

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34108-DDO

Chapter 7

Mark S. Daneshvar,

Debtor(s).

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

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TO: Debtor(s) and Attorney for Debtor(s); John A. Hedback, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, a secured creditor of Debtor(s), 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 am on Wednesday, September 8, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, at the U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.
3. Any response to this motion must be filed and delivered not later than Friday, September 3, 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 Monday, August 30, 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 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 9006-1, 9013-1 through 9013-3. Wells Fargo Financial Acceptance seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain personal property owned by Debtor(s).

5. The petition commencing this Chapter 7 case was filed on July 14, 2004 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), Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding.

6. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2003 Mitsubishi Eclipse, vehicle identification number 4A3AC84H63E073470 (the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

8. Payments due under the terms of the Contract for the months of May through July 2004 totaling \$1,534.83 plus late charges, have not been made by the Debtor(s). Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$21,320.79 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$16,050.00.

10. Wells Fargo Financial Acceptance's interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Financial Acceptance does not have, and has not been offered, adequate protection of its interest in the Vehicle. There is no appreciable equity in the Vehicle and, in view of the fact that this is a Chapter 7 liquidation proceeding, the Vehicle is not necessary for an effective reorganization.

11. The failure of the Debtor(s) to make payments pursuant to the Contract or otherwise provide Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning

of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

12. Wells Fargo Financial Acceptance requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

13. If testimony is necessary as to any facts relevant to this motion, A. Howard, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

14. This notice of motion and motion also serves as notice of default as may be required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn. 1980). If the default is not cured before the hearing, Wells Fargo Financial Acceptance will repossess the Vehicle promptly upon the Court signing the Order.

15. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WHEREFORE, Wells Fargo Financial Acceptance respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Financial Acceptance to foreclose its interest in the Vehicle in accordance with Minnesota law, (ii) finding that Bankruptcy Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable, and (iii) granting such other relief as may be just and equitable.

Dated: August 17, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Mark S. Daneshvar,

Bky. No. 04-34108

Debtor(s).

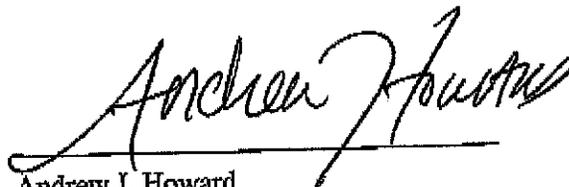
Affidavit

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):  
2003 Mitsubishi Eclipse VIN# 4A3AC84H63E0734702003 Mitsubishi Eclipse  
VIN# 4A3AC84H63E073470.
2. \$21,320.79 is the outstanding balance under the contract.
3. \$1,534.83 is the amount of the existing delinquency under the contract.
4. \$16,050.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

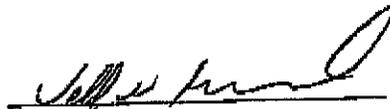
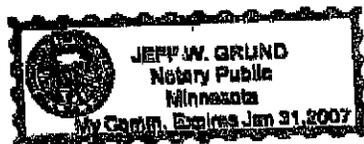
Further your affiant sayeth not.

Dated: 8/16/2004



Andrew J. Howard  
Bankruptcy Specialist  
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on August  
16, 2004

  
Notary

I RECEIVED A COPY OF THIS DOCUMENT BEFORE I SIGNED THE RETAIL INSTALLMENT CONTRACT.

**RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT**

No. 4785600

Date NOVEMBER 30th, 2002

FOREST LAKE MITSUBISHI  
322 19TH STREET SOUTH WEST  
FOREST LAKE MN 55025

MARK SHANIK DANESHVAR  
2378 COKO AVE.  
ST. PAUL MN 55108

"We" and "us" mean the Seller above, its successors and assigns. "You" and "your" mean each Buyer above, and guarantor, jointly and individually.

**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 its usual accessories and attachments.

Description of Year 2003 VIN 4A3ACB4H63E073470 Other:  
Motor Vehicle Make MITSUBISHI Ltr. No./Year  
Purchased Model ECLIPSE  New  Used

**SECURITY:** To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, 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 \$ 24835.16, plus finance charges accruing on the unpaid balance at the rate of 13.99 % 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 delayed payments as part of the cash down payment as reflected in your Payment Schedule.

**TRUTH IN LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of \$ <u>500.00</u>
13.99 %	\$ 12000.76	\$ 24835.16	\$ 36835.42	\$ 37335.92

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	511.61	MONTHLY, BEGINNING: DECEMBER 30th, 2002

**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 \$6.24 OR 5% WHICHEVER IS GREATER. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.09.  
**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 prepayment before the scheduled date, and prepayment refunds and penalties.

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Prop (incl. sales tax of \$ <u>1200.66</u> )	\$ <u>24587.66</u>
Service Contract, Paid to:	\$ <u>N/A</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>500.00</u>
Delayed Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>500.00</u>
b. Trade-In Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to:	\$ <u>N/A</u>
d. Net Trade-In (b. minus c.)	\$ <u>N/A</u>
a. Net Cash/Trade-In (a. plus d.)	\$ <u>500.00</u>
Down Payment (to disclose as \$0 if negative)	\$ <u>500.00</u>
Unpaid Balance of Cash Price	\$ <u>24087.66</u>
Paid to Public Officials - Filing Fees	\$ <u>302.50</u>
Insurance Premiums*	\$ <u>N/A</u>
Amount to Finance less c. (if e. is negative)	\$ <u>N/A</u>
To: <u>WFA*</u>	\$ <u>420.00</u>
To: <u>FOREST LAKE MITSUBISHI*</u>	\$ <u>26.00</u>
To:	\$ <u>N/A</u>
To:	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>747.50</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>24835.16</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.

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

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

Buyer Mark Shanik Daneshvar Buyer Mark Shanik Daneshvar  
**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 \$ N/A. If you get insurance from or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:  
 \$ N/A Deductible, Collision Coverage \$ N/A  
 \$ 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 N/A

**ASSIGNMENT:** This Contract and Security Agreement is assigned to WELLS FARGO FIN ACCEPT. Assignment is made  under the terms of a 2002-08-16 Assignment Agreement.  This assignment is made with recourse.  
Seller: By Mark Shanik Daneshvar Date 11/30/2002

Buyer: Mark Shanik Daneshvar 11/30/2002  
Signature: Mark Shanik Daneshvar Date

Seller: By Mark Shanik Daneshvar (Page 1 of 2)  
Signature: Mark Shanik Daneshvar MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

4885600

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  
US Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

DANESHUAR MARK SHAHIN  
2378 COMO AVE  
ST PAUL MN 55108

KEA756

Year 03	Make MITS	Model 2HECG	Title No. C3600P347
VIN 4A3AC84H63E073470		Security Date 11/30/02	Rebuilt NO

1ST SECURED PARTY  
**LIEN HOLDER**

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

WELLS FARGO FIN ACCEPT MN IN  
1 INTL PLAZA SUITE #300  
PHILADELPHIA PA 19113

1512



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-34108-DDO  
Chapter 7

Mark S. Daneshvar,  
  
Debtor(s).

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

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Wells Fargo Financial Acceptance submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 2003 Mitsubishi Eclipse with a vehicle identification number 4A3AC84H63E073470 (the "Vehicle"). Payments due under the terms of the Contract for the months of May through July 2004 totaling \$1,534.83 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$21,320.79 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$16,050.00. Despite written request to Debtor(s) and counsel for Debtor(s), no evidence has been provided to verify insurance coverage on the Vehicle.

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). No payments have been made as required by the Contract between the Debtor(s) and Wells Fargo Financial Acceptance has otherwise not been provided with adequate protection of interest in the Vehicle. Such failure constitutes cause, within the meaning of Section 362(d)(1), entitling Wells Fargo Financial Acceptance to relief from the stay. United

Savings Assn. of Texas v. Timbers of Inwood Forest Assoc., Ltd. (In re Timbers of Inwood Assoc., Ltd.),  
484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).

Pursuant to Section 362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where no equity exists and the property is not necessary to an effective reorganization. In re Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). The balance due under the Contract is \$21,320.79 as of the date hereof. The fair market value of the Vehicle is approximately \$16,050.00. Clearly, no appreciable equity exists in the Vehicle. Finally, as this a Chapter 7 case, the Vehicle is not necessary to an effective reorganization.

#### CONCLUSION

For all the reasons set forth herein, Wells Fargo Financial Acceptance is entitled to an order terminating the automatic stay of 11 U.S.C. § 362 and authorizing it to foreclose its interest in the Vehicle in accordance with Minnesota law.

Dated: August 17, 2004

STEWART, ZLIMEN & JUNGERS

By /e/ Bradley J. Halberstadt  
Bradley J. Halberstadt (#215296)  
Attorneys for Movant  
430 Oak Grove Street, Ste. 200  
Minneapolis, Minnesota 55403  
(612) 870-4100

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Mark S. Daneshvar

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34108-DDO

Bradley J. Halberstadt, an agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 430 Oak Grove Street, Ste. 200, Minneapolis, Minnesota 55403, declares that on the date set forth below, I served the annexed **Notice of Hearing and Motion For Relief From Stay** 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 mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

-----  
United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
April M. Little  
Prescott & Pearson  
PO Box 120088  
New Brighton, MN 55112

(Trustee)  
John A. Hedback  
2855 Anthony Lane S., Ste. 201  
St. Anthony, MN 55418

(Debtor(s))  
Mark S. Daneshvar  
1421 W 143rd St. Apt. 117  
Burnsville, MN 55306

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

Date: August 17, 2004

Signed: /e/ Bradley J. Halberstadt

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34108-DDO  
Chapter 7

Mark S. Daneshvar,  
  
Debtor(s).

***ORDER GRANTING  
MOTION FOR RELIEF FROM STAY***

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The above-entitled matter came before the Court for hearing on Wednesday, September 8, 2004 on the motion of Wells Fargo Financial Acceptance seeking relief from the automatic stay of 11 U.S.C. §362. Appearances were noted in the Court's record. Based upon the proceedings on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Wells Fargo Financial Acceptance to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362 is immediately terminated as to Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2003 Mitsubishi Eclipse, vehicle identification number 4A3AC84H63E073470 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

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

\_\_\_\_\_  
Dennis D. O'Brien  
United States Bankruptcy Judge