

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:           Patrick M. Roach  
  
                  Debtor(s).

Case No. Bky 04-34038-GFK  
Chapter 7 Case

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

TO: Patrick M. Roach, 1960 Asbury Street, Roseville, Minnesota 55113, Debtor and their attorney, Larry B. Stevens, 2233 N. Hamline Ave #412, Roseville, MN 55113, and other entities specified in Local Rule 9013-3.

1.       Affinity Plus, of 2730 Snelling Ave N, Saint Paul, MN 55113, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2.       The Court will hold a hearing on this matter at 10:30 a.m., on Monday, September 20, 2004 in Courtroom No. 228 B, at the United States Courthouse, at 316 N. Robert St., in St. Paul, MN 55101.

3.       Any response to this motion must be filed and delivered not later than Wednesday, September 15, 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 Thursday, September 9, 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, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on July 12, 2004. The case is now pending in this court.

5.       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 9013-1 through 9013-3 and 9006-

1. Movant requests relief with respect to:

2000 Smoker-Craft Millentia, Serial #RSB37091J900

2000 Mercury 75 ELPTO, Serial #OG800344

16' Trailer, Serial #5KTBS1917YF028417.

6. Movant has a valid and perfected first security interest in the preceding collateral to secure the purchase price thereof.

7. A copy of the Retail Installment Contract whereby Debtor granted Movant a security interest in the aforesaid collateral is attached hereto as Exhibit A.

8. Movant has duly perfected its security interest in the aforesaid collateral as reflected on the Confirmation of Lien Perfection and UCC-1 Financing Statement, true and correct copies of which are attached hereto as Exhibit B.

9. The total NADA retail value of the collateral at the time of the filing of the petition was \$8,700.00 while the amount of Movant's claim was \$9,431.42. The debtor is delinquent Three Hundred Sixty and 72/100 Dollars, (\$360.72) for the monthly installments due on July 20, 2004 through August 20, 2004 .

10. Movant does not have, and has not been offered, adequate protection of its interest in the above collateral, Debtor has no equity in the collateral, and the above collateral is not necessary for an effective reorganization.

11. A separate memorandum of facts and law is submitted with the motion.

WHEREFORE, Affinity Plus by its undersigned attorney, moves the Court for an order or judgment that the automatic stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, and for such other relief as may be just and equitable.

Dated: August 27, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505  
Derrick N. Weber, #241623  
Atty for Affinity Plus  
3033 Campus Drive  
Suite 250  
Plymouth, Minnesota 55441  
Telephone (763) 548-7900

**VERIFICATION**

I, Jodi Schramel, corporate representative of the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8-25-04

  
\_\_\_\_\_  
Jodi Schramel

Local Rule Reference: 9013-2

67.5m

925729 240

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b> No. _____ Date 05-09-00	Seller Source 1 Financial Services, Inc. 14500 Burnhaven Dr. Burnsville, MN 55306-	Buyer PATRICK MICHEAL ROACH 1960 ASBURY ST ROSEVILLE, MN 55113
	"We" and "us" mean the Seller above, its successors and assigns.	

**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 00/00 Make SMKERC/MERCUR Model MILLENTIA /75 ELPTD	VIN R5B37091J900 /06800344 Lic. No./Year ---PIN / ---PIN <input checked="" type="checkbox"/> New <input type="checkbox"/> Used	Other: 00 1800 VIN--5KTES1917YF028417
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Description of Trade-In

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, 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 \$ 12576.80, plus finance charges accruing on the unpaid balance at the rate of 11.99 % 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	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
The cost of your credit as a yearly rate. 11.99 %	The dollar amount the credit will cost you. \$ 9066.40	The amount of credit provided to you or on your behalf. \$ 12576.80	The amount you will have paid when you have made all scheduled payments. \$ 21643.20	The total cost of your purchase on credit, including your down payment of \$ 1390.00 \$ 23033.20

**Payment Schedule:** Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
120	180.36	Monthly Beginning June 8, 2000 and continuing until paid in full.

**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 5% of payment or \$5.72 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 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 \_\_\_\_\_

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

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ <u>844.80</u> )	\$ <u>13866.80</u>
Service Contract, Paid to: _____	\$ <u>N/A</u>
<b>Cash Price</b>	\$ <u>13866.80</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>1390.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>1390.00</u>
b. Trade-In Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to: _____	
d. Net Trade-In (b. minus c.)	\$ <u>N/A</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>1390.00</u>
<b>Down Payment (e.; disclose as \$0 if negative)</b>	\$ <u>1390.00</u>

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

Number of Payments	Amount of Payments	When Payments Are Due
120	180.36	Monthly Beginning June 8, 2000 and continuing until paid in full.

**Security:** You are giving a security interest in the Motor Vehicle purchased.

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**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 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 \_\_\_\_\_

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

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

[Signature] 03-12-62  
Buyer d/o/b Buyer d/o/b

**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 \$ 500.00. If you get insurance from or through us you will pay \$ N/A for \_\_\_\_\_ of coverage.

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

This Service Contract will be in effect for \_\_\_\_\_

**ASSIGNMENT:** This Contract and Security Agreement is assigned to AFFINITY PLUS FEDERAL C.U., the Assignee, phone \_\_\_\_\_. This assignment is made  under the terms of a separate agreement.  under the terms of the ASSIGNMENT BY SELLER on page 2.  This assignment is made with recourse.  
Seller: By [Signature] Date 05-09-00

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ <u>844.80</u> )	\$ <u>13866.80</u>
Service Contract, Paid to: _____	\$ <u>N/A</u>
<b>Cash Price</b>	\$ <u>13866.80</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>1390.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>1390.00</u>
b. Trade-In Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to: _____	
d. Net Trade-In (b. minus c.)	\$ <u>N/A</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>1390.00</u>
<b>Down Payment</b> (e.; disclose as \$0 if negative)	\$ <u>1390.00</u>
<b>Unpaid Balance of Cash Price</b>	\$ <u>12476.80</u>
Paid to Public Officials - Filing Fees	\$ <u>75.00</u>
Insurance Premiums*	\$ <u>N/A</u>
Amount to Finance line e. (if e. is negative)	\$ <u>N/A</u>
To: <u>Doc Fee</u>	\$ <u>25.00</u>
To: _____	\$ <u>N/A</u>
To: _____	\$ <u>N/A</u>
To: _____	\$ <u>N/A</u>
<b>Total Other Charges/Amounts Pd. to Others</b>	\$ <u>100.00</u>
Less: <b>Prepaid Finance Charges</b>	\$ <u>N/A</u>
<b>Amount Financed</b>	\$ <u>12576.80</u>

\*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] Date 05-09-00

Signature \_\_\_\_\_ Date \_\_\_\_\_

Seller: By [Signature]

**STATE OF MINNESOTA**  
**CERTIFICATE OF TITLE**  
 TO A WATERCRAFT

THIS TITLE IS PRIMA FACIE PROOF OF OWNERSHIP  
 KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

LIEN PERFECTION NO.	MARK	YEAR	LENGTH	HORSEPOWER
KS8770914900	SMOKERGRAB	2000	16 ft. 0 in.	110
VIN	NEW OR USED	NEW OR USED	FOR CENTRAL OFFICE USE ONLY	
K-207-70007	NEW	05/09/2000	925729 L40	
DATE ISSUED	HULL TYPE	HULL MATERIAL	REGISTRATION NUMBER	
05/09/2000	UTILITY	ALUMINUM	1320 40	
ASSIGNMENT BY SELLER (TRANSFEROR)				
I, THE SELLER, CERTIFY THAT THIS WATERCRAFT IS FREE FROM ALL SECURITY INTERESTS, WAIVES TITLE & ASSIGNS THE WATERCRAFT & REGISTRATION FEE PAID TO:				
SELLER'S SIGNATURE		BUYER'S SIGNATURE		
ROACH PATRICK MICHAEL		AFFINITY PLUS FEDERAL CREDIT		
1960 ASBURY ST ROSEVILLE MN 55113		175 W LAFAYETTE RD SAINT PAUL MN 55107 EDM DAVIS 5/10/2000		
CONFIRMATION NO. 313780		FIRST SECURED PARTY (IF APPLICABLE)		

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

ROACH PATRICK MICHAEL  
 1960 ASBURY ST  
 ROSEVILLE MN 55113

925729  
 L40

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

J02890

1ST SECURED PARTY

**LIEN HOLDER**

Year	00	Make	KARA	Model	TR	Title NR.	C2000M339
VIN	5KTBS1917YF028417		Security Date	05/09/00		Rebuilt	NO

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

AFFINITY PLUS FED CR UN  
 175 W LAFAYETTE RD  
 SAINT PAUL MN 55107-1488

925729-470



# STATE OF MINNESOTA UCC-1 FINANCING STATEMENT

For Filing Officer  
*[Signature]*

This statement is presented for filing pursuant to *Minnesota Uniform Commercial Code Minnesota Statutes Chapter 336.9-402* (Type in Black Ink)

<b>1. Individual Debtor - Last Name</b>		First Name	Middle I.
Social Security #		Mailing Address	
City		State	Zip Code
<b>2. Individual Debtor - Last Name</b>		First Name	Middle I.
Social Security #		Mailing Address	
City		State	Zip Code

<b>3. Business Debtor - Name</b>			
Fed. ID #		Mailing Address	
City		State	Zip Code

<b>4. Secured Party Name</b>			<b>5. Assignee of Secured Party</b>		
Mailing Address			Mailing Address		
City	State	Zip Code	City	State	Zip Code

**6. This financing statement covers the following types or items of property.**

- 00 SNIGERCRAFT MILLENNIA D/C Boat  
EAN: 1218370911900
- 00 MERCURY 75 ELPTD Boat Engine  
EAN: 1218370911900
- 00 KADAMON 1900 Trailer  
EAN: 1218370911900

Debtor is a transmitting utility as defined by Minnesota Statutes Chapter 336.9 - 105

**RETURN ACKNOWLEDGEMENT COPY TO: (name and address)**

AFFINITY PLUS FEDERAL C.U.  
175 W LAFAYETTE RD.  
ST PAUL, MN 55107

*[Signature]*  
Debtor's Signature  
(Required in Most Cases see instructions)

*[Signature]*  
Debtor's Signature

*[Signature]*  
Secured Party's Signature

Please do not type outside the bracketed area.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

Re: Patrick M. Roach

Case No. Bky 04-34038-GFK  
Chapter 7 Case

Debtor(s).

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

Affinity Plus moves the Court for an order modifying the automatic stay to permit Affinity Plus to take possession of a 2000 Smoker-Craft Millentia, 2000 Mercury 75 ELPTO, 16' Trailer presently in Debtor's possession. Movant has a security interest in the collateral pursuant to a Retail Installment Contract dated May 9, 2000, between Debtor and Source 1 Financial Services, Inc., whose interest was subsequently assigned to Affinity Plus. Movant's perfected security interest in the collateral is evidenced on the Confirmation of Lien Perfection and UCC-1 Financing Statement for the collateral.

The total NADA retail value of the collateral at the time of the filing of the petition was \$8,700.00 while the amount of Movant's claim was \$9,431.42. The Debtor is delinquent Three Hundred Sixty and 72/100 Dollars, (\$360.72) to the Movant.

Pursuant to 11 U.S.C. §362(d)(1), 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 collateral of such creditor." Debtor has defaulted on payments due under the Retail Installment Contract. Debtor has failed to provide Affinity Plus with adequate protection for its interest in the collateral. This failure constitutes cause within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the stay.

In addition, pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate where debtors have no equity in the collateral and the collateral is not necessary for

an effective reorganization. In this case, the balance due Affinity Plus exceeds the estimated value of the collateral, and therefore, no equity exists in the collateral. Debtors do not need this collateral for an effective reorganization.

In conclusion, Affinity Plus is entitled to an Order modifying the automatic stay and allowing it to pursue its state court remedies for cause, as defined under 11 U.S.C. §362(d), and due to the lack of equity in the collateral and the fact that the collateral is not necessary for Debtor's effective reorganization. Movant does not have adequate protection for its security interest and none has been offered.

Affinity Plus respectfully requests that the above-named Court modify the automatic stay to allow Movant to pursue its remedies pursuant to state law in regard to this collateral to protect its interest in the collateral.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), Affinity Plus requests that this Order shall be effective immediately.

Dated: August 27, 2004

MESSERLI & KRAMER, P.A.

By: 

William C. Hicks, #142505  
Derrick N. Weber, #241623  
3033 Campus Drive  
Suite 250  
Plymouth, Minnesota 55441  
Telephone (763) 548-7900

04-52963-0

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

Brian Wilson, of the City of Minneapolis, County of Hennepin, in the State of Minnesota, declares under penalty of perjury that on 8-27-04, he served by U.S. mail the following documents:

1. Notice of Hearing and Motion for Relief from Stay;
2. Memorandum in Support of Motion for Relief from Stay; and
3. proposed Order to:

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

John A. Hedback, Trustee  
2855 Anthony Lane South  
Suite 201  
St. Anthony, MN 55418

Larry B. Stevens  
2233 N. Hamline Ave #412  
Roseville, MN 55113

Patrick M. Roach  
1960 Asbury Street  
Roseville, Minnesota 55113

by depositing and mailing to them true and correct copies.

  
\_\_\_\_\_  
Brian Wilson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Patrick M. Roach

Case No. Bky 04-34038-GFK  
Chapter 7 Case

Debtor(s).

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ORDER

This matter is before the Court on Affinity Plus's Motion for Relief from Stay. The Motion came on for hearing on Monday, September 20, 2004 at 10:30 a.m., at St. Paul, MN. Appearances are as noted in the record.

Affinity Plus requested relief from the automatic stay to foreclose its security interest in:

2000 Smoker-Craft Millentia, Serial #RSB37091J900

2000 Mercury 75 ELPTO, Serial #OG800344

16' Trailer, Serial #5KTBS1917YFO28417.

Movant holds a duly perfected security interest in the collateral. The Court being advised fully in the Premises, and upon the Affidavit and all files and records herein,

**NOW ORDERS:**

That the Automatic Stay provided by 11 U.S.C. §362(a) be modified so as to permit Affinity Plus to foreclose its security interest in the above collateral, in accordance with state law. Notwithstanding Federal Rule of Bankruptcy Procedure 4001 (a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge