12, 2002, the Debtor executed a Manufactured Home Retail Installment Contract and Security Agreement with Conseco Finance Loan Company for a 1990, Homark 16' x 76' manufactured home, Detroit model, serial number MNHM8909131A, including but not limited to a stove, refrigerator and dryer, which is attached hereto as **Exhibit A**.
4. That Green Tree f/k/a Conseco Finance Loan Company properly perfected its interest in the manufactured home. A true and correct copy of the Confirmation of Lien Perfection is attached hereto as **Exhibit B**.
5. That said Manufactured Home Retail Installment Contract and Security Agreement provides that failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.
6. That Debtor failed to maintain monthly payments under said contract.
7. That the Debtor defaulted by virtue of Debtor's failure to remit the monthly payments for June (\$106.32), July (\$232.10) and August (\$232.10) 2004, plus \$247.07 in insurance and/or other contractual charges and \$15.00 in late charges. The total default is \$832.59.
8. That the approximate N.A.D.A. market value of said collateral is \$17,500.00.

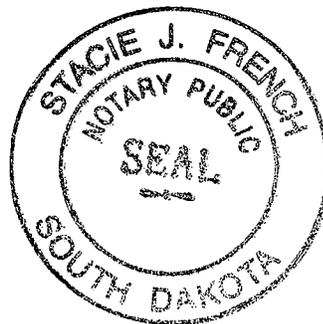
9. That as of September 9, 2004, the net balance due on the contract is \$21,840.74.
10. That cause exists, including lack of adequate protection, as evidenced by the failure to pay under the contract, of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay from Debtor, Charles V. Smith III.
11. That the last known address of Debtor is as follows:
- RR 3, Box 287
Bagley, MN 56621
12. That Green Tree believed and still believes that the aforementioned address was and still is the present residence of Debtor because Debtor had previously advised Green Tree of the same and because Green Tree has communicated with Debtor at said address and has no reason to believe that the Debtor no longer resides there.
13. That Debtor has no equity in the property and the property is not necessary to an effective reorganization.
14. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.
15. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.
16. This affidavit is given in support of the motion of Green Tree, for relief from the automatic stay.


Tina Galkowski

Subscribed and sworn to before me
this 5 day of Sept, 2004.


Notary Public

MY COMMISSION EXPIRES 11/31/10



07-10-00-201 (12/01) MH-PNBA

SMITH III - 5980736

MANUFACTURED HOME PROMISSORY NOTE, SECURITY AGREEMENT AND DISCLOSURE STATEMENT (CONV. - FHA - VA) (SI)

MAKER: SMITH III, CHARLES V., 901 WEST STONE ST, DULUTH, MN 55808

Date DISBURSEMENT DATE: 3/19/02
ACCOUNT # 30331903

MAKER:

CREDITOR: CONSECO FINANCE LOAN COMPANY, 1155 CENTRE POINTE DRIVE SUITE 7, MINNETONKA HEIGHTS, MN 55120

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURES				
ANNUAL PERCENTAGE RATE (The cost of my credit as a Yearly rate.)	FINANCE CHARGE (The dollar amount the credit will cost me.)	Amount Financed (The amount of credit provided to me or on my behalf.)	Total of Payments (The amount I will have paid after I have made all payments as scheduled.)	Total Sale Price (The total cost of my purchase on credit, including my down payment of
12.51 %	\$ 35285.14	\$ 20418.86	\$ 55704.00	\$ 1052.00) \$ 56756.00

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
240	232.10	Monthly beginning (estimate) - 04-15-02

SECURITY: I am giving a security interest in: N/A Other (describe): N/A
 The goods or property being financed. N/A Real property located at N/A
 LATE CHARGE: If a payment is more than 15 days late, I will be charged lesser of 95 or 5% of the unpaid amount of the installment.

PREPAYMENT: If I pay off early, I N/A may XX will not have to pay a penalty.
 If I pay off this note early, I N/A may XX will not be entitled to a refund of part of the additional finance charge.
 ASSUMPTION: Someone buying my home XX may, subject to conditions, N/A will not be allowed to assume the remainder of my obligation on the original terms.
 See the Contract document below for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.
 "e" means an estimate.

ITEMIZATION OF THE AMOUNT FINANCED	
1. Amount Given To Me Directly.....	\$.00
2. Amounts Paid To Others On My Behalf*:	
a. Paid to Public Officials.....	+ \$ 18.00
b. Paid to Insurance Companies.....	+ \$ 452.86
c. Paid to Appraiser.....	+ \$.00
d. Paid to CONSECO / FLOOD CERT	
e. Paid to CONSECO.....	+ \$ 10.00
f. Paid to.....	+ \$ 19948.00
g. Paid to.....	+ \$.00
h. Paid to.....	+ \$.00
i. Paid to.....	+ \$.00
j. Paid to.....	+ \$.00
k. Paid to.....	+ \$.00
l. Paid to.....	+ \$.00
m. Paid to.....	+ \$.00
n. Paid to.....	+ \$.00
3. Principal Balance (1 + 2a.-n).....	\$ 20428.86
4. Prepaid Finance Charges.....	\$ 10.00
TOTAL PREPAID FINANCE CHARGES	\$ 10.00
5. Amount Financed (3 + 4).....	\$ 20418.86

* Creditor and/or its affiliates may receive commissions or other compensation from businesses to whom these charges are due.

PHYSICAL DAMAGE INSURANCE	
Physical Damage Insurance is required but I may obtain it from anyone I want that is acceptable to you. If I get the insurance checked below from you or through you, I will pay you	
\$ 452.86	for insurance protection for a term of <u>01</u> years.
<input checked="" type="checkbox"/>	Comprehensive (\$ <u>250.00</u> deductible)
<input checked="" type="checkbox"/>	Flood
<input checked="" type="checkbox"/>	Liability
<input checked="" type="checkbox"/>	Other <u>N/A</u>
<input checked="" type="checkbox"/>	Vendor's Single Interest

OPTIONAL CREDIT LIFE AND DISABILITY INSURANCE	
Credit Life and Accident and Health Insurance are not required to obtain credit and will not be provided unless I sign and agree to pay the additional cost.	
The term of this insurance is <u>0</u> years.	
<input checked="" type="checkbox"/>	Single Credit Life Insurance \$.00
<input checked="" type="checkbox"/>	Joint Credit Life Insurance \$.00
<input checked="" type="checkbox"/>	Single Credit Accident & Health Insurance \$.00
<input checked="" type="checkbox"/>	Joint Credit Accident & Health Insurance \$.00
Total \$.00	
<input checked="" type="checkbox"/>	Signature of Maker(s) Insured
	Date

21,840.74
6.82



CONTRACT AND SECURITY AGREEMENT

SMITH III - 5980736

1. **DEFINITIONS:** "I," "me," or "my" means the Maker(s). "You" or "your" means the Creditor. "Manufactured Home" means the manufactured home and any property that now or later is attached to, is a part of, or any benefits or proceeds that arise from the manufactured home, and all supporting obligations. "Proceeds" includes anything acquired on the sale, lease, license, exchange, or other disposition of the manufactured home; any rights and claims arising out of the manufactured home; and any collections and distributions on account of the manufactured home. "Agreement" or "Contract" means this Promissory Note, Security Agreement and Disclosure Statement; and a Mortgage or Deed of Trust, if applicable.

NEW OR USED	Manufactured Home			
	YEAR AND MAKE	MODEL	SERIAL NUMBER	SIZE
<input checked="" type="checkbox"/>	1990 HOMELX	DETROITER	MNH8509131A	16 X 76
	<input checked="" type="checkbox"/> Stove	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Washer	<input checked="" type="checkbox"/> Dryer
		<input checked="" type="checkbox"/> Air Conditioner	<input checked="" type="checkbox"/> N/A	<input checked="" type="checkbox"/> Wheels/Axles
Other (Describe)	N/A			

2. **LOCATION:** The Manufactured Home is located at the following address: 901 WEST STONE ST, DULUTH, MN 55808
 The land on which the Manufactured Home is located is owned by: VINTAGE ACRES
 3. **PROMISE TO PAY:** To repay this loan, I promise to pay you U.S. \$ 20626.86 (the "Principal Balance" as shown on page 1) plus interest from the date of the disbursement at the rate(s) of 12.50%

per annum according to the payment schedule set forth on page 1, plus other amounts as agreed and allowed by law. It is not your intention to charge any amount which is not allowed by law, but should such amount be charged inadvertently, you will refund it to the Contract balance.

4. **N/A ADDITIONAL FINANCE CHARGE:** I also agree to pay a nonrefundable fee of \$ N/A, and it will be N/A withheld from the proceeds. N/A paid pro rata over the loan term. N/A paid in cash. (If the fee is withheld from the proceeds, the amount is included in the principal sum.)

