

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34700-DDO  
Chapter 13

Aaron Parker and Rosalyn Conersa Foster-Parker,

Debtor(s).

***OBJECTION TO CONFIRMATION***

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

1. TranSouth Financial Corp., 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. 3020(b) and TranSouth Financial Corp. 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, October 14, 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 August 11, 2004 and the case is now pending in this Court.

5. TranSouth Financial Corp. holds a valid, perfected interest in a 2004 Mitsubishi Outlander, vehicle identification number JA4LX31F54U001716 (the "Vehicle"). The value of the Vehicle is \$18,430.00.

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

7. The balance due to TranSouth Financial Corp. as of the petition date totals \$17,224.35 together with interest accruing at the contract rate of 13.95%. The fair market value of the Vehicle is \$18,430.00. Accordingly, the claim of TranSouth Financial Corp. should be treated as secured to the extent of **\$17,524.35** (\$17,224.35 plus \$300 attorneys fees and costs for objection). The interest rate should be at least 7.5%.

8. The Plan, however, provides for (i) TranSouth Financial Corp.'s secured claim of \$15,000 with interest accruing at 6%; (ii) total payment on TranSouth Financial Corp.'s secured claim of \$16,502.00.

9. Using the contract rate of interest, the Plan fails to satisfy TranSouth Financial Corp.'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 TranSouth Financial Corp. with adequate protection of its interest in the vehicle.

12. Movant gives notice that it may, if necessary, call W. Brink or another representative of TranSouth Financial Corp. to testify at the hearing.

13. Movant has incurred \$300 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, TranSouth Financial Corp. 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: September 10, 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 13

ROSALYN PARKER,

Bky. No. 04-34700

Debtor(s).

**Affidavit of Walter K. Brink**

I, Walter K. Brink, of TranSouth Financial Corp., declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. TranSouth Financial Corp. has a security interest in the following (the "Collateral"):  
2004 MISTUBISHI OUTLANDER VIN JA4LX31F54U001716.
2. \$17,224.35 is the outstanding balance under the contract as of September 8, 2004.
3. \$816.20 is the amount of the existing delinquency under the contract.
4. \$18,430.00 is the fair market value of the Collateral.
5. Yes Appropriate insurance has been verified.
6. No is the payment default under the Chapter 13 Plan.

Further your affiant sayeth not.

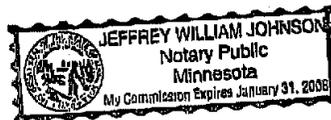
Dated: 9/8/2004

Walter K. Brink

Walter K. Brink  
Bankruptcy Specialist  
TranSouth Financial Corp.

Subscribed and sworn to before me on  
September 8, 2004

Jeffrey William Johnson  
Notary



2244495401-23

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b>		<b>Seller</b> FOREST LAKE HITSUBISHI 322 19TH STREET SOUTH WEST FOREST LAKE MN 55025 "We" and "us" mean the Seller above, its successors and assigns.	<b>Buyer</b> AARON PARKER ROSALYN COMERESA PARKER 8946 N HWY DR LEXINGTON MN 55014 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.
No.	Date MARCH 10th, 2004		
Description of Motor Vehicle Purchased	Year 2004 Make HITSUBISHI Model OUTLANDER	VIN JA4LK31F64U001716 Uc. No./Year X1 New <input type="checkbox"/> Used	Other:

**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 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 \$ 16863.70 plus finance charges accruing on the unpaid balance at the rate of 13.95 % 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 of 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. 13.95 %	The dollar amount the credit will cost you. \$ 8267.90	The amount of credit provided to you or on your behalf. \$ 16863.70	The amount you will have paid when you have made all scheduled payments. \$ 25131.60	The total cost of your purchase on credit, including your down payment of \$ 3000.00 \$ 28131.60

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	349.05	MONTHLY, BEGINNING: APRIL 24th, 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 the greater of \$6.24 or 5% of amount.  This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.02.

