

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34125-DDO

Chapter 13

Eric P. Sabathier and Sally J. Sabathier,

OBJECTION TO CONFIRMATION

Debtor(s).

TO: Debtor(s) and Attorney for Debtor(s); Jasmine Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. Bank One, N.A., a secured creditor of Debtor(s), by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor(s).
2. This objection is filed pursuant to Fed. R. Bankr. P. 3015(b) and Bank One, N.A. requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.
3. Hearing on confirmation of the Plan is scheduled for **10:30 am on Thursday, September 9, 2004**, before the Honorable Dennis D. O'Brien, in Courtroom No. 228A, U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.
4. The petition commencing this Chapter 13 case was filed on July 15, 2004 and the case is now pending in this Court.
5. Bank One, N.A. holds a valid, perfected interest in a 2000 Ford F150, vehicle identification number 1FTRX18W0YNB65692 (the "Vehicle"). The value of the Vehicle is \$15,725.00.
6. Copies of Bank One, N.A.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Bank One, N.A.'s interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to Bank One, N.A. as of the petition date totals \$14,704.91 together with interest accruing at the contract rate of 10.9% The fair market value of the Vehicle is \$15,725.00 as set forth on the attached NADA valuation. Accordingly, the claim of Bank One, N.A. should be treated as secured to the extent of \$14,704.91 plus \$350.00 for objecting to confirmation totaling \$15,054.91 plus postpetition interest.

8. The Plan, however, provides for (i) Bank One, N.A.'s secured claim of \$10,600.00; (ii) total payment on Bank One, N.A.'s secured claim of \$13,040.00.

9. Using the contract rate of interest, the Plan fails to satisfy Bank One, N.A.'s secured claim plus interest utilizing the payments set forth by Debtor(s).

10. The Plan does not comply with the provisions of Chapter 13.

11. The Plan does not provide Bank One, N.A. with adequate protection of its interest in the vehicle.

12. Movant gives notice that it may, if necessary, call T. Johnson or another representative of Bank One, N.A. to testify at the hearing.

13. Movant has incurred \$350 of costs and attorneys fees in connection with this objection that must be included in the secured claim pursuant to 11 U.S.C. Section 506.

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

WHEREFORE, Bank One, N.A. respectfully requests this Court to enter an order denying

confirmation of the Debtor' proposed plan and such other further relief as is just and equitable.

Dated: August 27, 2004

BANKRUPTCY SOLUTIONS LEGAL SERVICES, PLC

By /e/ Bradley J. Halberstadt _____

Bradley J. Halberstadt (#215296)

Attorneys for Movant

PO Box 270463

St. Paul, Minnesota 55127

(612) 251-7979

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-34125-DDO
Chapter 13

Eric P. Sabathier and Sally J. Sabathier,

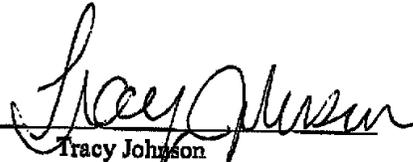
Debtor(s).

VERIFICATION

I, Tracy Johnson, a Bankruptcy Specialist of Bank One, N.A. declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

Dated:

8/27/04



Tracy Johnson
Bankruptcy Specialist
Bank One, N.A.

BANK ONE ARIZONA

Fax: 602-674-7194

Aug 26 2004 11:00

P.02

518380081900

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT	Seller BUILD MOTORS INC. 5241 WEST BROADWAY CRYSTAL MN 55429 <small>Buyer and Seller hereby agree, its successors and assigns.</small>	Buyer ERIC PASCAL SAGATHYER 743 DECORAH LN MENOTA HEIGHTS MN 55120 <small>You and your heirs, executors, administrators, assigns, jointly and severally.</small>
No. _____	Date AUGUST 18th, 2002	

SAL: 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 2000	VIN 1FTRX18M0YR666692	Other
	Make FORD	Lic. No./Year ESK-597	
	Model F150	<input type="checkbox"/> New <input type="checkbox"/> Used	

