

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 04-35308 DDO
Chapter 7

In Re:

Marichannon A Baker,

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor Marichannon A Baker; United States Trustee; and all other entities specified in
Local Rule 1204 (a):

1. AmeriCredit Financial Services, Inc., (“AmeriCredit”), a secured creditor in this Chapter 7 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The court will hold a hearing on this motion on **November 3, 2004, at 9:30 a.m.**, before the Honorable Dennis D. O'Brien, United States Bankruptcy Judge, in Courtroom No. 228a, 200 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on September 10, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. AmeriCredit requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtor as defined below.

6. On February 25, 2002, the debtor, Marichannon A Baker, executed a promissory note and security agreement in favor of AmeriCredit, in the original principal amount of \$17,262.01, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 2000 Ford Explorer, VIN # 1FMDU84P6YUB52716. Proof of perfection of the security interest of AmeriCredit is attached hereto as **Exhibit "B"**.

7. The promissory note is in default for failure to make payments when due since July 20, 2004, a delinquency in the approximate amount of \$1,692.80. As of September 10, 2004, the amount due was a payoff balance of \$24,445.92. On information and belief, the value of the vehicle is \$12,862.50 and the debtor has no equity in the vehicle.

8. The loan is in default for failure to make payments when due. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.

9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. AmeriCredit believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

a. AmeriCredit has not been offered and is not being provided with adequate protection for its interest in the vehicle;

b. The vehicle subject to the security interest of AmeriCredit continues to depreciate and decline in value; and

c. AmeriCredit has been unable to verify current proof of insurance on the vehicle; and

d. The debtor has stopped making payments to AmeriCredit.

10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtor has no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 7 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by Rosetta Cooks, or some other representative of the Movant, AmeriCredit Financial Services, Inc..

WHEREFORE, AmeriCredit requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest

described above, and for such other and further relief as the court deems just and equitable under the circumstances.

Dated: October 13, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn, #0324140
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105
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4725 SOUTH ROBERT TRAIL
INNER GROVE HEIGHTS, MN 55077
PHONE (651) 451-2201
www.saxonautogroup.com

JEFFERY P KAMIN

4905P

02/25/2002

Salesperson: ANN

Stock #: WHITFIELD-BAKER Date: JOYCE
Buyer Name: (Last) BAKER (First) MARICHANNON (Middle) ALETHA
Co-Buyer Name: RIVERWOOD LN BURNSVILLE MN DAKOTA 19 55937
Address: (962)707-8886 (962)983-6228 State: 04/13/56 County: 11/07/76
Home Phone: 314-447-067-288 Bus. Phone: Buyer DOB: 8-200-880-044-831 Co-Buyer DOB:
Buyer O.L.#: STATE FARM Policy #: Co-Buyer O.L.#: C14 7815-008-23F

PLEASE ENTER MY ORDER FOR: New Used Demo Lienholder
YEAR 2000 MAKE FORD TRUCK MODEL EXPLORER BODY EXPLORER E/B TRANSMISSION 5S WHITE INTERIOR
VIN 1FMDU84P6YU852716 LICENSE NO. MSO TAX EXP. DATE STATE MILEAGE 10161 DELAYED OR CRASH OUT 23762.01
CUSTOMER WAIVES EXTENDED WARRANTY COVERAGE
CASH PRICE OF VEHICLE FREIGHT DEALER INSTALLED OPTIONS
TRADE-IN DATA
YEAR 1995 MAKE FORD TRUCK MODEL EXPLORER BODY EB 4X4
VIN 1FMDU84X85U80794
LICENOR NAME BANK OF AMERICA ADDRESS PO BOX 44041 JACKSONVILLE FL 33231
LICENSE PLATE 328HON LICENSE STATE MSO DATE 110330 TRANSMISSION
DOES YOUR TRADE-IN HAVE A BRAND OR TITLE OR INSURANCE SALVAGE HISTORY? YES NO
POLLUTION CONTROL SYSTEM DISCLOSURE (TRADE-IN VEHICLE)
TOTAL 23762.01
LESS TRADE-IN ALLOWANCE FOR USED VEHICLE 6500.00
TRADE DIFFERENCE 17262.01
LICENSE PLATE 120.50 STATE & LOCAL TAXES 1122.03
TITLE & TRANSFER FEES N/A FEDERAL LUXURY TAX N/A
LIEN RECORDING FEE N/A DOCUMENT ADMINISTRATIVE FEE 25.00
TOTAL 120.50
TOTAL LICENSE & FEES CASH SUBMITTED WITH ORDER 1348.26 SUBTOTAL 18529.54
LESS BALANCE OWING TO LIENHOLDER ON TRADE-IN 9118.72 9118.72
TOTAL DOWN PAYMENT 1348.26
TOTAL AMOUNT DUE ON DELIVERY 26500.00

The front and back of this CONTRACT comprise the entire CONTRACT affecting this purchase. The DEALER will not recognize any verbal agreement, or any other agreement or understanding of any nature. You certify that no credit has been extended by dealer for the purchase of this motor vehicle. You certify that you are 18 years of age or older, and acknowledge receiving a copy of this contract.