5. **N/A LOAN ORIGINATION FEE:** I also agree to pay a loan origination fee of \$ N/A, and it will be N/A withheld from the proceeds. N/A paid pro rata over the loan term. N/A paid in cash. (If the fee is withheld from the proceeds, the amount is included in the principal sum.)

6. **N/A MINIMUM INTEREST CHARGE:** I agree to pay a minimum interest charge of \$ N/A if I pay this loan off before you have earned that much in interest.

7. **N/A POST MATURITY INTEREST:** Interest will accrue at the rate of N/A % per year on the balance of this note not paid at maturity, including maturity by acceleration. For purpose of this section, final maturity occurs: (a) if the note is payable on demand, or the date you make demand for payment; (b) if the note is payable on demand with alternate payment date(s), on the date you make demand for payment or on the final alternate payment date, whichever is earlier; (c) on the date of the last scheduled payment of principal; or (d) on the date you accelerate the due date of this loan (demand immediate payment).

8. **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of lesser of 95 or 5% of the unpaid amount of the installment

9. **NSF FEE:** If any instrument which I submit to you is returned unpaid for any reason, I will pay you a fee of \$ 20.00

10. **SIMPLE INTEREST CONTRACT:** This is a simple interest contract. Interest will accrue upon the unpaid principal balance outstanding from time to time. The Finance Charge, Total of Payments and Payment Schedule were computed based on the assumption that payment will be made on the dates scheduled for payment. Early payments will reduce my final payment. Late payments will increase my final payment. My final payment will be equal to all unpaid sums due under this Agreement. My promise requires me to pay the final payment on the date due even if the amount of the final payment differs from the amount of the final payment disclosed.

11. **SECURITY INTEREST:** I give you a security interest under the applicable certificate of title law or Uniform Commercial Code in the Manufactured Home and any property added or attached to it, to secure my obligation under this Contract. Unless otherwise stated in this Agreement, there are no prior liens on the Manufactured Home. I also grant you a security interest in any interest I may have in premium refunds or proceeds under any insurance covering the Manufactured Home. I agree to execute any application for certificate of title or ownership, financing statement or other document necessary to perfect your security interest in the Manufactured Home. To the extent, if any, that any Contract (whether or not accompanied by any one or more original) constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in the applicable jurisdiction) no security interest in any Contract may be created in any document(s) other than the original.

SMITH III - 5980796

12. PREPAYMENT: I MAY PREPAY THIS NOTE IN PART OR IN FULL AT ANY TIME. I WILL NOT PAY A PENALTY UPON PREPAYMENT UNLESS OTHERWISE STATED IN THE NEXT SENTENCE. IF I PREPAY A FULL WITHIN N/A MONTHS OF THE DATE OF THIS NOTE, I WILL PAY YOU A PENALTY OF N/A

Partial prepayments will not excuse or reduce any later scheduled payment until this note is paid in full.

13. NO WARRANTIES: I agree that there are no warranties of any type covering the Manufactured Home. I am buying the Manufactured Home AS IS and WITH ALL FAULTS and THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE MANUFACTURED HOME IS WITH ME. I agree that any implied warranty of merchantability and any implied warranty of fitness for a particular purpose are specifically excluded and do not cover the Manufactured Home. This No Warranties provision does not apply to the extent that any law prohibits it and it does not cover any separate written warranties. This No Warranties provision does not apply to West Virginia Residents.

14. PROTECTION OF THE MANUFACTURED HOME: I will: (a) keep the Manufactured Home in good condition and not commit waste; (b) pay all taxes, charges and lot rent due for the Manufactured Home and the real estate it is located on; (c) not move, sell, lease or otherwise transfer the Manufactured Home; (d) not use the Manufactured Home for a purpose that will violate any laws or subject the Manufactured Home to forfeiture or seizure; (e) not attach the Manufactured Home to any real estate and the Manufactured Home will always be treated as personal property unless you consent in writing and state law permits such contrary treatment; and (f) not let anybody else have any interest in the Manufactured Home.

15. FILING: I authorize you to file a financing statement covering the Manufactured Home. I agree to comply with and facilitate your requests in connection with obtaining possession of or control over the Manufactured Home until this security agreement is terminated. A copy of this security agreement may be used as a financing statement when allowed by law.

16. INSURANCE NOTICE (VIRGINIA): I may obtain insurance from anyone I want that is acceptable to you. My choice of insurance provider will not affect the credit decision or interest rate.

