

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No. 04-50837-GFK  
Chapter 7

Jose G. Cooper and Naomi M. Cooper,

Debtor(s).

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

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TO: Debtor(s) and Attorney for Debtor(s); Nauni J. Manty, Chapter 7 Trustee; U.S. Trustee; and other parties in interest.

1. Wells Fargo Financial Acceptance, 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 **1:30 pm on Wednesday, September 8, 2004**, before the Honorable Gregory F. Kishel, in Courtroom No. 2, at the U.S. Courthouse, 515 West First Street, Duluth, Minnesota 55807.

3. Any response to this motion must be filed and delivered not later than Friday, September 3, 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 Monday, August 30, 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. Wells Fargo Financial Acceptance 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 July 23, 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. Wells Fargo Financial Acceptance holds a valid, perfected interest in a 2000 Pontiac Grand Prix, vehicle identification number 1G2WP52K0YF312494 (the "Vehicle").

7. Copies of Wells Fargo Financial Acceptance's agreement with Debtor(s) (the "Contract") and evidence of perfection of Wells Fargo Financial Acceptance'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 March through July 2004 totaling \$1,467.05 plus late charges, have not been made by the Debtor(s). No evidence has been provided to verify insurance coverage on the Vehicle.

9. The balance due under the Contract is \$13,433.72 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,925.00.

10. Wells Fargo Financial Acceptance's interest is depreciating, while Debtor(s) are failing to make payments. Wells Fargo Financial Acceptance 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 Wells Fargo Financial Acceptance with adequate protection of its interest in the Vehicle and the failure of Debtor(s) to provide evidence of insurance on the Vehicle constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1) and 362(d)(2), entitling Wells Fargo Financial Acceptance to relief from the stay.

12. Wells Fargo Financial Acceptance 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, A. Howard, or some other representative of Movant, will testify on behalf of Wells Fargo Financial Acceptance.

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, Wells Fargo Financial Acceptance 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, Wells Fargo Financial Acceptance respectfully moves the Court for an order (i) modifying the automatic stay of 11 U.S.C. §362 so as to permit Wells Fargo Financial Acceptance 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: July 29, 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

Chapter 7 Case

In re:

Bky. No. 04-50837

Jose G. and Naomi M. Cooper,

Debtor(s).

Affidavit

I, Andrew J. Howard, of Wells Fargo Financial Acceptance, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. Wells Fargo Financial Acceptance has a security interest in the following (the "Collateral"):

2000 Pontiac Grand Prix VIN# 1G2WP52K0YF3124942000 Pontiac Grand  
Prix VIN# 1G2WP52K0YF312494.

2. \$13,433.72 is the outstanding balance under the contract.

3. \$1,467.05 is the amount of the existing delinquency under the contract.

4. \$8,925.00 is the fair market value of the Collateral.

5. No appropriate insurance has been verified.

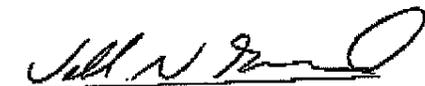
Further your affiant sayeth not.

Dated: 7/27/2004

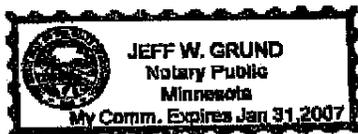


Andrew J. Howard  
Bankruptcy Specialist  
Wells Fargo Financial Acceptance

Subscribed and sworn to before me on July 27,  
2004



Notary



520 192

526052

<b>RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT</b>	<b>DULUTH FORD LIMITED LIABILITY CO</b> 1420 MILLER TRUNK HWY DULUTH, MN 55806 We and our Seller above, its successors and assigns.	<b>JOSE GABRIEL COOPER</b> NACHI MARIA COOPER 4729 N KIM BLVD HERNANDON, GA 30646 You and your Seller above, and guarantor, jointly and individually.
No. _____ Date <b>03/14/2003</b>		

**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** VIN **1G2WP52K0YF312494** Other: \_\_\_\_\_  
 Make **PONTIAC** LIC. No./Year \_\_\_\_\_  
 Model **GRAND PRIX**  New  Used **GTG 249 06 03**

Description of Trade-In: **1997 PLYMOUTH NEON**

**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 \$ 13190.50 plus finance charges accruing on the unpaid balance of the rate of 7.500 % 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 to you 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, non-refundable loan administration fee of \$25.00 that will be  paid in cash.  paid pro rata over the contract term.  withheld 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: <b>7.75</b> %	The dollar amount the credit will cost you: <b>6973.64</b>	The amount of credit provided to you or on your behalf: <b>13190.50</b>	The amount you will have paid when you have made all scheduled payments: <b>20184.14</b>	The total cost of your purchase on credit, including your down payment of: <b>1003.94</b> <b>21188.08</b>

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
<b>54</b>	<b>373.41</b>	<b>MONTHLY BEGINNING: 04/28/2003</b>

**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 6% OF LATE PAYMENT OR \$5.72, whichever is greater. This amount may increase so as to always be the highest amount allowed by law under Minn. Stat. § 47.03.

