

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34363-DDO

**Donald Rush and
Catherine Rush,**

**OBJECTION TO
PLAN CONFIRMATION**

Debtors.

Chapter 13 Case

TO: The Debtors above-named and other entities specified in Local Rule 3020-1.

1. Marquette Consumer Finance LLC (hereafter Marquette), a creditor in the above case, by its undersigned attorney, moves the Court for an Order denying confirmation of the Debtors' proposed chapter 13 plan.

2. The court will hold a hearing on this motion at 10:30 a. m. on September 9, 2004, in Courtroom No. 228 C, United States Court House, 316 N. Robert Street, St. Paul, Minnesota.

3. This court has jurisdiction over this proceeding pursuant to 28 U. S. C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on 07/28/04. The case is now pending in this court.

4. This proceeding arises under 11 U. S. C. §1325 and Bankruptcy Rule 3020. This proceeding is filed under Bankruptcy Rule 9014 and Local Rule 3020-1. Marquette requests that the Court deny plan confirmation for the reasons set forth herein.

5. Debtors are indebted to Marquette as evidence by a retail installment contract dated June 2002, secured by the following item of personal property: **2000 Mitsubishi Galant, VIN 4A3AA46G7YE141799.**

6. Debtors are indebted to Marquette as evidence by a retail installment contract dated June 2004, secured by the following item of personal property: **2003 Ford Taurus, VIN 1FAFP55203A234589.**

7. The NADA retail value for the 2000 Galant is reported as \$6,900.00. The NADA retail value for the 2003 Ford is reported as \$12,675.00.

8. Debtors propose to pay Marquette's claim secured by the Galant in the amount of \$5,600.00, plus interest, as a secured claim, the remainder, if any, as an unsecured claim; and Debtors propose to pay Marquette's claim secured by the Ford in the amount of \$8,825.00, plus interest, as a secured claim, the remainder, if any, as an unsecured claim.

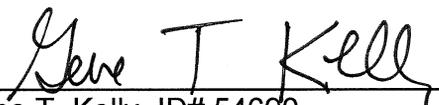
9. Marquette calculates its secured claim to be \$6,900.00 plus interest with respect to the 2002 contract secured by the Galant and \$12,675.00 plus interest with respect to the 2004 contract secured by the Ford.

10. Marquette objects because the plan does not propose to pay Marquette's allowed secured claim in full as required pursuant to 11 U.S.C. § 1325 (a)(5).

11. The parties' contract provides that the Debtors shall pay attorney's fees and costs incurred by Marquette. Marquette has incurred attorney's fees in an amount not yet determined.

WHEREFORE, Marquette, by its undersigned attorney, moves the Court for an Order denying confirmation of the proposed plan and for such other relief as the Court deems just and equitable.

Date: August 31, 2004


Gene T. Kelly, ID# 54690
Attorney for Marquette Consumer Finance LLC
1515 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 332-5890

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34363-DDO

Donald Rush and
Catherine Rush,

AFFIDAVIT IN SUPPORT
OF OBJECTION TO
PLAN CONFIRMATION

Debtors.

Chapter 13 Case

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

DENNIS SCHMIDT, being first duly sworn on oath, states as follows:

1. He is an employee of Marquette Consumer Finance LLC (hereafter Marquette) and he is familiar with the matters herein of his own knowledge, except as to those matters stated on the basis of information and belief or Marquette's business records, and as to those matters he believes them to be true.

2. On June 19, 2002, Donald Rush and Catherine Rush (hereafter Debtors) executed and delivered a retail installment contract in the principal amount of \$12,251.10 (hereafter the 2002 Contract). Attached hereto and incorporated as Exhibit A is a true and correct copy of the Contract.

3. To secure the indebtedness to Movant, Debtor granted a security interest in the following property (the Collateral): **2000 Mitsubishi Galant, VIN 4A3AA46G7YE141799.**

4. On June 4, 2004, Donald Rush and Catherine Rush (hereafter Debtors) executed and delivered a retail installment contract in the principal amount of \$11,940.57

(hereafter the 2004 Contract). Attached hereto and incorporated as Exhibit B is a true and correct copy of the Contract.

