

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35150-GFK
Chapter 7

Richard A. Sly and Teresa A. Sly,

Debtor(s).

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

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

1. TranSouth Financial Corp., 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 Tuesday, October 19, 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 Thursday, October 14, 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 Friday, October 8, 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. TranSouth Financial Corp. 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 September 2, 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. TranSouth Financial Corp. holds a valid, perfected interest in a 2000 Ford Windstar, vehicle identification number 2FMZA5145YBA72059 (the "Vehicle").

7. 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.

8. Payments due under the terms of the Contract for the months of June through September 2004 totaling \$1,090.05 plus late charges, have not been made by the Debtor(s).

9. The balance due under the Contract is \$9,452.69 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,300.00.

10. TranSouth Financial Corp.'s interest is depreciating, while Debtor(s) are failing to make payments. TranSouth Financial Corp. 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 TranSouth Financial Corp. 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 TranSouth Financial Corp. to relief from the stay.

12. TranSouth Financial Corp. 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, M. Rudenko, or some other representative of Movant, will testify on behalf of TranSouth Financial Corp..

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, TranSouth Financial Corp. 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, TranSouth Financial Corp. respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit TranSouth Financial Corp. 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: September 28, 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
ST. PAUL DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

RICHARD SLY,

Bky. No. 04-35150

Debtor(s).

Affidavit

I, Mariam Rudenko, 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"):
2000 FORD WINDSTAR VIN 2FMZA5145YBA72059.
2. \$9,452.69 is the outstanding balance under the contract.
3. \$1,090.05 is the amount of the existing delinquency under the contract.
4. \$8,300.00 is the fair market value of the Collateral.
5. No appropriate insurance has been verified.

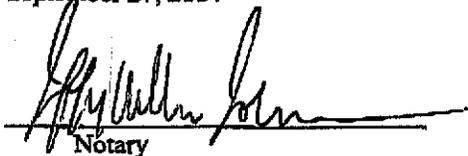
Further your affiant sayeth not.

Dated: 9/27/2004

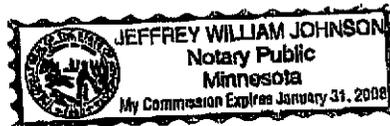


Mariam Rudenko
Bankruptcy Specialist
TranSouth Financial Corp.

Subscribed and sworn to before me on
September 27, 2004



Notary



1083870701

| | | |
|--|--|--|
| RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date <u>March 25, 02</u> | Seller NEADER MOTORS, INC. 270-A STUFF AVENUE LACROSSE WI 54601 | Buyer RICHARD A. ELY #7223 LIZZIE CT MILWAUKEE WI 53235 |
| | "We" and "us" mean the Seller above, its successors and assigns. "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 Motor Vehicle Purchased | Year 2000 | Make FORD | Model WINDSTAR | VIN 2FMBA5145YBA72059 | Other: _____ |
| | | | | <input type="checkbox"/> New <input checked="" type="checkbox"/> Used <input type="checkbox"/> Leased | |

Description of Trade-In

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 \$ 13786.73, plus finance charges accruing on the unpaid balance at the rate of 19.7500 % 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. Withhold 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. | 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 |
| <u>19.7500%</u> | <u>\$804.27</u> | <u>\$ 13786.73</u> | <u>\$ 21801.00</u> | <u>\$ 1500.00</u> |
| | | | | <u>\$ 23301.00</u> |

Payment Schedule: Your payment schedule will be

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|---|
| <u>60</u> | <u>363.35</u> | <u>day 24 of each month, begin 04/24/2002</u> |

Security: You are giving a security interest in the Motor Vehicle purchased.
 Late Charges: If a payment is more than 10 days late, you will be charged 5% of the payment or 15.00 whichever is greater. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.59.

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 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 Richard A. Ely Buyer Richard A. Ely

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably accessible 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

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 Platinum Package

This Service Contract will be in effect for 3 yrs or 36000 miles

ITEMIZATION OF AMOUNT FINANCED

| | |
|--|---------------------|
| Vehicle Price (incl. sales tax of \$ <u>714.73</u>) | \$ <u>13790.73</u> |
| Service Contract, Paid to: <u>Western Auto</u> | \$ <u>129.00</u> |
| Cash Price | \$ <u>14987.73</u> |
| Manufacturer's Rebate | \$ _____ |
| Cash Down Payment | \$ <u>1300.00</u> |
| Deferred Down Payment | \$ _____ |
| a. Total Cash/Rebate Down | \$ <u>1300.00</u> |
| b. Trade-In Allowance | \$ <u>0.00</u> |
| c. Less: Amount owing | \$ <u>0.00</u> |
| Paid to: | |
| d. Net Trade-In (b. minus c.) | \$ <u>0.00</u> |
| e. Net Cash/Trade-In (a. plus d.) | \$ <u>1300.00</u> |
| Down Payment (e.; disclose as \$0 if negative) | \$ <u>1300.00</u> |
| Unpaid Balance of Cash Price | \$ <u>13,687.73</u> |
| Paid to Public Officials - Filing Fees | \$ _____ |
| Insurance Premiums | \$ _____ |
| Amount to Finance line, e. (f. to g. plus h.) | \$ _____ |
| To: <u>Neader Motors Doc Fee</u> | \$ <u>25.00</u> |
| To: _____ | \$ _____ |
| To: _____ | \$ _____ |
| To: _____ | \$ _____ |
| Total Other Charges/Amounts Pd. to Others | \$ <u>99.00</u> |
| Less: Prepaid Finance Charges | \$ _____ |
| Amount Financed | \$ <u>13,786.73</u> |

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A 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 953-881-1500 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 Jerry Dade Date 3/25/02

Buyer: Richard A. Ely 3/25/02
 Signature _____ Date _____
 Signature _____ Date _____
 Seller: By Jerry Dade
 Signature _____ Date _____

CONFIRMATION OF SECURITY INTEREST (LIEN) PERFECTIC
DEBTOR NAME AND ADDRESS This lien has been recorded with the Wifor

1083 2707
SLY RICHARD
Transouth Branch 315

190

1082

SLY RICHARD A
N7223 LEIBL CT
HOLMEN WI 54636

| Year | Make | Body Style | Vehicle Identification Number | County of Debtor Residence | Security Party No | Date of Issue |
|------|------|------------|-------------------------------|-------------------------------|-------------------|---------------|
| 2000 | FORD | | 2FMZA5145YBA72059 | LA CROSSE | 044871 | 05/04/02 |

REQUIRED PARTY NAME AND ADDRESS

TRANSOUTH
14001 GRAND AVE
BURNSVILLE MN 55337-5701
|||||

Lending Agency: Retain this document until the lien has been satisfied. See reverse side of this form for removing this lien.
This lien releases only if signed on reverse side.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-35150-GFK
Chapter 7

Richard A. Sly and Teresa A. Sly,

Debtor(s).

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

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

FACTS

TranSouth Financial Corp. holds a perfected interest in a 2000 Ford Windstar with a vehicle identification number 2FMZA5145YBA72059 (the "Vehicle"). Payments due under the terms of the Contract for the months of June through September 2004 totaling \$1,090.05 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$9,452.69 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,300.00.

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 TranSouth Financial Corp. 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 TranSouth Financial Corp. 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 \$9,452.69 as of the date hereof. The fair market value of the Vehicle is approximately \$8,300.00. 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, TranSouth Financial Corp. 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: September 28, 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

In re:

Richard A. Sly and Teresa A. Sly

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-35150-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))
Stephen J. Behm
Eskens Gibson & Behm Law
Firm
P.O. Box 1056
Mankato, MN 56002-1056

(Trustee)
Charles W. Ries
Maschka, Riedy & Ries, PLLP
P.O. Box 7
Mankato, MN 56002-0007

(Debtor(s))
Richard A. Sly
219 3rd St. SE
Madelia, MN 56062

Teresa A. Sly
219 3rd St. SE
Madelia, MN 56062

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

Date: September 28, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35150-GFK
Chapter 7

Richard A. Sly and Teresa A. Sly,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Tuesday, October 19, 2004 on the motion of TranSouth Financial Corp. 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 TranSouth Financial Corp. 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 TranSouth Financial Corp., and TranSouth Financial Corp. is authorized to foreclose its interest in the subject 2000 Ford Windstar, vehicle identification number 2FMZA5145YBA72059 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