SECURITY: To assure 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 \$ 18532.25, plus finance charges accruing on the unpaid balance at the rate of 10.99 % per year from today's date until paid in full. Finance charges accrue on a 365/365 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, notes and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. You agree to make certain 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
10.99 %	\$ 6941.43	\$ 18532.25	\$ 25673.68	\$ N/A
Payment Schedule: Your payment schedule will be				
72	\$59.13	MONTHLY, BEGINNING: SEPTEMBER 24th, 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 5% OF THE UNPAID AMT OR PAYMENT OR \$5.72 WHICHEVER IS GREATER. This amount may increase up to a charge of the highest amount allowed by law under Minn. Stat. § 47.55.

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.

<p>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.</p> <p>Credit Life: Insured <u>N/A</u></p> <p><input type="checkbox"/> Single <input type="checkbox"/> Joint Prem. \$ <u>N/A</u> Term <u>N/A</u></p> <p>Credit Disability: Insured <u>N/A</u></p> <p><input type="checkbox"/> Single <input type="checkbox"/> Joint Prem. \$ <u>N/A</u> Term <u>N/A</u></p>	<p>ITEMIZATION OF AMOUNT FINANCED</p> <p>Vehicle Price (incl. sales tax) \$ <u>1136.25</u> ; \$ <u>18532.25</u></p> <p>Service Contract, Paid to: <u>N/A</u></p> <p>Manufacturer's Rebate \$ <u>N/A</u></p> <p>Cash Down Payment \$ <u>N/A</u></p> <p>Deferred Down Payment \$ <u>N/A</u></p> <p>a. Total Cash/Rebate Down \$ <u>N/A</u></p> <p>b. Trade-In Allowance \$ <u>N/A</u></p> <p>c. Less: Amount owing \$ <u>N/A</u></p> <p>Paid to:</p> <p>d. Net Trade-In (b. minus c.) \$ <u>N/A</u></p> <p>e. Net Cash/Trade-In (a. plus d.) \$ <u>N/A</u></p> <p>Down Payment (e.; disclose as 0 if negative) \$ <u>N/A</u></p> <p>Unpaid Balance of Cash Price \$ <u>18532.25</u></p> <p>Paid to Public Official - Filing Fees \$ <u>25.00</u></p>
--	---

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages not stated.

BANK ONE ARIZONA

Fax: 602-674-7194

Aug 26 2004 11:01

P.03

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 seller's coverage available may not exceed \$ N/A. If you get insurance from us through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:

N/A Collision Coverage \$ N/A

N/A Comprehensive Coverage \$ N/A

N/A Fire-Theft and Combined Additional Coverage \$ 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 2004 FORD 1FTRK1B0YNEB6692

This Service Contract will be in effect for N/A

Insured Premiums:	
Amount to Finance (line 6, if e, is repetitive)	\$ <u>N/A</u>
To: <u>DEALER / DOC FEE</u>	\$ <u>25.00</u>
To: _____	\$ <u>N/A</u>
To: _____	\$ <u>46.00</u>
Total Other Charges/Amounts Pld. by Others	\$ <u>N/A</u>
Less: Prepaid Finance Charges	\$ <u>1852.25</u>
Amount Financed	\$ <u>1852.25</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 FINANCING 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.

ASSIGNMENT: This Contract and Security Agreement is assigned to BANK ONE, NA

The Assignee, phone (800) 552-9844 This assignment is made under the terms of a separate agreement, under the terms of the ASSIGNMENT BY SELLER on page 3. This assignment is made with recourse.

Seller By: [Signature] Date: 08/10/2004

MINNEAPOLIS TITLE, INSTALLMENT CONTRACT AND SECURITY AGREEMENT © 1992, 1995 Bank One America, Inc. St. Paul, MN Form 88-04-04-01 (08/02)

Buyer Signature: [Signature] Date: 08/10/2004

Seller Signature: [Signature] Date: _____

Seller By: DUNLO MOTORS, INC.

MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

place the signature line 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 toward what you owe us.

DEFINITIONS:

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.

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 counterparty associated in connection with this Contract. Seller gives Assignee full power, either in its own name or in the name of a separate agreement as provided on page 1, the terms of this assignment are described in a separate writing(s) and not as provided herein:

- The Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
- The statements contained in the Contract are true and correct.
- The down payment was made by the Buyer in the amount stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was financed or paid to the Buyer by Seller or Seller's representative.
- This sale was consummated in accordance with all applicable federal and state laws and regulations.
- This Contract is valid and enforceable in accordance with its terms.
- The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
- This Contract is issued in the Seller's sole and true interest, and is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
- A complete blank copy of this Contract was delivered to the Buyer at the time of execution.
- The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
- Seller has or will perfect a security interest in the Property in favor of the Assignee.

If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, reimburse this Contract form 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.

Seller will indemnify Assignee for any loss suffered by it because of partial pay-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

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, claims, and grant extensions of time for payment to be made, to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE.

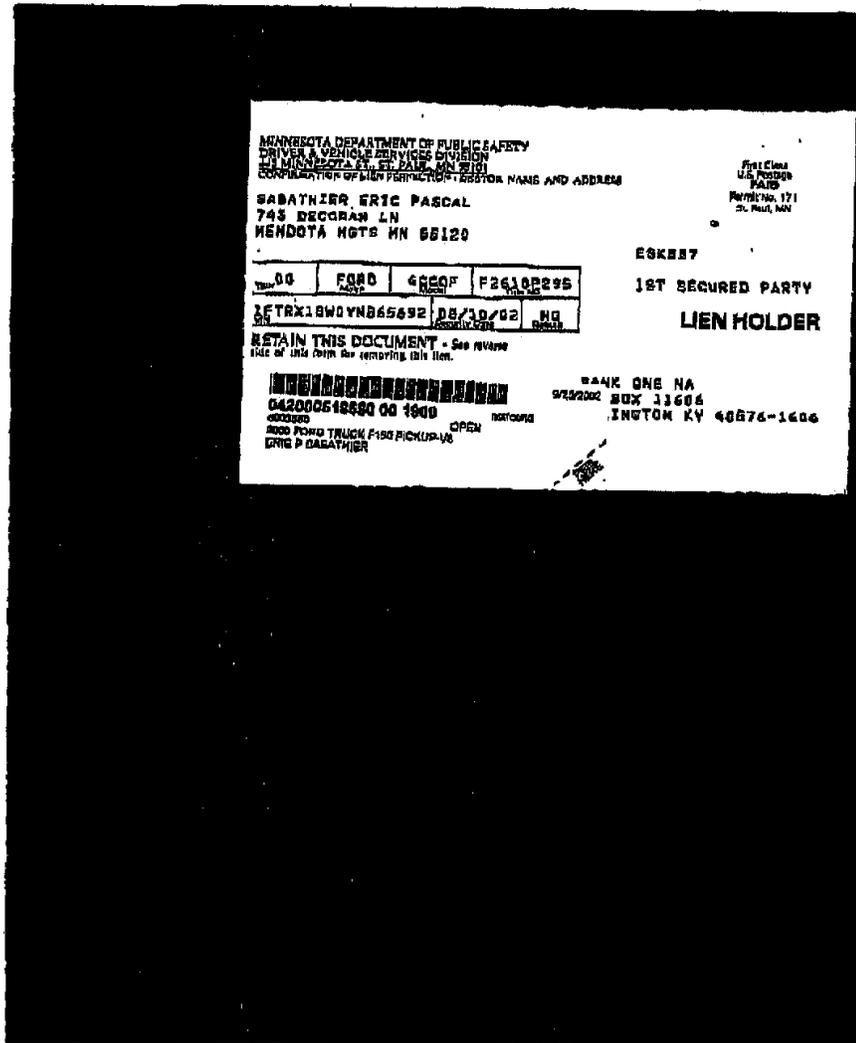
WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, reimburse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