5 To secure the indebtedness to Movant, Debtor granted a security interest in the following property (the Collateral): **2003 Ford Taurus, VIN 1FAFP55203A234589.**

6 Debtors are in default in payments due under both Contracts. The pay-off balance on the 2002 Contract is \$9,291.76. The pay-off balance on the 2004 Contract is \$12,225.96.

7 Based on information and belief, the retail value of the 2000 Mitsubishi as reported in the most recent NADA guidebook, is \$6,700.00. A copy of the relevant page of the NADA guidebook is attached hereto as Exhibit C and is incorporated herein by reference.

8. Based on information and belief, the original purchase price of the 2003 Ford Taurus was \$13,495.00 on June 4, 2004. A copy of the purchase agreement is attached hereto and incorporated herein by reference as Exhibit D.

9. The retail value of a 2003 Ford Taurus, as reported in the most recent NADA guidebook, is \$12,675.00. A copy of the relevant page of the NADA guidebook is attached hereto as Exhibit E and is incorporated herein by reference.

10. Debtors' proposed plan calls for payment of a secured claim to Marquette with respect to the 2000 Galant in the principal amount of \$5,600.00 and to Marquette with respect to the 2003 Ford in the principal amount of \$8,825.00.

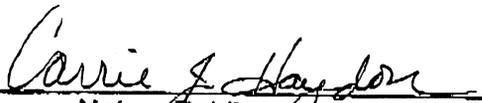
11. Debtors continue to use the Collateral thereby subjecting said property to wear and tear and risk of loss. Debtors have failed to offer adequate protection to Marquette with respect to its interest in said Collateral.

Further your affiant sayeth naught.

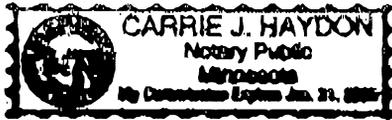


 DENNIS SCHMIDT

Subscribed and sworn to before me
on this 31st day of August, 2004



 Notary Public



RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date JUNE 19th, 2002	Seller NORTH COUNTRY FORD 10401 WOODCREST DRIVE COON RAPIDS MN 55433 <small>We and "us" mean the Seller above, its successors and assigns.</small>	Buyer DONALD HENRY RUSH CATHERINE MARY RUSH 38104 HARDER AVE NORTH BRANCH MN 55036 <small>You and "your" mean each Buyer above, and guarantor, jointly and individually.</small>
	<small>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.</small>	

Description of Motor Vehicle Year **2000** VIN **4A3FN4687YE141799** Other: _____
 Make **MITSUBISHI** Lic. No./Year **FYP 767**
 Model **GALANT** New Used

Description of Trade-In **1999 OLDSMOBILE EIGHTY-EIGHT 1G2NS4C91M364599**

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 \$ **12251.10**, 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** 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 <small>The cost of your credit as a yearly rate.</small>	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	AMOUNT FINANCED <small>The amount of credit provided to you or on your behalf.</small>	TOTAL OF PAYMENTS <small>The amount you will have paid when you have made all scheduled payments.</small>	TOTAL SALE PRICE <small>The total cost of your purchase on credit, including your down payment of</small>
10.99 %	\$ 6012.62	\$ 12251.10	\$ 19063.60	\$ 1490.00 \$ 29563.60

Payment Schedule: Your payment schedule will be _____

Number of Payments	Amount of Payments	When Payments Are Due
60	317.73	MONTHLY, BEGINNING: JULY 19th, 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 _____
55.70 OR 5% OF PAYMENT This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.50.

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. \$ _____ Term **N/A**

Credit Disability: Insured _____
 Single Joint Prem. \$ _____ 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.

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:
 \$ _____ Deductible, Collision Coverage \$ **N/A**
 \$ **N/A** Deductible, Comprehensive Cov. \$ **N/A**
 N/A Plus-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 _____

This Service Contract will be in effect for **15 MONTHS/75000 MILES**

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 714.60)	\$ 12209.60
Service Contract, Paid to: PROTECTIVE	\$ 1495.00
Cash Price	\$ 13704.60
Manufacturer's Rebate	\$ N/A
Cash Down Payment	\$ 1000.00
Deferred Down Payment	\$ N/A
a. Total Cash/Rebate Down	\$ 1000.00
b. Trade-In Allowance	\$ 500.00
c. Less: Amount owing	\$ N/A
Paid to: NONE	\$ _____
d. Net Trade-In (b. minus c.)	\$ 500.00
e. Net Cash/Trade-In (a. plus d.)	\$ 1500.00
Down Payment (e.; disclose as \$0 if negative)	\$ 1500.00
Unpaid Balance of Cash Price	\$ 12204.60
Paid to Public Official - Filing Fee	\$ 21.50
Insurance Premiums*	\$ N/A
Amount to Finance line a. (if e. is negative)	\$ N/A
To: _____	\$ N/A
To: NORTH COUNTRY FORD	\$ 23.00
To: _____	\$ N/A
To: _____	\$ N/A
Total Other Charges/Amounts Pd. to Others	\$ 46.50
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 12251.10

*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.

ASSIGNMENT: This Contract and Security Agreement is assigned to **Marquette Consumer Finance LLC**. The Assignee, phone **952-546-0399**. This assignment is made under the terms of a separate agreement. under the terms of this ASSIGNMENT BY SELLER on page 2. This assignment is made with recourse.
 Sold By: **Beth Kopp** Date: **06/19/2002**

Buyer: **Donald H. Rush** Date: **06/19/2002**
 Signature: **Donald Henry Rush**
Catherine Mary Rush Date: **06/19/2002**
 Signature: **Catherine Mary Rush**
 Seller: **Beth Kopp**

Ex A
P-1

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services 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 first 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 section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

This Contract is governed by the laws of Minnesota and the United States of America.

NAME AND LOCATION: Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with a written 30 days notice prior to changing your name or principal residence.

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 \$5.00.

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 affixed to the Vehicle.
B. You will defend our interest 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 property 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 occur (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. § 169.71, 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 liens 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 toward 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.

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 on provided above.

RETURNED 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 be \$30.00.

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 on 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 amounts 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 name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you 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. 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. However, if this Contract is assigned, and the Assignee is not a financial institution as defined by Minn. Stat. § 47.59, this amount will earn finance charges from the date paid at 0% per year.

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.

WAIVER: 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 make, 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 payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, 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.

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 executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE ASSIGNMENT: If this Assignment is made "under the terms 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 representative(s).
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on the Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is voided in the Seller's file of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. 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, 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 attorneys' fees.

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.

Seller waives notice of the occurrence 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 Buyer under this Assignment, compound or release any rights against, 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, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

100% Mits. Gallant

Ex A p. 2

MINN-02-2004 25132 MINN-02-2004 25132

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date JUNE 4th, 2004		Seller NORTH COUNTRY FORD 10401 WOODCREST DRIVE DOON RAPIDS MN 55433 *We* and *us* mean the Seller above, its successors and assigns.	Buyer DONALD HENRY RUSH CATHERINE MARY RUSH 3010A HARDER AVE NORTH BRANCH MN 55056 *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 the usual accessories and attachments.

Description of Year **2003** VIN **1FAPP5E03A234589** Other:
 Motor Vehicle Make **FORD** Lic. No./Year
 Purchased Model **TAURUS** New Used

Description of Trade-In **1994 BUICK LESABRE 1G4MR52L7RH401341**

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 \$ **11940.57**, plus finance charges accruing on the unpaid balance at the rate of **17.49** % 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, non-refundable 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. 17.49 %	The dollar amount the credit will cost you. 6184.83	The amount of credit provided to you, or on your behalf. \$ 11940.57	The amount you will have paid when you have made all scheduled payments. \$ 18125.48	The total cost of your purchase on credit, including your down payment of \$ 2466.86 \$ 20592.26

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
68	302.49	MONTHLY BEGINNINGS 07/19/2004

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 **GREATER OF \$6.24 OR 5% OF PAYMENT**. 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 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 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 d/h Buyer d/h

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 _____ 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 N/A

This Service Contract will be in effect for N/A

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ <u>543.68</u>)	\$ <u>14144.68</u>
Service Contract, Paid for: <u>N/A</u>	\$ <u>N/A</u>
Cash Price	\$ <u>14144.68</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>600.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>600.00</u>
b. Trade-In Allowance	\$ <u>300.00</u>
c. Less: Amount owing	\$ <u>1633.14</u>
Paid to: CREDIT ACCEPTANCE CORP.	
d. Not Trade-In (b. minus c.)	\$ <u>1666.86</u>
e. Net Cash/Trade-In (a. plus d.)	\$ <u>2466.86</u>
Down Payment (e.; disclose as \$0 if negative)	\$ <u>2466.86</u>
Unpaid Balance of Cash Price	\$ <u>11677.82</u>
Paid to Public Officials - Filing Fees	\$ <u>212.75</u>
Insurance Premiums	\$ <u>N/A</u>
Amount to Finance line a. (if a. in negative)	\$ <u>N/A</u>
To: <u>N/A</u>	\$ <u>N/A</u>
To: NORTH COUNTRY FORD	\$ <u>96.08</u>
To: <u>N/A</u>	\$ <u>N/A</u>
To: <u>N/A</u>	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>262.75</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>11940.57</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 charges. (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.

ASSIGNMENT: This Contract and Security Agreement is assigned to Marquette Consumer Finance LLC, the Assignee, phone 612-376-2117. 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 06/04/2004

Buyer Donald Henry Rush 06/04/2004
 Signature Donald Henry Rush Date
Catherine M Rush 06/04/2004
 Signature Catherine Mary Rush Date

EX B
P. 1

11/11/11 11/0

ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services 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 first 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 section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

This Contract is governed by the laws of Minnesota and the United States of America.

NAME AND LOCATION: Your name and address indicated on page 1 are your exact legal name and your principal residence. You will provide us with not less than 30 days notice prior to changing your name or principal residence.

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 \$5.00.

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 affixed 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 property identified in an 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 liens 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 toward 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 declining not to use any remedy, we do not give up our right to consider the event a default if it happens again.

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.

RETURNED 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 be \$30.00.

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 on 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 assurance of payment before we allow insurance proceeds to be used to repair or replace the Property, if the insurance proceeds do not cover the amounts 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 name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you if we do so. This insurance may include coverage 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. 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. However, if this Contract is assigned, and the Assignee is not a financial institution as defined by Minn. Stat. § 47.58, this amount will earn finance charges from the date paid at 8% per year.

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.

WAIVER: 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 make, 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 payments it requires. Your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take those steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.
Signatures _____ 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.

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 guarantee executed in connection with this Contract. Seller gives Assignee full power, either in its own name or in Seller's name, to take all legal or other actions which Seller could have taken under this Contract. (SEPARATE AGREEMENT: If this Assignment is made under the terms 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.)

- Seller warrants:
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 sale was completed in accordance with all applicable federal and state laws and regulations.
E. This Contract is valid and enforceable in accordance with its terms.
F. The names and signatures on this Contract are not forged, fictitious or assumed, and are true and correct.
G. This Contract is vested in the Seller free of all liens, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filed-in copy of this Contract was delivered to the Buyer at the time of assignment.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. 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, 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.

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.

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 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, repurchase this Contract for the amount of the unpaid balance, including finance charges, due at that time.

1034
Ford
Taurus

Ex B
P. 2



Your friend in the business.

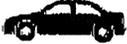
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- [2 - Make](#)
- [3 - Year](#)
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- [6 -](#)

Used Values: Vehicle Report



4-Door Sedan
2000 Mitsubishi Galant-4 Cyl.
Sedan 4D ES

August 31, 2004

Estimate Payment

\$104.34/Month**

**based on \$1,000 down, 4.7% interest rate, 8.25% sales tax, 60 months

[Financing Center](#)

Vehicle History Report

[check history of this vehicle.](#)

Enter VIN



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	Average Trade-In	Average Retail
Base Price	\$5,400	\$7,050
Mileage	70,000 miles	\$-350
TOTAL PRICE	\$5,050	\$6,700*

(* Average retail price represents a clean vehicle in good condition with a Clean Title History.

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Other Vehicle Information
Model Number: A46G
Weight: 3075

Exc

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- [1 - Body Style](#)
- [2 - Make](#)
- [3 - Year](#)
- [4 - Model & Trim](#)
- [5 - Mileage & Options](#)
- [6 -](#)

Used Values: Vehicle Report



4-Door Sedan
2003 Ford Taurus-V6
Sedan 4D SES

August 31, 2004

Estimate Payment

\$205.04/Month**

**based on \$1,000 down, 4.7% interest rate, 8.25% sales tax, 60 months

[Financing Center](#)

Vehicle History Report

check history of this vehicle.

Enter VIN

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Auto Resources Articles

- [Appraising Your Car](#)
- [Sales Tips](#)
- [Buying a Used Car](#)
- [Financing 101](#)

	<u>Average Trade-In</u>	<u>Average Retail</u>
Base Price	\$9,875	\$11,950
Mileage		
20,000 miles	\$325	\$325
Options		
Compact Disc Player (Std. SES, SEL)	\$150	\$175
Power Seat (Std. SES, SEL)	\$200	\$225
TOTAL PRICE	\$10,550	\$12,675*

(* Average retail price represents a clean vehicle in good condition with a Clean Title History.

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If you're purchasing a used vehicle, obtain used car financing rates as low as **4.66% APR** for 24-36 months. Find out if you can lower your insurance premium; [click here for a free Insurance Quote](#).

Selling your vehicle? Sell your vehicle through [AutoTrader.com](#) and get the most for your money. Print a checklist and the [required DMV Title & Registration](#) forms.

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EX E

Other Vehicle Information
Model Number: 55
Weight:

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34363-DDO

**Donald Rush and
Catherine Rush,**

**MEMORANDUM IN SUPPORT
OF CREDITOR'S OBJECTION
TO CONFIRMATION OF PLAN**

Debtors.

Chapter 13 Case

Marquette Consumer Finance LLC (hereafter Marquette) objects to confirmation of the Debtors' plan because Debtors' valuation of Marquette's security interest is less than the replacement value of the collateral. In addition, Marquette asks that the Court award its attorney's fees incurred in this proceeding.

In June 2002, Marquette advanced funds to Donald Rush and Catherine Rush, hereafter the Debtors, as evidenced by a retail installment contract. Debtors granted to Marquette an interest in a 2000 Mitsubishi Galant, VIN 4A3AA46G7YE141799 to secure payment. The retail value as reported in the relevant NADA used car guidebook with respect to the vehicle is stated to be \$6,900.00.

In June 2004, less than 2 months before the commencement of this bankruptcy filing, Marquette advanced funds to Debtors for the purchase of a 2003 Ford. The indebtedness is evidenced by a retail installment contract dated June 4, 2004. Debtors granted to Marquette an interest in 2003 Ford Taurus, VIN 1FAFP55203A234589 to secure payment. The purchase price of the vehicle was \$13,495.00 and the retail value as reported in the relevant NADA used car guidebook with respect to the vehicle is stated to be \$12,675.00.

At the time of commencement of the bankruptcy proceedings, the outstanding obligation due to Marquette was \$9,291.76 with respect to the 2002 contract and \$12,225.26 with respect to the 2004 contract.

Debtors filed a chapter 13 petition dated July 28, 2004. The Debtors' value Marquette's security interest in the Galant at \$5,600.00 and in the Ford at \$8,825.00. The remainder of Marquette's claim will be treated as an unsecured claim and Marquette will share *pro rata* with other unsecured creditors.

