

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Joseph M. Bradsteen,

Debtor(s).

Case No. 04-35181-GFK
Chapter 13

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

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, 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, October 25, 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, October 20, 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, October 14, 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 13 case was filed on September 3, 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 1995 Ford Explorer, vehicle identification number 1FMDU34X9SUA93185 (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. The Chapter 13 Plan proposes to surrender the Vehicle to TranSouth Financial Corp. On information and belief, a delinquency under the Contract exists for the months of July through October 2004 totaling at least \$1,465.31.

9. The balance due under the Contract is \$4,463.04 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,225.00.

10. The failure of the Debtor(s) to 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.

11. TranSouth Financial Corp. requests that any order modifying the automatic stay be effective immediately as allowed under Federal Bankruptcy Rule 4001(a)(3).

12. If testimony is necessary as to any facts relevant to this motion, B. Noah, or some other representative of Movant, will testify on behalf of TranSouth Financial Corp.

13. 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.

14. 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: October 7, 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 13

JOSEPH BRADSTEEN,

Bky. No. 04-35181

Debtor(s),

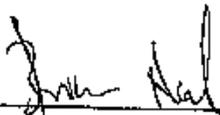
Affidavit of Brian Noah

I, Brian Noah, 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"):
1995 FORD EXPLORE VIN 1FMDU34X9SUA93185.
2. \$4,463.04 is the outstanding balance under the contract as of October 5, 2004.
3. \$1,465.31 is the amount of the existing delinquency under the contract.
4. \$4,225.00 is the fair market value of the Collateral.
5. No Appropriate insurance has been verified.
6. n/a is the payment default under the Chapter 13 Plan.

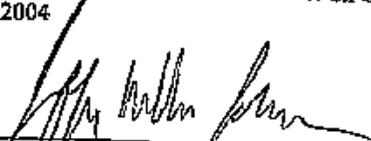
Further your affiant sayeth not.

Dated: 10/5/2004



 Brian Noah
 Bankruptcy Specialist
 TranSouth Financial Corp.

Subscribed and sworn to before me on October 5, 2004



 Notary



RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT

Seller: **ROBERT STREET AUTO SALES**
 745 S. ROBERT STREET
 ST. PAUL, MN 55107

Buyer: **BRADSTEEN JOSEPH M**

Date: **07/19/2001**

SALE: You agree to purchase the Motor Vehicle, 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 equipment.

Description of Motor Vehicle Purchased: Year **1995**, Make **FORD**, Model **EXPLORER**, VIN **1F80D4955M3105**, Lic. M/V Reg. **DFE 32A**

Other: New, Used

SECURITY: To ensure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, equipment, accessories, and equipment placed in or on the Vehicle, together with proceeds, and proceeds of the Vehicle. You also agree to us and give us a security interest in proceeds and premium amounts of any insurance and certain contracts purchased with this Vehicle.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay in the principal amount of \$ **1000.00**, plus finance charge according to the unpaid balance at the rate of **23.25** % per year from today's date until paid in full. Finance charges accrue on the **TRUTH IN LENDING DISCLOSURE**. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the **TRUTH IN LENDING DISCLOSURE**. 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 the principal amount.

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 **TRUTH IN LENDING DISCLOSURE**. You agree to make delayed 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
23.25 %	\$ 5243.06	\$ 1000.00	\$ 1700.54	\$ 1700.54

Payment Schedule: Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
42	362.87	MONTHLY BEGINNING 09/02/2001

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 **\$10.00** per month.

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 payment dates, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability, accident and health, and any other insurance coverage provided 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.

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ **11600.00**)

Service Contract, Plan No. **640-00** \$ **0.00**

Amount in Finance Plan **1000.00**

Cash Price **11600.00**

Manufacturer's Rebate \$ **0.00**

Cash Down Payment \$ **2000.00**

Delayed Down Payment \$ **0.00**

Total Cash/Financed Down \$ **1000.00**

Trade-in Allowance \$ **0.00**

Unpaid Amount owing \$ **0.00**

PROPERTY INSURANCE: You must provide the Property insurance for this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The coverage provided may not exceed \$ **1000.00**. If you get insurance from or through us you will pay \$ **0.00** for **0.00** of coverage.

This premium is calculated as follows:

- \$ **0.00** - Collision, Cracking Coverage \$ **0.00**
- \$ **0.00** - Deductible, Comprehensive Cov. \$ **0.00**
- \$ **0.00** - First Year Combined Additional Coverage \$ **0.00**

LIABILITY INSURANCE: 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:

SEVERE WEATHER BREAKDOWNS

ASSIGNMENT: This Contract and Security Agreement is assigned to **TRANSOUTH FINANCIAL**.

The Assignor, phone **651-231-1111**, 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: **Michael Kelly** Date: **07/19/01**

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.

Buyer: **Joseph M. Bradsteen** Date: **07/19/2001**

Signature: **Michael Kelly** Date: **07/19/01**

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 645 MINNESOTA ST. ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DILUTION NAK

0 7 1 9 0 1 3 0 1
 145 - BRADSTEEN JOSEPH M

BRADSTEEN JOSEPH MILTON
 804 1ST AVE S
 SO ST PAUL MN 55075

21-1904,141

99	FORD	4NEPR	K2670N405
Year	Make	Model	Title No
IFNDU34X9SHA93105	07/19/03	NO	
VIN	Security Date	Rebate	

DYF320
 1ST SECURED PARTY
 LIEN HOLD

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

TRANSOUTH FINANCIAL CORP
 6200 AURORA AVE STE#406
 DES MOINES IA 50322-2000

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|||||

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No.04-35181-GFK

Chapter 13

Joseph M. Bradsteen,

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 1995 Ford Explorer with a vehicle identification number 1FMDU34X9SUA93185 (the "Vehicle"). The Chapter 13 Plan proposes to surrender the Vehicle to TranSouth Financial Corp. Payments due under the terms of the Contract totaling \$1,465.31 have not been made by the Debtor(s). The balance due under the Contract is \$4,463.04 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$4,225.00.

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. § 362(d)(1). Here, the payments have not been made by the Debtor(s) under the Contract and the Chapter 13 Plan proposes to surrender the Vehicle to TranSouth Financial Corp.

TranSouth Financial Corp. does not have, and has not been offered, adequate protection of its interest in the Vehicle. The Plan of the Debtor(s) fails to provide TranSouth Financial Corp. with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of

Section 362(d)(1), entitling TranSouth Financial Corp. 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, 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.

Respectfully Submitted,

Dated: October 7, 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:

Joseph M. Bradsteen

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-35181-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))
Jeffrey Michael Bruzek
Prescott & Pearson
443 Old Hwy 8, Ste. 208
New Brighton, MN 55112

(Trustee)
Jasmine Keller
12 S 6th Street Suite 310
Minneapolis, MN 55402

(Debtor(s))
Joseph M. Bradsteen
1104 E. 5th St.
St. Paul, MN 55106

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

Dated: October 7, 2004

Signed: /e/ Bradley J. Halberstadt

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 04-35181-GFK
Chapter 13

Joseph M. Bradsteen,

Debtor(s).

**ORDER GRANTING
MOTION FOR RELIEF FROM STAY**

The above-entitled matter came before the Court for hearing on Monday, October 25, 2004 at 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 1995 Ford Explorer, vehicle identification number 1FMDU34X9SUA93185 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