17. PERSONAL PROPERTY: I agree that regardless of how my Manufactured Home is attached to the real property and regardless of how your security interest in my Manufactured Home is perfected and regardless of whether an affidavit of fixture (or other similar instrument identifying the property as a fixture) has been recorded, my Manufactured Home is and shall remain personal property and is not and shall not become a fixture or part of the real property unless you consent in writing and state law permits a contrary classification. I agree to pay any and all personal property taxes assessed against my Manufactured Home and agree that failure to pay such taxes shall constitute a default under paragraph 23 on page 4.

18. INSURANCE: I am giving you a security interest in property to secure this loan. I understand that I must keep this property insured against loss, expense or damage due to fire, theft, collision, or other risk as you may reasonably require and in such amounts as you require with an insurance company satisfactory to you. I authorize you to furnish account data to a licensed insurance agent of your choice so such agent may solicit the purchase of credit, property, warranty or other insurance from me. I will arrange for you to be named as loss payee on the insurance policy I purchase. I agree that the insurance company may make any payments due under the policy directly to you, and I direct the insurance company to do so. You may do whatever you think is necessary to be sure that any proceeds of the insurance will be used to repair the Manufactured Home or pay off this Contract. I give you power of attorney (which I cannot cancel) so that you may do whatever you need to do in order to collect the insurance proceeds.

If I fail to obtain, maintain or pay for the required insurance, or if I fail to arrange for you to be named as loss payee, you may treat this as a default of my obligations under this Contract. Unless I provide evidence of the insurance coverage required by my agreement with you, you may purchase insurance at my expense to protect your interests in my collateral. This insurance may, but need not, protect my interests. The coverage that you purchase may not pay any claim that I make or any claim that is made against me in connection with the collateral.

I may later cancel any insurance purchased by you, but only after providing evidence that I have obtained insurance as required by our agreement. If you purchase insurance for the collateral, I will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to my total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance I may be able to obtain on my own.

19. CHARGES; LIENS: I shall pay all taxes, assessments and other charges, fines and impositions attributable to the Manufactured Home which may obtain a priority under this Agreement. I shall promptly furnish to you all notices of amounts due under this paragraph and, if I make payments on any such amounts directly, I shall promptly furnish to you receipts evidencing such payments. I shall promptly discharge any lien which has priority over this Agreement provided that I shall not be required to discharge any such lien so long as I shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to you or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Manufactured Home or any part thereof.

20. INSPECTION: You may make, or cause to be made, reasonable entries upon and inspections of the Manufactured Home, provided that you shall give me notice prior to any such inspection specifying reasonable cause therefor related to your interest in the Manufactured Home.

21. FORBEARANCE BY CREDITOR NOT A WAIVER: Any forbearance by you in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by you shall not be a waiver of your right to accelerate the maturity of this indebtedness secured by this contract and declare a default herein.

22. IDAHO ONLY - BALLOON PAYMENTS: If any payment is more than twice as large as the average of earlier scheduled payments, I have the right to refinance that payment without penalty, at the time it is due, and on terms no less favorable than this original transaction. This right does not apply: (1) to the extent that the payment schedule has been adjusted to my seasonal or irregular income or obligations; (2) if the collateral is a second deed of trust or mortgage on a 1 to 4 family dwelling occupied by me; (3) at the time of the balloon payment you offer me the other options required by rules of the Administrator of the Idaho Credit Code; or (4) this transaction qualifies as an alternative mortgage transaction under federal law.

SHICH - II - 5980736

23. DEFAULT: I will be in default if: (i) I do not make a payment on time; or (ii) I do not keep any of my other promises under this Contract; or (iii) I file a case, or someone else files a case against me, under the United States Bankruptcy Code; or (iv) you feel in good faith that the Manufactured Home is in danger or that I will not be able to continue my payments. The default described under (iv) does not apply if this Contract is guaranteed by the Veteran's Administration. You will give me notice of the default except when I voluntarily surrender or abandon the Manufactured Home. I will have the right to cure the default during the notice period. If I do not cure the default, you may do either of both of the following: (a) Acceleration: You can require me to immediately pay you the entire remaining balance of this Contract; and/or (b) Repossession: You can repossess the Manufactured Home. Once you get possession of the Manufactured Home, you may sell it. If the amount from the sale, after expenses, is less than what I owe you, I will pay you the difference. If there is any property left in the Manufactured Home when you repossess, you may dispose of it as provided by law. If I default, you can do whatever is necessary to correct my default. If you spend money to correct my default, I will pay you back immediately with interest at the contract rate of interest.

24. NOTICE: Except for any notice required under applicable law to be given in another manner, (a) any notice to me provided for in this Contract shall be given in writing by mailing such notice by certified mail, addressed to me at the Manufactured Home address or at such other address as I may designate by notice to you in writing, and (b) any notice to you shall be given in writing by certified mail, return receipt requested, to your address stated herein or to such other address as you may designate by notice to me in writing.

25. ATTORNEY'S FEES: I agree to pay you all reasonable costs you incur to collect this debt or realize on any security. This includes, unless prohibited by law, reasonable attorneys' fees after default and referral to an attorney not your regularly salaried employee, court costs, alternative dispute resolution costs, and other collection costs, including fees and charges of collection agencies. This provision also shall apply if I file a petition or any other claim for relief under any bankruptcy rule or law of the United States, or if such petition or other claim for relief is filed against me by another. This Attorneys' Fees provision does not apply to West Virginia Residents.

26. COLLECTION EXPENSES AND ATTORNEY'S FEES (SOUTH DAKOTA): Or or after default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Agreement. I agree to pay expenses for you to inspect and preserve the Manufactured Home and for any recordation costs of releasing the Manufactured Home from this Agreement. Expenses include, but are not limited to, attorneys' fees when you are a "regulated lender" under 8.D.C.L. - 84-3-14, as amended, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in this Agreement. To the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees you incur to collect the debts as awarded by any court exercising jurisdiction under the Bankruptcy Code.

27. NAME AND LOCATION: My name and address indicated on page 1 are my exact legal name and principal residence. I will provide you with at least 30 days notice prior to changing my name or principal residence.

28. TRANSFER OF PROPERTY: If all or any part of the Manufactured Home or interest therein is sold or otherwise transferred by me without your prior written consent, excluding the creation of a purchase money security interest for household appliances, you may, at your option, declare all the sums secured by this Contract to be immediately due and payable. If you exercise such option to accelerate, you shall mail to me thirty (30) days prior notice of acceleration in accordance with the notice provision herein. If I fail to pay such sums prior to the expiration of such period, you may, without further notice or demand on me, invoke any remedies permitted under law.

29. ASSUMPTION: If the Creditor's policies in effect at the time permit, an assumption of this Contract by another qualified party may be considered. All assumptions are at the Creditor's sole discretion and will be subject to the conditions that are in effect at the time the assumption is requested. All conditions are determined solely by the Creditor and are subject to change at anytime without notice.

30. MISCELLANEOUS PROVISIONS: This written Contract is the only agreement that covers my loan. This Contract can only be modified or amended or provisions in it waived (given up) by a written modification to this Contract signed by you. You can decide not to use or enforce any of your rights under this Contract without losing them. For example, you can extend the time for making some payments without extending others. If any part of this Contract cannot be enforced because of a law which prohibits it, all other parts can still be enforced. I agree to cooperate with you regarding any requests after closing to correct errors made concerning this Agreement or the transaction and to provide any and all additional documentation deemed necessary by you to complete this transaction. If I purchase credit insurance or other elective product with the proceeds of the Contract, and such product is later cancelled and a refund owed, you will credit such refund against the principal balance of the Contract. This Contract is not made until all documentation relating to it has been received by, reviewed by, and accepted by the Creditor.

31. ARBITRATION: All disputes, claims, or controversies arising from or relating to this Agreement or the relationships which result from this Agreement, or the validity of this arbitration clause or the entire Agreement, shall be resolved by binding arbitration by one arbitrator selected by you with my consent. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, Title 9 of the United States Code. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes in court, but that they prefer to resolve their disputes through arbitration, except as provided herein. **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY YOU (AS PROVIDED HEREIN).** The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this agreement. I agree that I shall not have the right to participate as a representative or a member of any class of claimants pertaining to any claim arising from or relating to this Agreement. The parties agree and understand that the arbitrator shall have all powers provided by law and the Agreement. These powers shall include all legal and equitable remedies, including, but not limited to, money damages, declaratory relief, and injunctive relief. Notwithstanding anything hereunto the contrary, you retain an option to use judicial or non-judicial relief to enforce a security agreement relating to the collateral secured in a transaction underlying this arbitration agreement, to enforce the monetary obligation or to foreclose on the collateral. Such judicial relief would take the form of a lawsuit. The institution and maintenance of an action for judicial relief in a court to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement, shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Agreement, including the filing of a counterclaim in a suit brought by you pursuant to this provision.

