

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 02-31907 GFK
Chapter 13

In Re:

Tawnia L Follstad-Martin ,
Debtor,

Kevin DeShawn Williams,
Co-Borrower.

**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY
AS TO DEBTOR AND AS TO CO-BORROWER**

TO: Debtor Tawnia L Follstad-Martin; her attorney James T. Skonnord; Co-Borrower Kevin DeShawn Williams United States Trustee; and all other entities specified in Local Rule 1204 (a):

1. AmeriCredit Financial Services, Inc., (“AmeriCredit”) a secured creditor in this Chapter 13 proceeding, by and through duly authorized and undersigned attorneys, moves the court for the relief requested below, and gives notice of hearing.
2. The court will hold a hearing on this motion on October 19, 2004, at 10:30 a.m., before the Honorable Gregory F. Kishel, United States Bankruptcy Judge, in Courtroom No. 228b, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than, October 14, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 8, 2004, which is seven 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.

1. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 13 case was filed on May 17, 2002. The case is now pending in this court.

2. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. AmeriCredit requests relief from the automatic stay under §362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtor as defined below.

3. On April 24, 2002, the debtor, Tawnia L Follstad-Martin executed a promissory note and security agreement in favor of AmeriCredit, in the original principal amount of \$15,915.00, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, 2002 Ford Focus, VIN # 1FAFP34P52W238821 and proof of perfection of AmeriCredit's security interest is attached hereto as **Exhibit "B"**.

4. On April 24, 2002 the co-borrower Kevin DeShawn Williams, who is not a debtor in this action, also executed a promissory note and security agreement in favor of AmeriCredit, in the original principal amount of \$15,915.00, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, 2002 Ford Focus, VIN # 1FAFP34P52W238821 and proof of perfection of AmeriCredit's security

interest is attached hereto as **Exhibit "B"**.

5. Debtor's confirmed Plan called for the payment of AmeriCredits' claim by the Co-Borrower outside the Plan. The promissory note is in default for failure to make payments when due since March 24, 2004, a delinquency of approximately \$2,380.20. As of May 17, 2002, the amount due was a payoff balance of approximately \$6,599.37. On information and belief, the value of the vehicle is \$8,500.00 and the debtor and co-borrower have no equity in the vehicle.

6. Debtor and Co-Borrower have defaulted in payments to be made to AmeriCredit outside of the Plan.

7. DCS seeks relief from the automatic stay to foreclose its personal Property security interest in the vehicle and to pursue its non-bankruptcy remedies against the Co-Borrower.

8. Pursuant to 11 U.S.C. § 362(d)(1) and 1301, a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. AmeriCredit believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

a. AmeriCredit has not been offered and is not being provided with adequate protection for its interest in the vehicle;

b. The vehicle subject to AmeriCredit's security interest continues to depreciate and decline in value;

c. AmeriCredit has been unable to verify current proof of insurance on the vehicle;
and

d. The debtor and Co-Borrower have stopped making payments to AmeriCredit.

12. Pursuant to 11 U.S.C. § 362(d)(2) and §1301, a creditor may be granted relief from the automatic stay if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtor and co-borrower have no equity in the vehicle which is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 13 liquidation proceedings.

13. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by Rosetta Cooks, or some other representative of the Movant AmeriCredit Financial Services, Inc..

WHEREFORE, AmeriCredit requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362 and § 1301, to allow it to foreclose its personal property security interest described above for relief against the co-borrower, and for such other and further relief as the court deems just and equitable under the circumstances.

Dated: September 30, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn, #0324140
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105
(314) 727-0101
FAX (314) 727-1086
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 02-31907 GFK
Chapter 13

In Re:

Tawnia L Follstad-Martin,
Debtor,

Kevin DeShawn Williams,
Co-Borrower.

MEMORANDUM OF LAW

INTRODUCTION

AmeriCredit Financial Services, Inc., ("AmeriCredit") has made a motion for relief from the automatic stay. AmeriCredit incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan which is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and AmeriCredit has been unable to verify current proof of insurance. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

ARGUMENT

Pursuant to 11 U.S.C. § 362(d)(1) and § 1301, a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. AmeriCredit's motion for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the automatic

stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd.)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle which is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. § 362(d)(2) and 1301. **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

CONCLUSION

Based on the foregoing, AmeriCredit requests that the court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. § 362(a) and § 1301 to permit AmeriCredit to enforce and foreclose its personal property security interest.

DATED: September 30, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn, #0324140
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105
(314) 727-0101
FAX (314) 727-1086
Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 02-31907 GFK
Chapter 13

In Re:

Tawnia L Follstad-Martin,

Debtor,

Kevin DeShawn Williams,

Co-Borrower.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an employee of Riezman Berger P.C., attorney licensed to practice law in this court, with office address of 7700 Bonhomme Ave., 7th Floor, Saint Louis, Missouri, 63105, declares that on September 30, 2004, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** 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 postage prepaid and depositing same in the post office at Saint Louis, Missouri, addressed to each of them as follows:

(Debtor)

Tawnia L Follstad-Martin
882 Westcott Trl Unit 104
Eagan, MN 55123

(Co-Buyer)

Kevin DeShawn Williams
588 Milton St. N. Unit B
St. Paul, MN 55104

(Debtor's Attorney)

James T. Skonnord
311 Ramsey Street
St. Paul, MN 55102

(Chapter 13 Trustee)

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

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

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

Executed: September 30, 2004.

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 02-31907 GFK
Chapter 13

In Re:

Tawnia L Follstad-Martin,

Debtor,

Kevin DeShawn Williams,

Co-Borrower.

ORDER

The above entitled matter before the Court for hearing on _____, 2004, on the motion AmeriCredit Financial Services, Inc., (“AmeriCredit”), seeking relief from the automatic stay of 11 U.S.C. § 362(a) and § 1301. Appearances are as noted in the Court’s record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling AmeriCredit to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is granted; that AmeriCredit may enforce its rights against the Co-Borrower and the property described as:

2002 Ford Focus, VIN # 1FAFP34P52W238821.

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

DATED at St. Paul, Minnesota, this _____ day of _____, 2004.

BY THE COURT:

Gregory F. Kishel
United States Bankruptcy Judge



225 UNIVERSITY AVENUE ST. PAUL, MINNESOTA 55103 PHONE 651-222-0511

#10836427

Vehicle purchase details including VIN (21502), date (04/18/2002), salesperson (ANDEE B YANG), buyer name (KEVIN WILLIAMS), address (402 N LEXINGTON PKWY #1), and phone numbers.

AMERICAN CREDIT FINANCIAL SERVICES BOX 182673 ARLINGTON

Main vehicle pricing table with columns for MAKE (FORD), MODEL (FOCUS), BODY (4DR SE SEDAN), and various fees. Includes sections for CASH PRICE OF VEHICLE, TRADE-IN DATA, and LESS REBATE.

DEALER'S POLLUTION CONTROL SYSTEM DISCLOSURE (VEHICLE BEING SOLD) - Dealer certifies that the pollution control system on this vehicle being sold has not been removed, altered, or rendered inoperative.

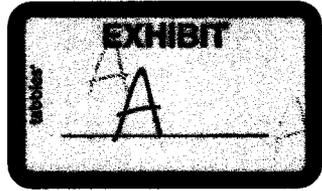
Terms of this CONTRACT were agreed upon and the CONTRACT signed in the dealership on... IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

Buyer's Signature Accepting Terms of Contract - Kevin Williams

This ODOMETER DISCLOSURE STATEMENT and ASSIGNMENT Refers to Vehicle Being Sold

1 and State law require that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Assignment of title and odometer disclosure form. Includes fields for SELLER'S NAME (TAWNIA LEA FOLLSTAD-MARTIN), BUYER'S NAME (KEVIN WILLIAMS), and ADDRESS (402 N LEXINGTON PKWY #1).



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

FOLLSTAD-MARTIN TAWNIA LEA
WILLIAMS KEVIN DESHAWN
402 N. LEXINGTON PKWY #1
ST PAUL MN 55104

JDD648

02 Year	FORD Make	4DFSC Model	C1220P956 Title NR.
1FAFP34P52W238821 VIN		04/18/02 Security Date	NO Rebuilt

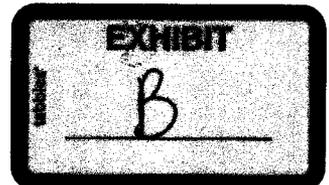
1ST SECURED PARTY

LIEN HOLDER

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

AMERICREDIT FINANCIAL SERVS
PO BOX 182673
ARLINGTON TX 76096-2673

23



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 02-31907 GFK
Chapter 13

In Re:

Tawnia L Follstad-Martin,
Debtor,

Kevin DeShawn Williams,
Co-Borrower.

VERIFICATION

I, Michael McLaughlin^{SH} employee of AmeriCredit Financial Services, Inc., named in the foregoing Notice of Hearing and Motion for Relief from Stay, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: 9-29, 2004

SIGNED: Michael McLaughlin