

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

William Charles Gimmestad
SSN XXX-XX-6695
Paula Jo Gimmestad
SSN XXX-XX-1821

CASE NO. 04-30281 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Roadloans a division of Triad Financial Corporation (hereinafter "Secured Creditor"), 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 on October 20, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 11, 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 Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on January 20, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$17,710.00, as evidenced by that certain Motor Vehicle Contract dated February 14, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a contract on personal property in which Debtor has an interest as evidenced by that certain Motor Vehicle Contract dated February 14, 2002, executed by William Charles Gimmestad, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is legally described as follows to-wit:

1998 Dodge Durango, VIN #1B4HS28Y5WF120334.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 28, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of June, 2004 through September, 2004, inclusive, in the amount of \$355.05 each; accruing attorneys fees and costs. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

10. Secured Creditor 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 law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its

rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence repossession proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

AUG. 30. 2004 9:34AM

NO. 162 P. 9/10 73749

249

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
TRUCK & VEHICLE SERVICES DIVISION
415 WEST WASHINGTON ST. ST. PAUL, MN 55401
CONNECTIONS SYSTEM SERIAL TEST NUMBER NAME AND ADDRESS

File Class
Lic. Number
PAID
Print No. 1/1
St. Paul, MN

GIMMSTAD WILLIAM CHARLES
618 KATHRYN
MARSHALL MN 56258

FR5939

98	0002	40002	408300074
Year	Code	Model	Type
184H820Y5W120334	02/14/02	NO	
VIN	Registry Date	MPG	

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See (77402)
also at 1998 (1998) for procedure this type.

ROAD LOANS.COM
PO BOX 4459
HUNTINGTON BEACH CA 92645-4459

18

See procedure and (1998) for procedure

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

William Charles Gimmestad
SSN XXX-XX-6695
Paula Jo Gimmestad
SSN XXX-XX-1821

CASE NO. 04-30281 DDO

Debtor.

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

ARGUMENT

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

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 28, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through September, 2004, in the amount of \$355.05 each; accruing attorneys fees and costs.

2. Debtor has failed to make any offer of adequate protection. Additionally, Debtor has failed to provide proof of insurance.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the

automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrcty. S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 28th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

73799
745

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
SAINT PAUL DIVISION**

IN RE:

**William Charles Gimmestad
Paula Jo Gimmestad
Debtors**

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CASE NO. 04-30281-DDO

CHAPTER NO. 13

AFFIDAVIT

STATE OF CALIFORNIA

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§

COUNTY OF ORANGE

Before me, the undersigned authority, on this day personally appeared the undersigned Affiant, who being by me duly sworn, on her oath stated:

1. "My full name is Pamela Loud and I am at least eighteen (18) years old."
2. "I am employed by Roadloans ('Creditor') and I have the care, custody, and control of all records ('Records') concerning the account of William Charles Gimmestad and Paula Jo Gimmestad ('Debtors '). All facts recited herein are within my personal knowledge and are true and correct."
3. "The Records reflect acts, events, conditions, or opinions made at or near the time by, or from information transmitted by, a person with knowledge in the course of a regularly conducted business activity, and it was the regular practice of the business activity to make the record."
4. "The Records indicate that by virtue of a Motor Vehicle Contract & Security Agreement ('Agrcement'), dated February 14, 2002, entered into by Creditor and Debtors who financed the purchase of a 1998 DODGE DURANGO-VIN # 1B4HS28Y5WF120334 ("Vehicle"). True and correct copies of the Agreement and Certificate of Title indicating Creditor's lien on the Vehicle are attached hereto as Exhibits 'A' and 'B', respectively."

5. "The Records indicate that as of January 20, 2004, the amount owed to Creditor under the Agreement was \$13,470.33. Debtors' payments under the Agreement are \$355.05 per month and Debtors are due for June 22, 2004 for a total delinquency of \$1,045.15."

FURTHER, AFFIANT SAYETH NAUGHT.

Pamela Loud
Pamela Loud
Roadloans

SUBSCRIBED AND SWORN TO BEFORE ME on this the 7th day of September, 2004.



[Signature]
NOTARY PUBLIC IN AND FOR THE
STATE OF CALIFORNIA

My Commission Expires: May 9th 2008 Printed Name: Robert R. Hughes

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

William Charles Gimmestad
SSN XXX-XX-6695
Paula Jo Gimmestad
SSN XXX-XX-1821

CASE NO. 04-30281 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 28, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Pamela Loud, 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 Woodbury, Minnesota addressed to each of them as follows:

William C. Gimmestad
Paula Jo Gimmestad
610 Kathryn Drive
Marshall, MN 56258

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Wayne G. Nelson
5500 Wayzata Blvd Ste 1025
Golden Valley, MN 55416

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

IndyMac Bank, FSB
c/o Brice, Vander Linden & Wernick, PC
PO Box 829009
Dallas, TX 75382-9009

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

Dated this 28th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

William Charles Gimmestad
SSN XXX-XX-6695
Paula Jo Gimmestad
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Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Roadloans a division of Triad Financial Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 20, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. 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 Secured Creditor, 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 Motor Vehicle Contract dated February 14, 2002, executed by William Charles Gimmestad, covering personal property legally described as follows, to-wit:

1998 Dodge Durango, VIN #1B4HS28Y5WF120334

and may proceed to take possession of the vehicle and sell, lease or dispose of the vehicle in a commercially reasonable manner. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court