

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13

Case No. 04-34886 DDO

Keith L. Peterson,

Debtor.

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY

1. TopLine Federal Credit Union ("Movant"), a secured creditor of the Debtor herein, by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 9:30 o'clock a.m., on September 27, 2004, before the Honorable Dennis D. O'Brien, in 228-A United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than September 20, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than September 17, 2004, which is ten days before the date set for the hearing (including 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 is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-2 and 4001-1 and Movant requests relief from the automatic stay imposed by the United States Bankruptcy Code with respect to certain personal property subject to Movant's valid security interest.

5. This case was filed as a voluntary case under Chapter 13 of the United States Bankruptcy Code, 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), Local Rule 1070-1, Fed. R. Bankr. P. 5005 and applicable rules. This is a core proceeding.

6. Movant holds a valid, perfected security interest in a 2002 Kia Spectra, VIN No. KNAFB121625154649 (the "Vehicle").

7. Copies of Movant's Installment Sale Contract (the "Contract") and Confirmation of Lien Perfection, respectively evidencing creation and perfection of Movant's security interest, are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The Contract was entered into on May 29, 2004 and required monthly payments of \$148.24 per month on the 13th day of each month commencing on July 13, 2004. Debtor made no payments to Movant pursuant to the Contract and is in default for the payments due for July and August 2004 as of the date of this motion.

9. The terms of the Chapter 13 Plan requires payments to the Chapter 13 Trustee for distribution through the Plan. The Chapter 13 Plan provides no payments to Movant until the sixth month of the Plan. The Chapter 13 Plan does not provide adequate protection because the proposed Plan payments will not compensate Movant for interest and depreciation in the early months of the Plan.

10. The balance due under the Contract is \$7,610.54 as of the date hereof. Debtor values the Vehicle at \$7,500 in his bankruptcy schedules. There is no equity in the Vehicle.

11. Movant's security is depreciating in that Vehicle is being utilized, subjecting the same to wear, without payments until the sixth month of the Plan.

12. Movant does not have, and has not been offered, adequate protection of its interest in the Vehicle under the Chapter 13 Plan. Further, the failure to make any of the payments required by the Contract pre-petition constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the automatic stay.

13. If testimony is necessary as to any facts relevant to this motion, Kirstin Bethke or Denise Karngbaye of Movant, 9353 Jefferson Highway, Maple Grove, MN, 55369, will testify on behalf of Movant.

WHEREFORE, Movant, respectfully moves the Court for an order modifying the automatic stay imposed by the United States Bankruptcy Code and authorizing Movant to foreclose its security interest in the Vehicle, waiving Fed. R. Bankr. 4001(a)(3) to make the order effective immediately and for such other relief as may be just and equitable.

Date: August 27, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen
Thomas J. Lallier (#163041)
Ruth E. Honkanen (#175924)
Attorneys for Movant
250 Marquette Avenue, Suite 1200
Minneapolis, MN 55401
(612) 338-8788

UNITED STATES BANKRUPTCY COURT
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MEMORANDUM IN SUPPORT
OF MOTION

TopLine Federal Credit Union ("Movant") submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a 2002 Kia Spectra, VIN No. KNAFB121625154649. Debtor signed the Contract on May 29, 2004. The Contract required payments to be made on the 13th of each month commencing with July 13, 2004. Debtor did not make any payments due pursuant to the Contract before filing bankruptcy. The vehicle subject to Movant's security interest is depreciating with use. The Chapter 13 Plan does not adequately protect Movant because it provides for no payments to Movant until the sixth month of the Plan.

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). Here, the payments have not been made as required by the Contract, and the proposed Plan provides for no payments to Movant until the sixth month of the Plan.

Movant does not have, and has not been offered, adequate protection of its interest in the vehicle. The Plan fails to provide Movant with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Movant to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, Movant is entitled to an order terminating the automatic stay and authorizing it to take possession of and foreclose its security interest in the Vehicle.

Dated: August 27, 2004.

Respectfully submitted,

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen
Thomas J. Lallier (#163041)
Ruth E. Honkanen (#175924)
Attorneys for Movant
250 Marquette Avenue, Suite 1200
Minneapolis, MN 55401
(612) 338-8788

UNITED STATES BANKRUPTCY COURT
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VERIFICATION

I, Kirstin Bethke, for TopLine Federal Credit Union, f/k/a Firstel Federal Credit Union,
declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge,
information and belief.

Executed on: 8.26.04

Signed: Kirstin Bethke
Kirstin Bethke

STK# 1009A

1,003.72

950212 4156

VEHICLE FINANCING CONTRACT
 SELLER: GUYER MITSUBISHI KIA, 1470 WEST TOWNE SQUARE, LITTLE ROCK, ARIZONA, MN 55077
 BUYER: KRISTI L. PATTERSON, 939 GREENPRIER ST, SAUCO PAUL, MN 55108
 Date: 08/29/04
 VIN: KNU93121625154647
 Model: 2004 KIA
 Year: 2004

WARRANTY: We warrant that the Seller above, as your and your family and yours, are each Buyer above, and your, jointly and individually, shall be held liable for the purchase of the vehicle and services described below. Your purchase is subject to the terms and conditions of this contract and to the terms and conditions of the vehicle's warranty. The vehicle is sold in its present condition, together with the usual accessories and license fee.

