

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34626-GFK
Chapter 7

Gene Robert McNab and Judy Kay McNab,

Debtor(s).

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

TO: Debtor(s) and Attorney for Debtor(s); Paul W. Bucher, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Arcadia Financial Ltd., 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 **10:30 am on Monday, September 13, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 228B, 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 Wednesday, September 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than Thursday, September 2, 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. Arcadia Financial Ltd. 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 August 9, 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. Arcadia Financial Ltd. holds a valid, perfected interest in a 1999 Chrysler Sebring, vehicle identification number 3C3EL55H8XT589308 (the "Vehicle").

7. Copies of Arcadia Financial Ltd.'s agreement with Debtor(s) (the "Contract") and evidence of perfection of Arcadia Financial Ltd.'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 June and July 2004 totaling \$428.97 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$12,930.70 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$9,025.00.

10. Arcadia Financial Ltd.'s interest is depreciating, while Debtor(s) are failing to make payments. Arcadia Financial Ltd. 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 Arcadia Financial Ltd. with adequate protection of its interest in the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Arcadia Financial Ltd. to relief from the stay.

12. Arcadia Financial Ltd. 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. Leicher, or some other representative of Movant, will testify on behalf of Arcadia Financial Ltd..

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, Arcadia Financial Ltd. 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, Arcadia Financial Ltd. respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Arcadia Financial Ltd. 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 20, 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

GENE & JUDY MCNAB,

Bky. No. 04-34626

Debtor(s).

Affidavit

I, Andrew Leicher, of Arcadia Financial Ltd, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Arcadia Financial Ltd has a security interest in the following (the "Collateral"):
1999 CHRYSLER SEBRING VIN 3C3EL55H8XT589308.
2. \$12,930.70 is the outstanding balance under the contract.
3. \$428.97 is the amount of the existing delinquency under the contract.
4. \$9,025.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

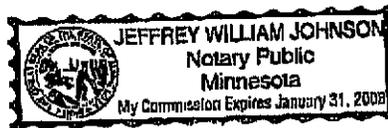
Further your affiant sayeth not.

Dated: 8/19/2004



Andrew Leicher
Bankruptcy Specialist
Arcadia Financial Ltd

Subscribed and sworn to before me on August
19, 2004


Notary

2579 F8155 333

3233905

CONSUMER PAPER RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT		Seller DAN NELSON DAEMD 2900 WEST 12TH SIOUX FALLS, SD 57104	Buyer GENE R MCNAB JUDY R MCNAB 527 W 6TH ST SIOUX FALLS SD 57104
No.	Date	*We and "us" mean the Seller above, its successors and assigns.	
	08/16/2002	*You and "your" mean each Buyer above, and guarantor, jointly and individually.	

SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this contract and security agreement (Contract), the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of Motor Vehicle Purchased	Year 1999	VIN 3C9EL55H8X7589308	Other:
	Make CHRYSLER	Lie. No./Year	
	Model SEBRING	<input type="checkbox"/> New <input checked="" type="checkbox"/> Used	

Description of Trade-In: 1998 FORD EXPL 1F1M2U34E1WUC6736

SECURITY: To ensure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, appurtenances, 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 returns 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 \$ 17730.00, plus finance charges accruing on the unpaid balance at the rate of 13.95% per year from today's date until maturity. Finance charges accrue on a 365 day basis. After maturity, or after your default and we demand payment, we will earn finance charges on the unpaid balance at 13.95% per year. 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.

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.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase on credit, including your down payment of
13.95%	\$ 7108.20	\$ 17730.00	\$ 24838.20	\$ 1436.00
				\$ 26274.20

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
60	413.97	MONTHLY BEGINNING: 09/27/2002

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 25% OR 45

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.
 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 coverage you have chosen to purchase.

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

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

Buyer: G/S Buyer: G/OB

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 \$ _____. If you get insurance from elsewhere, 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 personal liability and property damage caused to others is not included in this Contract unless checked and indicated.

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

Buyer: Buyer:

SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Service Contract to cover 48 MONTHS 85000 MILES. This Service Contract will be in effect for SEE ATTACHED POLICY

ASSIGNMENT: This Contract and Security Agreement is assigned to _____ the Assignee, phone _____. This assignment is made under the terms of a separate agreement. under the terms of the ASSIGNMENT BY SELLER on page 2. This assignment is made with recourse. 08/16/2002
 Seller: By _____ Date

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 141.00)	\$ 17041.00
Service Contract, Paid to SMART CHOICE	\$ 2000.00
Amount to Finance line o. (if it is negative)	\$ 0.00
Cash Price	\$ 19041.00
Manufacturer's Rebate	\$ 0.00
Cash Down Payment	\$ 1436.00
Deferred Down Payment	\$ 0.00
a. Total Cash/Rebate Down	\$ 1436.00
b. Trade-In Allowance	\$ 16200.00
c. Less: Amount owing	\$ 16200.00
Paid to: HAFC	
d. Net Trade-In (b. minus c.)	\$ 0.00
a. Net Cash/Trade-In (a. plus d.)	\$ 1436.00
Down Payment (a.; disclose as 50 if negative)	\$ 17805.00
Unpaid Balance of Cash Price	\$ 17805.00
Paid to Public Official - Filing Fee	\$ N/A
Insurance Premiums*	\$ N/A
To:	\$ N/A
To:	\$ N/A
To: DOCUMENT FEE TO SELLER	\$ 50.00
To: TITLE FEE	\$ 75.00
To:	\$ N/A
To:	\$ 125.00
Total Other Charges/Amounts Pd. to Others	\$ 125.00
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 17730.00

*We may retain or receive a portion of this amount.
 Your signature below means you agree to the fees paid to public officials and fees itemized above. These fees have been disclosed and explained to you prior to your signing the Contract.