SECTION 1325

Section 1325 (a)(5) of the Bankruptcy Code states:

"(a) Except as provided in subsection (b), the court shall confirm a plan if - . . . (5) with respect to each allowed secured claim provided for by the plan - (A) the holder of such claim has accepted the plan; (B) . . . (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim . . ." See 11 U.S.C. § 1325 (a) (5).

SECTION 506

Section 506(a) of the Bankruptcy Code provides:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property. . . ." See 11 U.S.C. §506(a).

Section 506(b) of the Bankruptcy Code provides:

"To the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim . . . any reasonable fees, costs or charges provided for under the agreement under which such claim arose." See 11 U.S.C. §506(b).

The Supreme Court of the United States has determined that replacement value is the correct standard to be used in valuing the secured creditor's claim where the debtor exercises the "cram down" power of 11 U.S.C. §1325(a)(5)(B). See ***Associates Commercial Corp. v. Rash***, 117 S.Ct. 1879 (1997). In the case of ***In re Trimble***, 50 F.3d 530, (8th Cir. 1995), the court held that the amount of the ". . . secured claim is the lesser of the principal balance [of the note] or the retail value of the encumbered vehicle, without deduction for costs of

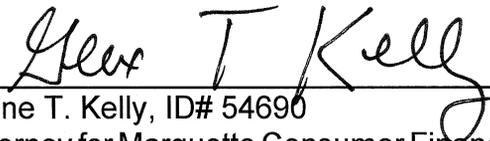
repossession or sale." Given that pronouncement, Marquette contends that the proposed plan cannot be confirmed since it does not properly value Marquette's security interest in the collateral.

CONCLUSION

Marquette does not accept this plan because the Debtor values Marquette's security interest at less than the retail value of the collateral. Marquette claims the retail value of the Galant to be \$6,900.00 and the Ford to be \$12,675.00, and therefore, Marquette's secured claims should be paid in that amount plus interest.

For the reasons stated herein, Marquette asks the Court to deny confirmation of the proposed plan and allow such other relief as is fair and equitable. Further, Marquette asks the Court to order the Debtor to immediately submit a modified plan that properly values Marquette's security interest.

Dated: August 31, 2004



Gene T. Kelly, ID# 54690
Attorney for Marquette Consumer Finance LLC
1515 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
(612) 332-5890

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34363-DDO

**Donald Rush and
Catherine Rush,**

ORDER

Debtors.

Chapter 13 Case

A hearing on confirmation of the proposed chapter 13 plan was held before the above court on the ____ day of September, 2004. Appearances were noted in the Court's records.

Upon all the proceedings, file, affidavits, exhibits and argument of counsel,

IT IS HEREBY ORDERED:

1. Confirmation of the Debtors's proposed plan dated July 28, 2004 is denied.
2. Debtors shall file a motion for preconfirmation modification, with modified plan appended, and shall serve that motion in conformity with LOC. R. BANKR. P. (D. MINN.) 3015-3. Counsel for Debtors shall schedule the hearing on the motion for October _____, 2004.
3. Failure by Debtors to comply with this Order shall constitute cause for conversion or dismissal of this case under 11 U. S. C. § 1307 (c), upon motion of the trustee or another party in interest.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34363-DDO

Donald Rush,
Catherine Rush

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Debtor.

Chapter 13 Case

I, Gene T. Kelly, declare under penalty of perjury that on August 31, 2004, I mailed copies of the foregoing Objection to Plan Confirmation, Affidavit, Memorandum, proposed Order and this proof of service by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

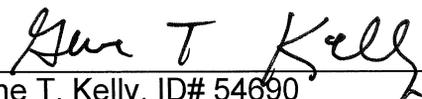
Donald Rush
Catherine Rush
38104 Harder Avenue
North Branch, MN 55056

Robert J. Hoglund
Attorney for Debtor
P. O. Box 130938
Roseville, MN 55113

Jasmine Z. Keller, Trustee
310 Plymouth Building
Minneapolis, MN 55402

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

Date: 8. 31, 04


Gene T. Kelly, ID# 54690
Attorney for Marquette Consumer Finance LLC
1515 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402
Telephone: (612) 332-5890