The terms of this CONTRACT were agreed upon and the CONTRACT signed in the dealership on the date listed at top of this form. If DEALER is arranging credit for YOU, this CONTRACT is not void until a credit disclosure is made as described in Regulation Z and you have accepted the credit conditions.
NOTICE OF SALESPERSON'S LIMITED AUTHORITY. This contract is not void unless signed and accepted by Sales Manager or Chief of Dealership.
Accepted *John Wholson*

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

This ODOMETER DISCLOSURE STATEMENT and ASSIGNMENT Refers to Vehicle Being Sold
Federal and State law require that you state the mileage on transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.
I (we), *JOYCE ANN WHITFIELD-BAKER*, the owner(s) of the vehicle described below, certify the vehicle is free of all security interests.
warrant title, assign the vehicle and taxes paid to the person(s) named below and state that the odometer now reads *10161* (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle, unless one of the following statements is checked.
 (1) I hereby certify to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.
 (2) I hereby certify that the odometer reading is NOT the actual mileage.
WARNING - ODOMETER DISCREPANCY if box (1) or (2) is checked.

YEAR 2000 MAKE FORD TRUCK MODEL EXPLORER BODY TYPE EXPLORER E/B
VIN 1FMDU84P6YU852716 LICENSE NO. MSO LIC. EXP. DATE
TRANSFEROR'S NAME BUYER'S NAME
4725 SO. ROBERT TRAIL
CITY INVER GROVE HEIGHTS STATE MN ZIP 55077
CITY BURNSVILLE MN 55937
TRANSFEROR'S (BUYER'S) SIGNATURE (BUYER'S SIGNATURE) DATE 02/25/02

This ODOMETER DISCLOSURE STATEMENT and ASSIGNMENT Refers to Vehicle Being Traded In
Federal and State law require that you state the mileage on transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.
I (we), *JOYCE ANN WHITFIELD-BAKER*, the owner(s) of the vehicle described below, certify the vehicle is free of all security interests.
warrant title, assign the vehicle and taxes paid to the person(s) named below and state that the odometer now reads *110330* (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle, unless one of the following statements is checked.
 (1) I hereby certify to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.
 (2) I hereby certify that the odometer reading is NOT the actual mileage.
WARNING - ODOMETER DISCREPANCY if box (1) or (2) is checked.

YEAR 1995 MAKE FORD TRUCK MODEL EXPLORER BODY TYPE EB 4X4
VIN 1FMDU84X85U80794 LICENSE NO. 328HON LIC. EXP. DATE
TRANSFEROR'S NAME BUYER'S NAME
INNER GROVE FORD
4725 SO. ROBERT TRAIL
CITY INVER GROVE HEIGHTS STATE MN ZIP 55077
CITY BURNSVILLE MN 55937
TRANSFEROR'S (BUYER'S) SIGNATURE (BUYER'S SIGNATURE) DATE 02/25/02



MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 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

WHITFIELD-BAKER JOYCE ANN
BAKER MARICHANNON ALETHA
98 RIVER WOODS LN
BURNSVILLE MN 55337

JDN583

Year 00	Make FORD	Model 4WEPR	Title No. B1280P460
VIN 1FMDU84P6YUB52716	Security Date 02/25/02	NO Rebuilt	

1ST SECURED PARTY

LIEN HOLDER

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

AMERICREDIT FIN SERV INC
PO BOX 182673
ARLINGTON TX 76096-2673

23



Blumberg No. 5119

EXHIBIT

B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re

Case No. 04-35308 DDO

Chapter 7

Marichannon A Baker,

Debtor.

VERIFICATION

I, Roseetta Cooks, an employee of AmeriCredit Financial Services, Inc. named in the foregoing Notice of Hearing and Motion for Relief from Stay, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

DATED: 10/11, 2004

SIGNED: 

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re

Case No. 04-35308 DDO
Chapter 7

Marichannon A Baker,

Debtor.

MEMORANDUM OF LAW

INTRODUCTION

AmeriCredit Financial Services, Inc., (“AmeriCredit”) has made a motion for relief from the automatic stay. AmeriCredit incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due and AmeriCredit has been unable to verify current proof of insurance. AmeriCredit seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

ARGUMENT

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by AmeriCredit, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the

automatic stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd.)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. § 362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

CONCLUSION

Based on the foregoing, AmeriCredit requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. § 362(a) to permit AmeriCredit to enforce and foreclose its personal property security interest.

DATED: October 13, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
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(314) 727-0101
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Attorneys for AmeriCredit

**UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7th Floor, St. Louis, Missouri 63105, declares that, on the date listed below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** 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 postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor)
Marichannon A Baker
98 River Woods Ln.
Burnsville, MN 55337

(Chapter 7 Trustee)
John A. Hedback
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418

Office of the U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

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

Executed: October 13, 2004.

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT
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ORDER

The above entitled matter before the Court for hearing on _____, 2004, on the motion of AmeriCredit Financial Services, Inc., (“AmeriCredit”), seeking relief from the automatic stay of 11 U.S.C. § 362(a). Appearances are as noted in the Court’s record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling AmeriCredit to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is immediately terminated as to AmeriCredit and AmeriCredit is authorized to proceed with its legal remedies according to state law as to the subject motor vehicle,

a 2000 Ford Explorer, VIN # 1FMDU84P6YUB52716.

2. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

DATED at St. Paul, Minnesota, this _____ day of _____, 2004.

BY THE COURT:

Dennis D. O'Brien
United States Bankruptcy Judge