**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 N/A  
 Single  Joint Prem. \$ \_\_\_\_\_ Term \_\_\_\_\_  
 Credit Disability: Insured N/A  
 Single  Joint Prem. \$ \_\_\_\_\_ Term \_\_\_\_\_

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are checked, you have declined any coverage we offered.  
 04/24/1979

Buyer JOSE GABRIEL COOPER Buyer NACHI MARIA COOPER

**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 property coverage deductible may not exceed \$ \_\_\_\_\_ if you get insurance from or through us you will pay \$ \_\_\_\_\_ of coverage.

This property is calculated as follows:  
 \$ N/A Deductible, Collision Coverage \$ 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 \_\_\_\_\_

This Service Contract will be in effect for \_\_\_\_\_

**ITEMIZATION OF AMOUNT FINANCED**

Vehicle Price (incl. sales tax of \$ <u>649.94</u> )	\$ <u>13648.94</u>
Service Contract, Paid to: _____	\$ <u>N/A</u>
Cash Price	\$ <u>13648.94</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>1500.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>1500.00</u>
b. Trade-in Allowance	\$ <u>3495.05</u>
c. Less: Amount owing	\$ <u>WELL FARGO</u>
Paid for:	\$ <u>-436.06</u>
d. Net Trade-in (b. minus c.)	\$ <u>1003.94</u>
e. Net Cash/Trade-in (a. plus d.)	\$ <u>1003.94</u>
Down Payment (e.) (disclose as 50 if negative)	\$ <u>12845.00</u>
Unpaid Balance of Cash Price	\$ <u>20.50</u>
Paid to Public Officials - Filing Fees	\$ <u>N/A</u>
Insurance Premiums	\$ <u>N/A</u>
Amount to Finance (10% is required)	\$ <u>25.00</u>
Tax	\$ <u>N/A</u>
Tot: <b>TOTAL LOSS PROTECTION</b>	\$ <u>500.00</u>
Tot:	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>545.50</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>13190.50</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 JOSE GABRIEL COOPER OF THIS CONTRACT.

**ASSIGNMENT:** This Contract and Security Agreement is assigned to \_\_\_\_\_  
 to \_\_\_\_\_ This assignment is made  under the terms of the ASSIGNMENT BY SELLER on page 2.  This assignment is made with recourse.  
 Seller, By \_\_\_\_\_ Date \_\_\_\_\_

Signed: \_\_\_\_\_ 03/14/2003  
 Signature: Jose Gabriel Cooper 03/14/2003

DULUTH FORD LIMITED LIABILITY CO. Date \_\_\_\_\_

Seller, By \_\_\_\_\_ (copy 1 of 2)  
 MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

5260520

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

COOPER JOSE GABRIEL  
COOPER NAONI MARIA  
4723 N KIM BLVD  
HERMANTOWN MN 55811

GTC249

00 Year	PONT Make	4DGP6 Model	H1350R116 Title NR
1G2WF52K0YF312494 VIN		03/14/03 Security Data	NO Rebuilt

1ST SECURED PARTY

**LIEN HOLDER**

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

WELLS FARGO FINANCIAL ACCEPT  
P O BOX 250  
ESSINGTON PA 19029-0250



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

Case No.04-50837-GFK  
Chapter 7

Jose G. Cooper and Naomi M. Cooper,  
Debtor(s).

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

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

FACTS

Wells Fargo Financial Acceptance holds a perfected interest in a 2000 Pontiac Grand Prix with a vehicle identification number 1G2WP52K0YF312494 (the "Vehicle"). Payments due under the terms of the Contract for the months of March through July 2004 totaling \$1,467.05 plus late charges, have not been made by the Debtor(s). The balance due under the Contract is \$13,433.72 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$8,925.00. No evidence has been provided to verify insurance coverage on the Vehicle.

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 Wells Fargo Financial Acceptance 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 Wells Fargo Financial Acceptance 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 \$13,433.72 as of the date hereof. The fair market value of the Vehicle is approximately \$8,925.00. 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, Wells Fargo Financial Acceptance 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: July 29, 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:

Jose G. Cooper and Naomi M. Cooper

Debtor(s).

UNSWORN DECLARATION

FOR PROOF OF SERVICE

Bky. No. 04-50837-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:

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United States Trustee  
Suite 1015  
300 South 4th Street  
Minneapolis, MN 55415

(Attorney for Debtor(s))  
John F. Hedke  
1217 E. 1st St.  
Duluth, MN 55805

(Trustee)  
Nauni J. Manty  
Rider Bennett LLP  
333 S 7th St Ste 2000  
Minneapolis, MN 55402

(Debtor(s))  
Jose G. Cooper  
718 4th Street  
Proctor, MN 55810

Naomi M. Cooper  
718 4th Street  
Proctor, MN 55810

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

Date: July 29, 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. 04-50837-GFK  
Chapter 7

Jose G. Cooper and Naomi M. Cooper,

Debtor(s).

**ORDER GRANTING  
MOTION FOR RELIEF FROM STAY**

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The above-entitled matter came before the Court for hearing on Wednesday, September 8, 2004 on the motion of Wells Fargo Financial Acceptance 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 Wells Fargo Financial Acceptance 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 Wells Fargo Financial Acceptance, and Wells Fargo Financial Acceptance is authorized to foreclose its interest in the subject 2000 Pontiac Grand Prix, vehicle identification number 1G2WP52K0YF312494 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