DEPOSIT: You agree to pay, or to have paid, to the Seller above, a cash, rebate and not trade-in value described in the EMPLOYER'S OR FINANCIAL INSTITUTION'S statement of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

APRORATE PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE
5.99%	\$ 515.00	\$ 746.43	\$ 1000.40	\$ 939.40

SECURITY: You are granting a security interest in the Motor Vehicle purchased to the Seller above. If you are not a resident of this State, you will be charged a monthly fee of \$15.00. The amount may increase to always be the highest amount allowed by law not to exceed \$47.50.

DEFERRED PAYMENT: If you are not a resident of this State, you will not have to pay a penalty if you pay all the amounts due, you will not be entitled to a refund of part of the loan administration fee.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ 454.68)	\$ 749.00
Service Contract, Paid to	N/A
Cash Price	\$ 749.68
Manufacturer's Rebate	N/A
Cash Down Payment	\$ 500.00
Deferred Down Payment	N/A
Total Cash/Trade Down	\$ 500.00
Trade-In Allowance	N/A
Amount owing	N/A
Not Trade-In (b minus c)	N/A
Not Cash/Trade-In (a, plus d)	\$ 500.00
Down Payment (e, or d, or a, or b, if negative)	\$ 500.00
Unpaid Balance of Cash Price	\$ 699.60
Paid to Public Officials: Filing Fees	\$ 23.75
Finance Premiums*	\$ N/A
Amount in Finance Line (if o, b, negative)	\$ N/A
Total	\$ 80.00
Total Other Charges/Amounts Pd. to Others	\$ 445.00
Total	\$ 518.75
Less: Prepaid Finance Charges	\$ N/A
Amount Financed	\$ 746.43

COPIES OF A FINANCIAL STATEMENT: If you are not a resident of this State, you will be charged a monthly fee of \$15.00. The amount may increase to always be the highest amount allowed by law not to exceed \$47.50.

DEFERRED PAYMENT: If you are not a resident of this State, you will not have to pay a penalty if you pay all the amounts due, you will not be entitled to a refund of part of the loan administration fee.

NOTICE TO BUYER

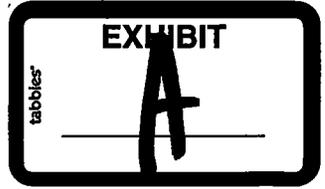
(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance 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.

ACCEPTANCE: I, the undersigned, hereby accept the terms and conditions of this contract and agree to be bound by its terms. I understand that this contract is a legal document and that I am signing it voluntarily. I have read the terms and conditions of this contract and I understand them. I have signed this contract and I agree to its terms.

Date: 08/29/04

Buyer: KRISTI L. PATTERSON
 Date: 08/29/04
 Signature: [Signature]
 Date: 08/29/04
 Signature: [Signature]



535626 LIB

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

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

PETERSON KEITH LYLE
939 GREENBRIER ST
ST PAUL MN 55106

KGJ395

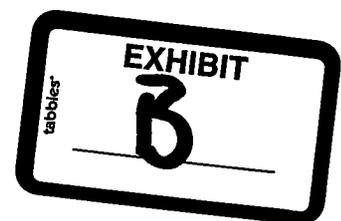
02 Year	KIA Make	4DSTL Model	J2290S652 Title NR.
KNAFB121625154669 VIN		05/29/04 Security Date	NO Rebuilt

1ST SECURED PARTY
LIEN HOLDER

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

TOPLINE FEDERAL CREDIT UNION
9353 JEFFERSON WAY
MAPLE GROVE MN 55369-4240

12 [Barcode]



Unsworn Affidavit of Service

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Jacquelyn J. LaVaque, declare under penalty of perjury that on August 30, 2004, I mailed copies of the attached **Notice of Hearing and Motion for Relief From Stay, Memorandum of Law in Support of Motion, and proposed Order** by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

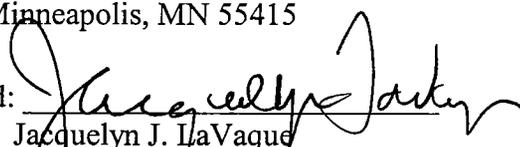
Keith L. Peterson
939 Greenbriar Street
St. Paul, MN 55106

Ian Traquair Ball, Esq.
12 S. 6th Street, Suite 326
Minneapolis, MN 55402

Jasmine Z. Keller
Chapter 13 Trustee
12 South Sixth St. #310
Minneapolis, MN 55402

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

Executed on: August 30, 2004

Signed: 

Jacquelyn J. LaVaque
Foley & Mansfield, P.L.L.P.
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

UNITED STATES BANKRUPTCY COURT
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ORDER FOR RELIEF
FROM STAY

The above-entitled matter came before the Court for hearing on the motion of TopLine Federal Credit Union ("Movant") seeking relief from the automatic stay imposed by the United States Bankruptcy Code. Appearances were noted in the Court's record. The Standing Chapter 13 Trustee submitted a report and recommendation in response to the motion. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. § 362(a) of the Bankruptcy Code is immediately terminated as to Movant, and Movant is authorized to take possession of and foreclose its security interest in the subject:

2002 Kia Spectra, VIN No. KNAFB121625154649

Notwithstanding Fed. R. Bankr. 4001(a)(3), this order is effective immediately.

Dated: _____

Dennis D. O'Brien
United States Bankruptcy Judge