32. HOMESTEAD: I waive, to the extent allowed by law, the benefit of my homestead and personal property exemptions as to this Contract. My waiver applies only to the property securing payment of this Contract.

CVS
initial

SMITH III - 5980736

33. APPLICABLE LAW: The interest charged, contracted for, and received on this loan, including fees and charges constituting interest under federal statutory or regulatory law, is governed by the laws of the State of Minnesota. See Additional Terms section below.

All other terms of this loan are governed by the law of the State of Minnesota.

34. ADDITIONAL TERMS:

APPLICABLE LAW: This extension of credit is made under the authority of MINN. STAT. §§ 53.04 and 47.204, and Federal law, as applicable.

THIS LOAN IS NOT MADE UNTIL THE DOCUMENTS HAVE BEEN REVIEWED AND ACCEPTED BY CREDITOR.

ACKNOWLEDGMENT (Required in Wyoming): STATE OF WYOMING, COUNTY OF _____) ss.
The foregoing instrument was acknowledged before me by _____
this _____ day of _____

Witness my hand and official seal.

Notary Public

My Commission Expires _____

CREDITOR PLACED INSURANCE NOTICE: I am giving you a security interest in the Manufactured Home, as described in the SECURITY section on page 1. I am required to maintain insurance on the Property to protect your interest. If I fail to provide you with evidence of such insurance, you may place insurance to protect your interest. I will pay for the costs of any creditor-placed insurance.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, OR EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

WARNING TO BORROWER: DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT.

NOTICE TO MAKER(S): 1. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. 2. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

MAKER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.
CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Maker X Charles V. Smith III 3/13/02
Signature CHARLES V. SMITH III Date
Maker X _____
Signature _____ Date

476505178

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

First Class
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St. Paul, MN

SMITH CHARLES VIRGIL III
1426 91ST AVE W
DULUTH MN 55808

*

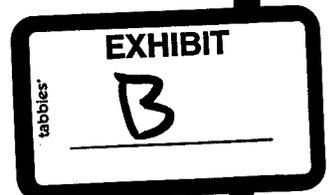
Year 90	Make HOMA	Model MH	Title NR. W0890P418
VIN MNHM8909131A		Security Date 03/19/02	Rebuilt NO

1ST SECURED PARTY

LIEN HOLDER

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

CONSECO FINANCE
4625 RIVER GREEN PKWY
DULUTH GA 30096-2583



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Charles V. Smith III

And In Re:

Kari L. Smith a/k/a Kari L. Lee a/k/a Kari L. Sutherland

CASE NO. 04-60968 DDO

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Andrew Brueggeman of Stephenson & Sanford, PLC, attorneys licensed to practice law in this court, with office address at Suite 220, 1905 East Wayzata Boulevard, Wayzata, Minnesota, declares under penalty of perjury that on the 22nd day of September, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief from Automatic Stay, Affidavit of Tina Gaikowski and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Wayzata, Minnesota addressed to each of them as follows:

Charles V. Smith III
RR 3, Box 287
Bagley, MN 56621

David G. Velde
1118 Broadway
Alexandria, MN 56308

Kari L. Smith a/k/a Kari L. Lee
a/k/a Kari L. Sutherland
RR 3, Box 287
Bagley, MN 56621

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

John F. Hedtke
1217 E. 1st St.
Duluth, MN 55805

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

Dated this 22nd day of October, 2004.

/e/ Andrew Brueggeman

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Charles V. Smith III

And In Re:

Kari L. Smith a/k/a Kari L. Lee a/k/a Kari L. Sutherland

CASE NO. 04-60968 DDO

Debtors.

ORDER

The above entitled matter came on for hearing upon motion of Green Tree Loan Company f/k/a Conseco Finance Loan Company, pursuant to 11 U.S.C. Section 362 on October 14th, 2004 at U.S. Bankruptcy Court, 205 U.S. P.O. Bldg., 118 S. Mill St., Fergus Falls, MN 56537. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Green Tree Loan Company f/k/a Conseco Finance Loan Company, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. 362 with regard to that certain Manufactured Home Retail Installment Contract and Security Agreement dated March 12, 2002, executed by Debtor, Charles V. Smith III, covering a 1990, Homark 16' x 76' manufactured home, Detroit model, serial number MNHM8909131A, including but not limited to a stove, refrigerator and dryer; and may proceed to foreclose said security interest in accordance with Minnesota law.

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

DATED: _____

BY THE COURT:

The Honorable Dennis D. O'Brien
United States Bankruptcy Court Judge