

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

in the matter of:

ERIC B. & DIANA L. KALEY
1732 Davis
Muskegon Michigan 49441

Bankruptcy Case Number: GG 03-02462
Chapter Seven
Honorable James D. Gregg
James W. Hoerner, Chap. 7 Trustee

Debtor
_____ /

Notice to Creditors and Other Parties in Interest

NOTICE IS HEREBY GIVEN THAT A HEARING will be held at the United States Bankruptcy Court, 792 Federal Bldg., 110 Michigan, N.W., Grand Rapids, Michigan on Nov. 10, 2004 at 1:30 p.m. to consider and act upon the following matter:

TRUSTEE'S MOTION TO SELL 1997 CHEVROLET TAHOE MOTOR VEHICLE.

(a copy of motion is enclosed)

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read the documents carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the clerk of the U.S. Bankruptcy Court, P.O. Box 3310, Grand Rapids MI 49501, and should be received by the clerk before the hearing date. A copy of your response should also be mailed upon the party filing the motion and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion or petition, and may enter an order granting the relief requested.



Daniel M. LaVille, Clerk of Court

David G. Scalici, Deputy Clerk

Dated: Oct. 13, 2004

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the clerk's office from the court files or docket.

A copy of this notice returned to Attorney Larry VerMerris for service.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

FILED
2004 OCT 13 AM 11:35
MICHEL M. LAVILLE CLERK
U.S. BANKRUPTCY COURT
WEST. DIST. OF MICH.

In the Matter of:

Eric B. Kaley and Diana Lynn Kaley,

Debtors.

Case No. GG 03-02462
(Chapter 7)
Filed: 2/26/2003

**TRUSTEE'S MOTION TO SELL 1997 CHEVROLET TAHOE
MOTOR VEHICLE**

NOW COMES JAMES W. HOERNER, Chapter 7 Trustee herein, by and through his attorneys, Day & Sawdey, P.C., pursuant to Bankruptcy Code § 363 and Federal Rules of Bankruptcy Procedure 6004 and 2002, and shows unto this Court as follows:

1. Your Movant is the duly-appointed, qualified and acting Chapter 7 Trustee in the above-entitled case, which was commenced by the Debtors through the filing of a voluntary petition for relief under chapter 7 of the Bankruptcy Code on February 26, 2003.
2. Included among the assets herein is the Debtors' 1997 Chevrolet Tahoe motor vehicle (hereinafter "motor vehicle").
3. The Debtors have offered to purchase said motor vehicle for the sum of \$1,750.00 cash, with their allowed claim of exemption of \$602.00 being "subsumed" in the purchase price.
4. The aforesaid motor vehicle was scheduled by the Debtors as having a value of \$9,200.00. However, the vehicle had 266,197 miles on the odometer as of mid-August, 2004, has body damage, needs brakes and tires, the air conditioning is not working, the engine knocks, and is generally in rough condition and needs a paint job. Consequently, this vehicle has recently been appraised as having a value of between \$2,500.00 and \$2,825.00, which is significantly less than the scheduled value.

5. The aforesaid motor vehicle is held free and clear of any liens or claims, to the best of the Trustee's knowledge, information and belief. To the extent that liens or other interests exist, they would be in bona fide dispute, thus allowing the Trustee to sell said motor vehicle, without the consent of such party, pursuant to the provisions of Bankruptcy Code § 363(f)(4).

6. The motor vehicle will be offered for sale in one (1) lot with bidding commencing at the amount of the bid of the Debtors of \$1,750.00, coupled with their allowed claim of exemptions of \$602.00, for a total of \$2,352.00. Thereafter, bidding will be in increments of no less than \$100.00, with the initial bid to be at least \$2,500.00.

7. The sale is to be made on a cash basis with the successful bidder being required to tender to the Trustee the amount of the purchase price immediately after the sale has been approved by the Bankruptcy Court.

8. To the extent that the Debtors make a higher bid on such motor vehicle, they will, effectively be "credit bidding" their allowed claim of exemption.

9. The Trustee shall have the right to refuse to recommend confirmation of any bid which does not, in his judgment, assure a reasonable monetary return to the estate. Prospective purchasers may make arrangements for examination and inspection of this motor vehicle by contacting the Trustee's counsel, at the address which appears at the foot of this Motion.

10. The sale of this motor vehicle shall be made on an "AS-IS, WHERE-IS" basis, without representation or warranty, express or implied, of any kind, nature or description including, without limitation, any warranty by description or of merchantability, usability, or of fitness for any particular purpose. The seller shall not be required to inspect or test or report on the condition of this motor vehicle, or of the existence of any possible defects in the same. The Trustee further makes no representations or warranties concerning whether this motor vehicle is road-worthy or

otherwise in running condition. He would reiterate the known defects and problems with this motor vehicle, as stated above.

11. The above motor vehicle shall be sold free and clear of any liens or claims thereon with the interest of any party asserting a lien or claim thereon attaching to the sale proceeds in the same order of rank, validity and priority as they presently may exist against such motor vehicle. All expenses of custody, protection and insurance of this motor vehicle, as well as expenses of sale, including administrative and all legal expenses of the bankruptcy proceeding relating to the protection and sale of said motor vehicle shall be charged against the sale proceeds with priority over all claims. The successful bidder shall have five (5) days to remove this motor vehicle from its present location, whereafter any additional storage costs shall be the responsibility of the buyer. (This provision shall not apply if the successful purchaser is the Debtors.)

12. Your Movant believes the sale of said motor vehicle, as aforesaid, to the Debtors, or to a higher bidder, on such terms, is in the best interest of the creditors in this estate, and should be approved.

WHEREFORE, YOUR MOVANT PRAYS that the creditors herein be ordered to object or otherwise show cause, on a time and date certain, why this motor vehicle should not be sold, as aforesaid, to the Debtors, or to such other party who may make a higher bid thereon; why the Trustee should not be allowed to execute a bill of sale and motor vehicle certificate of title so as to transfer title to the successful purchaser; and why he should not have such other and further relief as this Court might deem just, equitable and proper.

Dated: October 13, 2004

DAY & SAWDEY, P.C.
Attorneys for Trustee

By 

Larry A. Ver Merris (P-29093)

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