

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 03-34468 DDO

Scott Allen Lagerstrom and
Mary Lou Lagerstrom,

Debtor.

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY

1. Capital One Auto Finance ("Movant"), a secured creditor of the Debtor herein, 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 9:30 o'clock a.m., on September 27, 2004, before the Honorable Dennis D. O'Brien, in 228-A U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than September 20, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than September 17, 2004, which is ten days before the date set for the hearing (including 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 is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-2 and 4001-1 and Movant requests relief from the automatic stay of 11 U.S.C. § 362(a) with respect to certain personal property subject to Movant's valid security interest.

5. This case was filed as a voluntary case under Chapter 13 of the United States Bankruptcy Code, 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), Local Rule 1070-1, Fed. R. Bankr. P. 5005 and applicable rules. This is a core proceeding.

6. Movant holds a valid, perfected security interest in a 2000 Suzuki Swift, VIN No. 2S2AB21HXY6603593 (the "Vehicle").

7. Copies of Movant's Installment Sale Contract (the "Contract") and Confirmation of Lien Perfection, respectively evidencing creation and perfection of Movant's security interest, are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Debtors were denied a discharge of Movant's debt in a previous case, Bky 01-92249 and Adv. No. 03-3129.

9. The balance due under the Contract is \$10,667.86 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$3,050.00.

10. A delinquency of at least \$5,474.00 exists and has not been paid as of the date of this motion. Debtors have not made a payment since March of 2002.

11. Movant repossessed the Vehicle on May 21, 2003, prior to filing this case. The Vehicle remains in possession of Movant. Movant seeks relief from the automatic stay in order to sell the Vehicle.

12. The failure to make the payments constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the automatic stay.

13. If testimony is necessary as to any facts relevant to this motion, Marnie Baker of Movant, P.O. Box 260848, Plano, Texas 75026, will testify on behalf of Movant.

WHEREFORE, Movant, respectfully moves the Court for an order modifying the automatic stay imposed by the United States Bankruptcy Code, and authorizing Movant to foreclose its security interest in the Vehicle, and for such other relief as may be just and equitable.

Date: August 30, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

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MEMORANDUM IN SUPPORT
OF MOTION

Capital One Auto Finance ("Movant") submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a 2000 Suzuki Swift, VIN No. 2S2AB21HXY6603593 (the "Vehicle"). Debtors are delinquent with respect to payments due under the contract with Movant. Movant repossessed the Vehicle prior to this case, and the Vehicle remains in possession of Movant. Movant seeks relief from the automatic stay in order to sell the Vehicle. Debtors were denied a discharge with respect to Movant's debt in a previous case.

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). Here, the payments pursuant to Movant's installment contract have not been made. Debtors were denied a discharge of Movant's debt in a prior bankruptcy case and adversary proceeding pursuant to 11 U.S.C. §

727(a)(9). Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Movant to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, Movant is entitled to an order modifying the automatic stay, and authorizing it to take possession of and foreclose its security interest in the Vehicle.

Dated: August 30, 2004.

Respectfully submitted,

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

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VERIFICATION

I, ^{MARNE}
BAKUL, for Capital One Auto Finance, P.O. Box 260848, Plano, Texas 75026,

declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge,
information and belief.

Executed on: 8/23/04

Signed: Marnie Bakul

Kline NISSAN DAEWOO



2800 Hwy 51 Maplewood, MN 55156
Phone: 651-481-1133 Fax: 651-481-0191
www.klinecarworld.com

Form with fields for VIN (252AB21JXV1R03593), Year (2000), Make (SUZUKI), Model (BUFT GA), Dealer (KLINE), and various identification numbers.

Table with columns for Year, Make, Model, Dealer, and other vehicle details.

Section for ALL FACTORY REBATES ASSIGNED TO THE DEALER and DEALER INSTALLED OPTIONS.

LEASE TERMS (if applicable) section with fields for term, mileage, and payment.

TRADE-IN DATA section with fields for make, model, year, and price.

ODOMETER DISCLOSURE STATEMENT and ASSIGNMENT section with checkboxes for accuracy.

Bottom section with dealer information, contact details, and signature lines.



ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and associated services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any service if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, you have a right to a refund of the excess charge. If you agree, or if you do not make a timely request for a refund, we will apply the refund amount that to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any portion or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance, but no refund will be paid if the amount of the refund would be less than \$3.00.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or titled to the Vehicle.
- B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
- C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
- D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
- E. You will not attempt to sell the Property (unless it is properly identified inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
- F. You will pay all taxes and assessments on the Property as they become due.
- G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to perform any obligation that you have undertaken in this Contract.
 - B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.
- If you default, you agree to pay our costs for collecting amounts owing, including court costs, attorneys' fees, and fees for repossession, repair, storage and sale of the Property securing this Contract, if this Contract is subject to Minn. Stat. § 168.71, the amount of our attorneys' fees you must pay will not exceed 15% of the amount due and payable under this Contract.
- If an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, less any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- B. We may pay taxes, assessments, or other fees or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
- C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
- D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then forward what you owe us.
- E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By deciding not to use any remedy, we do not give up our right to consider the event a default if it happens again.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement, (Contract), to the Assignee, its successors and assigns, including all its rights, title and interest in this Contract, and any guarantees secured in connection with this Contract. Seller gives Assignee full power, either in its own name or in the name of a separate agreement as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.

- A. This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
- B. The statements contained in this Contract are true and correct.
- C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
- D. This Contract is valid and enforceable in accordance with its terms.
- E. The terms and conditions on this Contract are not forged, fictitious or assumed, and are true and correct.
- F. This Contract is valid in the Seller's face of all debts, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
- G. A complete true and correct copy of this Contract was delivered to the Buyer at the time of execution.
- H. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
- I. Seller has or will perfect a security interest in the Property in favor of the Assignee.
- J. If any of these statements is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorney's fees.
- K. Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.
- L. Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against, and grant extensions of time for payment to, Buyer and any other person obligated under this Contract.

WITH RECOURSE: If the Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

You agree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer (or such other period of time as is required by law).

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

RETURN CHECK CHARGE: You agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will generally be \$20.00, but if we use a law enforcement agency to collect payment and the service charge is used to reimburse the law enforcement agency, the amount of the service charge will be \$25.00.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee or any such policy. (Generally, loss payee is the one to be paid the policy benefits in case of loss or damage to the property.) In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property. If the insurance proceeds do not cover the amount you still owe us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until this Contract is paid in full.

If you fail to obtain or maintain this insurance, or terminate it as a loss payee, we may obtain insurance to protect our interest in the Property. We will not pay if we do so. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose. It may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. The amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
- B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.
- C. We may release any security and you will still be obligated to pay this Contract.
- D. If we give up any of our rights, it will not affect your duty to pay this Contract.
- E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WAIVERS: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; (3) give notice that we intend to repossess, or are making, this Contract immediately due; or, (4) obtain official certification of nonpayments.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payment of interest. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, amend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

6425136

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

ESSES
US Postage
PAID
Permit No. 11
St. Paul, MN

LAGERSTROM MARY LOU SMITH
LAGERSTROM SCOTT ALLEN
2011 E 122ND ST #D2
BURNSVILLE MN 55337

HEK363

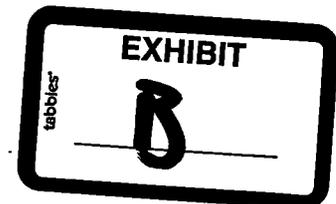
00	SUZI	ZHUGL	F3510N229
Year	Make	Model	Title NR.
2S2AB21HXY6603593		09/13/01	NO
VIN		Security Code	Rebu i

1ST SECURED PARTY

LIEN HOLDER

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

CAPITAL ONE AUTO FINANCE
3901 DALLAS PKWY
PLANO TX 75093-7864



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

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Scott Allen Lagerstrom and
Mary Lou Lagerstrom,

Debtor.

ORDER FOR RELIEF
FROM STAY

The above-entitled matter came before the Court for hearing on the motion of Capital One Auto Finance ("Movant") seeking relief from the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code is immediately modified as to Movant, and Movant is authorized to enforce its security interest as provided by contract and state law in the subject:

2000 Suzuki Swift, VIN No. 2S2AB21HXY6603593.

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

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge