

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 08-81565-CIV-HURLEY/HOPKINS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CREATIVE CAPITAL CONSORTIUM, LLC
A CREATIVE CAPITAL CONCEPT\$, LLC,
and GEORGE L. THEODULE,

Defendants.

**RECEIVER JONATHAN E. PERLMAN'S
MOTION FOR AUTHORITY TO SELL AUTOMOBILE**

Jonathan Perlman, Esq., the court-appointed Receiver (the "Receiver") of Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC, (together, "Creative Capital") United Investment Club, Inc., Reverse Auto Loan, LLC, and Sancal Investment and Financial Services, Inc. (collectively, the "Receivership Entities") by and through undersigned counsel and pursuant to S.D. Fla. L.R. 7.1(E), files this Motion for Authority to Sell Automobile (the "Motion") and moves this Court to enter an Order authorizing the Receiver to sell an automobile belonging to Creative Capital and hold the net proceeds thereof, in trust, for eventual distribution to creditors of the receivership estate. In support of the Motion, the Receiver states as follows:

I. INTRODUCTION

1. On December 29, 2008, the Securities and Exchange Commission ("SEC") filed its Complaint for Injunctive and Other Relief (the "Complaint") against the Receivership Defendants [D.E. 1]. The SEC alleged that Theodule, through the Receivership Entities, sold

unregistered securities and violated various sections of the Securities Exchange Act of 1934 (the “Exchange Act”). More specifically, the SEC alleged that all of the Receivership Defendants violated section 10(b) of the Exchange Act.

2. On December 29, 2008, this Court entered a Temporary Restraining Order and Other Emergency Relief (the “TRO”) against Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC and George L. Theodule [DE 7]. Additionally, the Court entered an Order Appointing Receiver (“Receivership Order”) naming Jonathan E. Perlman, Esq. as the Receiver over Creative Capital [DE 8]. Two days later, this Court entered the First Order Expanding Receivership and expanded the scope of the receivership estate to encompass Creative Capitals’ alter-ego companies United Investment Club, Inc., Reverse Auto Loan, LLC, and Sancal Investment and Financial Services, Inc. After a show case hearing on January 6, 2009, this Court entered an Order Granting Preliminary Injunction and Other Relief Against All Defendants on January 8, 2009 [DE 21].

3. Pursuant to the terms of the Receivership Order, the Receiver is charged with the power, duty and authority to administer and manage the Receivership Entities business affairs, funds and assets. The Receiver is also authorized to investigate the pre-receivership affairs of the Receivership Entities and to marshal and safeguard their assets for protection and for the benefit of the investors and other creditors.

4. Through his investigation, the Receiver has learned that Theodule purchased automobiles with monies received from the Receivership Entities. Among the automobiles is a 2005 BMW X5 (V.I.N. 5UXFA13555LY02696) (the “BMW”).

5. Defendant Theodule disclosed the BMW as a corporate asset of Creative Capital in the sworn accounting provided to the court pursuant to the TRO. See D.E. 20.

6. The Receiver has also learned that the BMW was originally registered in Florida by Theodule, but has since been registered in Georgia on or about May 27, 2008. Upon demand on Theodule's counsel by the Receiver, Theodule disclosed that the BMW was in the possession of a Creative Capital employee, Mr. Edwidge Benoit ("Benoit"). Benoit denied possession or knowledge of the BMW. Upon further demand for turnover of the BMW, Benoit admitted that the BMW is currently in the possession of Mr. Duckens Delisfort, Theodule's brother-in-law, and is located near Atlanta, Georgia. Mr. Delisfort has agreed to the orderly turn over of the vehicle to the Receiver's agents.

7. On January 27, 2009, the Receiver purchased a Carfax® Vehicle History Report™ for the BMW (the "Carfax Report"). A copy of the Carfax Report is attached hereto as Exhibit "A." The Carfax Report indicates that no major structural, frame, total-loss, or accident/damage has been reported in regards to the BMW. The Carfax Report indicates that on May 27, 2008, a Georgia emissions inspection station reported the BMW's odometer reading at 61,000 miles.

8. Based upon the information contained in the Carfax Report and other reasonable assumptions, the Receiver estimates that the BMW has a Kelley Blue Book trade-in-value of \$14,100.00¹

9. The Receiver cannot reasonably expect to demand full trade-in-value for the BMW considering the depressed used car market. The Receiver believes a fair price for the BMW to be within 25 percent of the Kelley Blue Book trade-in-value of \$14,100.00.

10. Accordingly, the Receiver requests the Court enter an Order authorizing the Receiver to sell the BMW for no less than \$10,575.00.

¹ For purposes of establishing the BMW's Kelley Blue Book value, the Receiver assumes that the BMW currently has 68,000 miles and is in "fair" condition.

11. The Receiver believes that granting this Motion is in the best interest of the Receivership Estate because the BMW is a depreciating asset and needs to be sold as soon as possible for the highest possible price. Further, the Receiver believes that because of the BMW's relatively low value, it is not in the best interest of the Receivership Estate to administer the asset for a prolonged period of time. Also, the BMW is currently not insured, and as such exposes the Receivership Estate to liability if the asset is not promptly administered and sold by the Receiver.

12. Pursuant to S.D. Fla. L.R. 7.1(A)(2), the Receiver attaches a proposed Order granting the relief requested herein.

WHEREFORE, Jonathan E. Perlman, in his capacity as Receiver of the Receivership Entities, hereby respectfully requests this Court enter an Order authorizing the Receiver to sell the BMW for no less than \$10,575.00, pursuant to the terms and conditions set forth herein, and to grant such other relief as the Court deems just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that he conferred with counsel for the Securities and Exchange Commission and George L. Theodule, none of whom have any objection to the relief requested herein.

Dated: January 29, 2009.
Miami, Florida

Respectfully submitted,

s./ Carmen Contreras-Martinez

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s./ Carmen Contreras-Martinez

Attorney

SERVICE LIST

**Securities and Exchange Commission v. Creative Capital Consortium, LLC et. al.
CASE NO.: 08-CIV-81565-HURLEY/HOPKINS**

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Lexis-Nexis Client Production - Accurint
Boca Raton, FL




CARFAX[®] Vehicle History Report[™]


An independent company established in 1986

carfax.com


Vehicle Information:
 2005 BMW X5 3.0i
 5UXFA13555LY02696
 4 DR. WAGON/SPORT UTILITY 3.0L L6 FI
 DOHC 24V
 ALL WHEEL DRIVE
 Standard Equipment | Safety Options




No accident / damage reported to CARFAX




4 Previous owners




Types of owners: Lease, Personal



Last owned in Georgia




12 Detailed records available



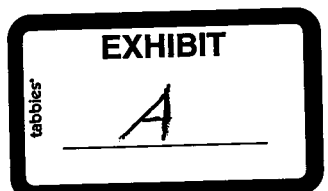
SUMMARY

A CARFAX Vehicle History Report is based only on information supplied to CARFAX. Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

OWNERSHIP HISTORY	Owners 1-2	Owner 3	Owner 4
The number of owners is estimated by CARFAX			
Year purchased	2004	2008	2008
Type of owner	Lease, Personal	Personal	Personal
Estimated length of ownership	3 yrs. 2 mo.	2 months	8 months
Owned in the following states/provinces	Florida	Florida	Georgia
Estimated miles driven per year	17,520/yr	---	---
Last reported odometer reading	53,920	61,140	57,000

TITLE PROBLEMS	Owners 1-2	Owner 3	Owner 4
CARFAX guarantees the information in this section			
Salvage Junk Rebuilt	Guaranteed No Problem	Guaranteed No Problem	Guaranteed No Problem
Fire/Flood Hail Damage Buyback/Lemon	Guaranteed No Problem	Guaranteed No Problem	Guaranteed No Problem
Not Actual Mileage Exceeds Mechanical Limits	Guaranteed No Problem	Guaranteed No Problem	Guaranteed No Problem
			Register View Terms
<p>GUARANTEED - None of these major title problems were reported by a state Department of Motor Vehicles (DMV). If you find that any of these title problems were reported by a DMV and not included in this report, CARFAX will buy this vehicle back.</p>			

OTHER INFORMATION	Owners 1-2	Owner 3	Owner 4
Not all accidents or other issues are reported to CARFAX			




Total Loss Check No total loss reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported
Structural / Frame Damage Check No structural / frame damage reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported
Airbag Deployment Check No airbag deployment reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported
Odometer Rollback Check Inconsistent odometer reading indicated.	<input checked="" type="checkbox"/> No Issues Indicated	<input checked="" type="checkbox"/> No Issues Indicated	Inconsistent Odometer Reading
Accident / Damage Check No accidents or damage reported to CARFAX.	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported	<input checked="" type="checkbox"/> No Issues Reported
Manufacturer Recall Check Check with an authorized BMW dealer for any open recalls.	<input checked="" type="checkbox"/> No Recalls Reported	<input checked="" type="checkbox"/> No Recalls Reported	<input checked="" type="checkbox"/> No Recalls Reported

DETAILS

Glossary

A CARFAX Vehicle History Report is based only on information supplied to CARFAX. CARFAX checked over 5 billion vehicle history events and found **12 record(s)** for this 2005 BMW X5 3.0i (5UXFA13555LY02696).

Owner 1	Date:	Mileage:	Source:	Comments:
Purchased: 2004 Type: Lease Where: Florida Est. miles/year: 17,520/yr Est. length owned: 12/3/04 - 12/19/07 (3 years)	12/03/2004		Dealer Inventory Florida	Vehicle sold
	12/03/2004		Florida Motor Vehicle Dept. Miami, FL	Registered as lease vehicle
	12/03/2004	25	Florida Motor Vehicle Dept. Dublin, OH Title #0092123828	Odometer reading reported
	01/05/2005		Florida Motor Vehicle Dept. Dublin, OH Title #0092123828	Title issued or updated First owner reported Loan or lien reported Registered as commercial lease vehicle
				 <p>Don't be confused by the two locations in this record. The title was held in Dublin, Ohio but the car was registered to be driven in Florida.</p>
	10/11/2005		Florida Motor Vehicle Dept. Miami, FL Title #0092123828	Registration issued or renewed Loan or lien reported Registered as commercial lease vehicle Vehicle color noted as Gray
	10/10/2006		Florida Motor Vehicle Dept. Miami, FL Title #0092123828	Registration issued or renewed Loan or lien reported Registered as commercial lease vehicle Vehicle color noted as Gray
	12/19/2007	53,920	Auto Auction	Sold at auction in Florida Listed as a fleet vehicle



Dealers routinely buy and sell millions of used vehicles at auction each year.

Owner 2
 Purchased: 2008
 Type: Personal
 Where: Florida
 Est. miles/year: ---
 Est. length owned: 1/18/08 - 2/15/08
 (28 days)

Date:	Mileage:	Source:	Comments:
01/18/2008		Florida Motor Vehicle Dept. West Palm Beach, FL Title #0092123828	Title issued or updated New owner reported Vehicle color noted as Gray

Owner 3
 Purchased: 2008
 Type: Personal
 Where: Florida
 Est. miles/year: ---
 Est. length owned: 2/15/08 - 5/3/08
 (2 months)

Date:	Mileage:	Source:	Comments:
02/15/2008	56,464	Florida Motor Vehicle Dept. West Palm Beach, FL Title #0092123828	Title issued or updated New owner reported Vehicle color noted as Gray
05/03/2008		Georgia Motor Vehicle Dept. Lawrenceville, GA	Vehicle purchase reported
05/27/2008	61,140	Georgia Inspection Station	Passed emissions inspection

Owner 4
 Purchased: 2008
 Type: Personal
 Where: Georgia
 Est. miles/year: ---
 Est. length owned: 5/27/08 - present
 (8 months)

Date:	Mileage:	Source:	Comments:
05/27/2008	57,000	Georgia Motor Vehicle Dept. Lawrenceville, GA Title #772572081483016	Title issued or updated New owner reported INCONSISTENT ODOMETER READING Vehicle color noted as Gray



Hmmm...hard to tell whether this reading represents an odometer rollback or a clerical error. Confirm the mileage with your dealer or qualified mechanic.

Have Questions? Consumers, please visit our Help Center at www.carfax.com. Dealers or Subscribers, please visit our Help Center at www.carfaxonline.com.

GLOSSARY

[View Full Glossary](#)

- **Commercial**
Vehicle was registered for business purposes.
- **First Owner**
When the first owner(s) obtains a title from a Department of Motor Vehicles as proof of ownership.
- **Lease**
When someone leases a car from a dealer, the dealer actually sells the vehicle to a leasing company. The leasing company then collects payments for the vehicle from the new owner for 24, 36, 48 or more months. A leasing company

- can be an independent car dealer or a car manufacturer.
- **Mileage Inconsistency**
If a more recent odometer reading is less than an older reading but CARFAX is uncertain whether the discrepancy is a rollback or a clerical error, then CARFAX calls it a "Mileage Inconsistency". In this case, you should verify the mileage with your dealer or a qualified mechanic.
- **New Owner Reported**
When a vehicle is sold to a new owner, the Title must be transferred to the new owner(s) at a Department of Motor Vehicles.
- **Ownership History**
CARFAX defines an owner as an individual or business that possesses and uses a vehicle. Not all title transactions represent changes in ownership. To provide estimated number of owners, CARFAX proprietary technology analyzes all the events in a vehicle history. Estimated ownership is available for vehicles manufactured after 1994 and titled solely in the US including Puerto Rico. Dealers sometimes opt to take ownership of a vehicle and are required to in the following states: Maine, Massachusetts, New Jersey, Ohio, Oklahoma, Pennsylvania and South Dakota. Please consider this as you review a vehicle's estimated ownership history.
- **Title Issued**
A state issues a title to provide a vehicle owner with proof of ownership. Each title has a unique number. Each title or registration record on a CARFAX report does not necessarily indicate a change in ownership. In Canada, a registration and bill of sale are used as proof of ownership.

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