Buyer: Gene McNab Judy McNab

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.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIVING A COPY OF THIS CONTRACT.

Buyer: Gene McNab 08/16/2002
 Signature: Judy McNab 08/16/2002
 Signature: _____ Date

STATE OF SOUTH DAKOTA

VEHICLE

CERTIFICATE OF TITLE

TITLE NO.	TITLE ISSUE DATE	TYPE	PREVIOUS STATE/BRAND	TAX *CODE/SANT.	TITLE COUNTY	WEIGHT/CC
30043371	09/12/2002	T	IL	84.75	01	3,351

YEAR	MAKE	MODEL	BODY	VEHICLE IDENTIFICATION NUMBER	ODOMETER
1999	CHRY	SEB	CV	3C3EL55H8XT589308 3C3EL55H8XT589308	26,013 ACTUAL 26,013

MAIL TO:

ARCADIA FINANCIAL LTD
P O BOX 1437
MINNEAPOLIS MN 55440-1437

OWNER(S): MCNAB, GENE R OR
MCNAB, JUDY J

OWNER ADDRESS: 527 W 6TH ST
SIOUX FALLS SD 57104

LIENHOLDER(S)

LIEN RELEASE(S)

FIRST LIENHOLDER: 10 ARCADIA FINANCIAL LTD
P O BOX 1437
MINNEAPOLIS MN 55440-1437

NOTED BY REGISTER OF DEEDS (CO.#) (DATE) RELEASED BY REGISTER OF DEEDS (CO.#) (DATE)

SECOND LIENHOLDER:

NOTED BY REGISTER OF DEEDS (CO.#) (DATE) RELEASED BY REGISTER OF DEEDS (CO.#) (DATE)

COUNTY TREASURER ONLY

- Purchase Price (see reverse side) \$
- BN of Sale Not Available - Computer HADAYED
- Less Trade-In Allowance
- Difference
- Tax 5% of Line 3
- Credit for Tax Paid to Another State
- Title Fee
- Penalty Fee
- Licence Fee
- Solid Waste Fee
- County Wheel Tax (if applicable)
- Other Fees
- Balance Due

THE DEPARTMENT OF REVENUE, UNDER SOUTH DAKOTA LAW, CERTIFIES THAT THE PERSON(S) NAMED HEREON IS DULY REGISTERED IN THIS OFFICE AS OWNER(S) OF THE DESCRIBED PROPERTY SUBJECT TO ANY LIENS AND ENCUMBRANCES HEREIN SET FORTH. SOUTH DAKOTA LAW REQUIRES DISCLOSURE OF DAMAGE ON MOTOR VEHICLES. DAMAGE INFORMATION IS AVAILABLE UPON WRITTEN REQUEST SENT TO THE DEPARTMENT OF REVENUE; DIVISION OF MOTOR VEHICLES; 445 EAST CAPITOL AVENUE; PIERRE, SD 57501-3100.

Ang R. Viper

SECRETARY,
DEPARTMENT OF REVENUE

MVSUNEM
020912 111313

CONTROL NO. 8170480

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:
Gene Robert McNab and Judy Kay McNab,
Debtor(s).

Case No.04-34626-GFK
Chapter 7

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

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

FACTS

Arcadia Financial Ltd. holds a perfected interest in a 1999 Chrysler Sebring with a vehicle identification number 3C3EL55H8XT589308 (the "Vehicle"). Payments due under the terms of the Contract for the months of June and July 2004 totaling \$428.97 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$12,930.70 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$9,025.00.

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 Arcadia Financial Ltd. 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 Arcadia Financial Ltd. 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 \$12,930.70 as of the date hereof. The fair market value of the Vehicle is approximately \$9,025.00. 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, Arcadia Financial Ltd. 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 20, 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:

Gene Robert McNab and Judy Kay McNab

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34626-GFK

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))
Eugene D. Mailander
PO Box 256
Slayton, Minnesota 56172-0256

(Trustee)
Paul W. Bucher
PO Box 549
Rochester, MN 55903-0549

(Debtor(s))
Gene Robert McNab
PO Box 631
Worthington, MN 56187

Judy Kay McNab
PO Box 631
Worthington, MN 56187

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

Date: August 20, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-34626-GFK
Chapter 7

Gene Robert McNab and Judy Kay McNab,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Monday, September 13, 2004 on the motion of Arcadia Financial Ltd. 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 Arcadia Financial Ltd. 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 Arcadia Financial Ltd., and Arcadia Financial Ltd. is authorized to foreclose its interest in the subject 1999 Chrysler Sebring, vehicle identification number 3C3EL55H8XT589308 in accordance with Minnesota law. Notwithstanding Fed R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge