UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS



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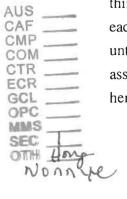
ESSENTIAL.COM, INC., Debtor)	02000
)	CHAPTER 11
TOYOTA MOTOR CREDIT)	
CORPORATION,)	
Plaintiff)	CASE NO. 01-15339 WCH
V.)	
)	<u>JUDGE WILLIAM C. HILLMAN</u>
ESSENTIAL.COM, INC.)	
Defendant)	

MOTION FOR RELIEF FROM STAY BY **TOYOTA MOTOR CREDIT CORPORATION**

- 1. An order for relief under 11 U.S.C. Chapter 11 entered in the above Case No. 01-15339 WCH on a petition filed by Essential.com, Inc. on June 29, 2001.
- 2. Plaintiff is a corporation duly organized under the laws of the State of California, is qualified to engage in business in the Commonwealth of Massachusetts and has a usual place of business in the Town of Westborough, County of Worcester within said District.
- 3. Defendant Essential.com, Inc. is a corporation with a principal place of business in the City of Burlington, County of Middlesex, in said District.
- 4. Plaintiff is holder by assignment of a Closed End Motor Vehicle Lease Agreement dated May 11, 1999 (hereinafter referred to as the "Lease Agreement"), entered into between defendant Essential.com, Inc. as Lessee and Akhil D. Garland as co-lessee and Coady Corp./495 Toyota, as Lessor for the lease of a new 1999 Toyota 4Runner, Vehicle Identification No. JT3HM84R0X0035392 (hereinafter referred to as "the motor vehicle"). Pursuant to the Lease Agreement, the lessee agreed, among other things, to pay a total of \$17,631.00 in thirty-six (36) monthly installments of \$489.75 each commencing on May 11, 1999, and due the same day of each month thereafter until paid. The motor vehicle has at all times been the property of the plaintiff as assignee. A copy of this Closed End Motor Vehicle Lease Agreement is attached hereto and marked as Exhibit "A". 05 FEB 22 AM 8: 33

DISTRIBUTION CENTER

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- 5. The plaintiff's ownership interest in the motor vehicle is noted on Certificate of Title No. 8636747 issued by the State of New Hampshire Registry of Motor Vehicles. A copy of said Certificate of Title is attached hereto and marked as Exhibit "B."
- 6. The Lease Agreement has been in default since December 11, 2001, by the failure of lessee to make payments due on the motor vehicle. The post-petition arrears total \$1,399.29 (December 2001 through February 2002) and late charges of \$46.64 are due, for a total of \$1,495.93. The payoff price on the lease through March 10, 2002 is \$19,856.26 (exclusive of tax, title, license, and attorneys' fees). Remaining lease payments are \$2,378.58. The estimated lease residual is \$17,724.26. The Lease Agreement is also in default based on lessee's failure to provide proof of insurance on the motor vehicle.
- 7. By reason of said defaults, the plaintiff, pursuant to the terms of said lease agreement and applicable law, is entitled to immediate possession of the motor vehicle.
- 8. The motor vehicle is believed to have a fair market value of \$17,100.00 retail, and \$14,550.00 trade-in. Source: NADA Automated, 2/13/2002.
- Defendant has failed to maintain post-petition payments on the Lease Agreement and the motor vehicle is depreciating in value.
- 10. Plaintiff submits that adequate protection has not been provided for plaintiff's ownership interest under Sec. 362(d)(1) in that: (1) post petition lease payments have not been made; (2) debtor has failed to keep the vehicle insured and (3) debtor has failed to assume the lease agreement.
- 11. Plaintiff also submits that there is no value or benefit which will inure to the estate, since this is a lease vehicle. Therefore, under Sec. 362(d)(2) debtor has no equity in the property, and it has not been shown to be necessary to an effective reorganization.
- 12. The vehicle is, on information and belief, in possession of Akhil Garland.

WHEREFORE, the plaintiff prays:

1. For an order relieving it from the debtor and non-debtor stays, and authorizing plaintiff to proceed to take immediate possession said 1999 Toyota 4Runner,

Vehicle Identification No. JT3HM84R0X0035392, in accordance with the subject lease agreement and applicable law, and TMCC prays that said order not be subject to stay under B.R.P. Rule 4001(a)(3);

2. In the event this Court declines to vacate or modify the stay, for an order requiring that defendant's use of the motor vehicle be prohibited or conditioned upon payment of all installments and verification of hazard insurance due or the provision of some other adequate protection of plaintiff's interest in the property;

3. For order stating that "should TMCC exercise its rights to repossess and sell or otherwise liquidate the subject vehicle pursuant to this Order or any subsequent Order for Relief from Stay, TMCC shall have the right to file an amended Proof of Claim (within 90 days of) after the sale of any deficiency deficiency balance remaining and such balance is to be paid and treated as an unsecured claim under the petition or existing Confirmed Plan, if any. TMCC maintains this right in the event that this case should convert to a subsequent chapter;"

4. If the Court is unwilling to grant relief from stay, for a conditional order granting plaintiff relief from stay in the event of any future default under the lease by the filing and serving of an affidavit of default by counsel, without necessity of further hearing, and whether or not the debtor dismisses this case and refiles or converts to a different chapter.

5. For an order requiring debtor to make all post petition payments under said lease for all periods of its possession of the subject vehicle;

6. For plaintiff's attorneys' fees; and

7. Such other relief as may seem proper.

TOYOTA MOTOR CREDIT CORPORATION By its attorney,

John Monterisi, Jr./, Esq

1330 Beacon Street, Suite 311

Brookline, MA 02446

617-739-4224

BBO# 352120

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N.A.D.A. Official Used Car Guide **Automated Vehicle Valuation** 2/13/2002

Guide Edition:

New England 2-2002

Vehicle Description:

1999 TOYOTA

Stock #: VIN:

L24-65091

4RUNNER

WGN 4D 4WD 4 CYL

JT3HM84R0X0035392

MSRP:

\$ 24,038

Weight:

3,770

Mileage:

45,001

Base Retail \$ 17,050

Base Trade-In \$ 14,500

Base Loan

\$ 13,050

Accessory Equipment:

Luggage Rack

\$ 50

Accessory Total

\$ 50

Mileage Value

\$ 0

Total N.A.D.A. Official Used Car Guide Values

Retail

\$ 17,100

Trade-In

\$ 14,550

Loan

\$ 13,100

Appraiser Adjustments:

Appraiser Adjustment Total:

\$ 0

TOTAL ADJUSTED VEHICLE VALUE

Retail \$ 17,100

Trade-In \$ 14,550

Loan

\$ 13,100

Hich value \$ 15,825.00