**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	<input type="checkbox"/> Single <input type="checkbox"/> Joint Prem. \$	N/A	Term	N/A
Credit Disability: Insured	<input type="checkbox"/> Single <input type="checkbox"/> Joint Prem. \$	N/A	Term	N/A

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ 1132.95)	\$ 19562.95
Service Contract, Paid to:	N/A
Cash Price	\$ 19562.95
Manufacturer's Rebate	\$ 1000.00
Cash Down Payment	\$ 2000.00
Deferred Down Payment	\$ N/A
a. Total Cash/Rebate Down	\$ 3000.00
b. Trade-In Allowance	\$ N/A
c. Less: Amount Owning	\$ N/A
Paid to:	
d. Net Trade-In (b. minus c.)	\$ N/A
e. Net Cash/Trade-In (b. plus d.)	\$ 3000.00
Down Payment (e., disclose as \$0 if negative)	\$ 16562.95
Unpaid Balance of Cash Price	\$ 250.75
Paid to Public Officials - Filing Fees	\$ N/A
Insurance Premiums*	\$ N/A
Amount to Finance Line s. (if s. is negative)	\$ N/A
To:	
To: FOREST LAKE HITSUBISHI	\$ 50.00
To:	\$ N/A
To:	\$ N/A
Total Other Charges/Amounts Pd. to Others	\$ 300.75
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 16863.70

Your signature below means you have read and agree to the insurance coverages quoted above. If you do not agree, you have declined any coverages we offer.

Buyer: *Aaron Parker* Date: 03/10/2004

**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 of coverage.

This premium is calculated as follows:

\$ N/A Deductible, Collision Coverage	\$ N/A
\$ N/A Deductible, Comprehensive Cov.	\$ 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 N/A.

This Service Contract will be in effect for N/A.

**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 TRANSOUTH.

The Assignee, phone \_\_\_\_\_ This assignment is made  under the terms of a separate agreement.  under the terms of the ASSIGNMENT BY REBATE above. This assignment is made with recourse.

Seller By: *[Signature]* Date: 03/10/2004

Buyer: *[Signature]* Date: 03/10/2004

Signature: AARON PARKER Date: \_\_\_\_\_

Signature: ROSALYN COMERESA PARKER Date: 03/10/2004

Seller By: *[Signature]* Date: \_\_\_\_\_

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

Post Class  
U.S. Postage  
PAID  
Form No. 171  
St. Paul, MN

PARKER AARON  
PARKER ROSALYN CONERESA  
8946 N HWY DR  
LEXINGTON MN 55014

MNN401

Year	04	MI	4MOUT	K15306166
MI	JA4LX31F54U001716		03/10/04	NO

1ST SECURED PARTY  
LIEN HOLDER

RE  
side



CTRL#: 487 AA305540  
NAME : A PARKER  
LOAN#: 2244 4954

TRANSOUTH  
PO BX 3449  
COPELL TX 75019-9449



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-34700-DDO

Chapter 13

Aaron Parker and Rosalyn Conersa Foster-Parker,

Debtor(s).

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

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TranSouth Financial Corp. submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

FACTS

TranSouth Financial Corp. holds a valid, perfected interest in a 2004 Mitsubishi Outlander, vehicle identification number JA4LX31F54U001716 (the "Vehicle").

The balance due to TranSouth Financial Corp. as of the petition date totals \$17,224.35 together with interest accruing at the contract rate of 13.95%. The fair market value of the Vehicle is \$18,430.00. Accordingly, the claim of TranSouth Financial Corp. should be treated as secured to the extent of \$17,524.35 (\$17,224.35 plus \$300 attorneys fees and costs for objection).

The Plan, however, provides for (i) TranSouth Financial Corp.'s secured claim of \$15,000 with interest accruing at 6%; (ii) total payment on TranSouth Financial Corp.'s secured claim of \$16,502.00.

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 TranSouth Financial Corp.'s secured claim plus

interest at the contract rate. The contract rate should be at least 7.5%. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, TranSouth Financial Corp. respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: September 10, 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:

Aaron Parker and Rosalyn Conersa Foster-Parker

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-34700-DDO

Bradley J. Halberstadt, agent of Stewart, Zlimen & Jungers, attorney(s) licensed to practice law in this court, with office address of 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 **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:

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United States Trustee	(Attorney for Debtor(s))	(Trustee)
Suite 1015	Curtis K. Walker	Jasmine Keller
300 South 4th Street	4356 Nicollet Ave. S.	12 S 6th Street Suite 310
Minneapolis, MN 55415	Minneapolis, MN 55409	Minneapolis, MN 55402

(Debtor(s))  
Aaron Parker  
PO Box 22033  
Robbinsdale, MN 55422

Rosalyn Conersa Foster-Parker  
PO Box 22033  
Robbinsdale, MN 55422

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

Dated: September 10, 2004                      Signed: /e/ Bradley J. Halberstadt

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-34700-DDO  
Chapter 13

Aaron Parker and Rosalyn Conersa Foster-Parker,  
Debtor(s).

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**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