BANK ONE ARIZONA

Fax: 602-674-7194

Aug 26 2004 11:01

P.05



BANK ONE ARIZONA

Fax: 602-674-7194

Aug 26 2004 11:02

P. 06

**Vehicle Summary With NADA Values
N.A.D.A Official Used Car Guide
Tuesday, August 03, 2004**

Guide Edition: Midwest Used Car Guide - August 2004

Vehicle Description: 2000 FORD TRUCK
F150 PICKUP-V8 STYLE SPR CAB XL 63/4'

VIN: 1FTRX18WOYNB65692
Stock #:

Weight: 4204
MSRP: \$18,905

N.A.D.A. Base Values:	Retail:	\$13,300	Trade:	\$10,975	Loan:	\$9,900
Mileage Value (N/A Miles)		N/A				
Accessories Values		\$2,425		\$2,200		\$2,200
N.A.D.A Adjusted Values:	Retail:	\$15,725	Trade:	\$13,175	Loan:	\$12,100
Appraiser Adjustment Value		\$0				
Adjusted Values:	Retail:	\$15,725	Trade:	\$13,175	Loan:	\$12,100

Accessories:

	Retail	Trade	Loan
4WD or AWD	\$2,425	\$2,200	\$2,200

Appraiser Adjustments:

NADA assumes no responsibility or liability for any errors or omissions or any revisions or additions made by anyone on this report.

All NADA values are reprinted with permission of N.A.D.A., Official Used Car Guide Company Copyright NADARC 2004

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-34125-DDO

Chapter 13

Eric P. Sabathier and Sally J. Sabathier,

Debtor(s).

***MEMORANDUM IN SUPPORT OF
OBJECTION TO CONFIRMATION***

Bank One, N.A. submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

Bank One, N.A. holds a valid, perfected interest in a 2000 Ford F150, vehicle identification number 1FTRX18W0YNB65692 (the "Vehicle"). The value of the Vehicle is \$15,725.00.

The balance due to Bank One, N.A. as of the petition date totals \$14,704.91 together with interest accruing at the contract rate of 10.9%. The fair market value of the Vehicle is \$15,725.00 as set forth on the attached NADA valuation. Accordingly, the claim of Bank One, N.A. should be treated as secured to the extent of \$14,704.91 plus \$350.00 for objecting to confirmation totaling \$15,054.91 plus postpetition interest.

The Plan, however, provides for (i) Bank One, N.A.'s secured claim of \$10,600.00; (ii) total payment on Bank One, N.A.'s secured claim of \$13,040.00.

DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy Bank One, N.A.'s secured claim plus interest at the contract rate. Bank One, N.A. also asserts that its lien should not terminate until such time as the

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Eric P. Sabathier and Sally J. Sabathier

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34125-DDO

Bradley J. Halberstadt, agent of Bankruptcy Solutions Legal Services, PLC, attorney(s) licensed to practice law in this court, with office address of with office address of PO Box 270463, St. Paul, Minnesota 55127, declares that on the date set forth below, I served the annexed **Objection to Confirmation** 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 Roseville, Minnesota addressed to each of them as follows:

United States Trustee	(Attorney for Debtor(s))	(Trustee)
Suite 1015	James T. Skonnord	Jasmine Keller
300 South 4th Street	311 Ramsey St.	12 S 6th Street Suite 310
Minneapolis, MN 55415	St. Paul, MN 55102	Minneapolis, MN 55402

(Debtor(s))
Eric P. Sabathier
743 Decorah Lane
Mendota Heights, MN 55120-1619

Sally J. Sabathier
743 Decorah Lane
Mendota Heights, MN 55120-1619

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

Dated: August 27, 2004 Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34125-DDO
Chapter 13

Eric P. Sabathier and Sally J. Sabathier,

Debtor(s).

ORDER

This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor(s). Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor(s) is denied.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge