

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Russell E. Saggerson
SSN XXX-XX-3170
Beverly J. Saggerson
SSN XXX-XX-6009

CASE NO. 04-40466 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), 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 on November 4, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 26, 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 Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on February 2, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$135,341.00, as evidenced by that certain mortgage deed dated December 21, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated December 21, 1998, executed by Russell E. Saggerson, and Beverly J. Saggerson, husband and wife, recorded on January 4, 1999, as Document No. 1397198, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Anoka County, Minnesota and is legally described as follows to-wit:

Lot 32, Block 2, Oakwood Park, according to the recorded plat thereof, Anoka County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of October 13, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through October, 2004, inclusive, in the amount of \$1,284.91 each; accruing attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

1397198

WHEN RECORDED MAIL TO:
COUNTRYWIDE HOME LOANS, INC.
MSN SV-79 / DOCUMENT CONTROL DEPT.
P.O. BOX 10266
VAN NUYS, CALIFORNIA 91410-0266

SPACE ABOVE FOR RECORDERS USE

LOAN #: 1894657

ESCROW/CLOSING #:

01-31-24-44-002699

MORTGAGE

VX CASE NO.
LH0535292

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

THIS MORTGAGE ("Security Instrument") is given on December 21, 1998. The mortgagor is RUSSELL E SAGGERSON, AND BEVERLY J SAGGERSON, Husband and Wife

("Borrower"). This Security Instrument is given to COUNTRYWIDE HOME LOANS, INC.

which is organized and existing under the laws of NEW YORK 4500 PARK GRANADA, CALABASAS, CA 91302-1613

, and whose address is

("Lender"). Borrower owes Lender the principal sum of

ONE HUNDRED THIRTY FIVE THOUSAND THREE HUNDRED FORTY ONE and 00/100

Dollars (U.S. \$ 135,341.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on January 1, 2024 and for interest at the yearly rate of SIX & ONE-HALF percent. This

Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in ANOKA

County, Minnesota:

LOT 32, BLOCK 2, OAKWOOD PARK, ACCORDING TO THE RECORDED PLAT THEREOF, ANOKA COUNTY, MINNESOTA.

ABSTRACT.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
-5V(MN) (0702) CHL (03/97) VMP MORTGAGE FORM 9 - (800) 621-7291

Page 1 of 5 *RES* Form 3024 8/90
Amended 8/92 *BJS*



EXHIBIT *A*

**UNITED STATES BANKRUPTCY COURT
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CASE NO. 04-40466 RJK

Debtor.

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

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of October 13, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through October, 2004, in the amount of \$1,284.91 each; accruing attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to another mortgage in favor of Aristar Mortgage in excess of \$3,000.00.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy.

S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 13th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

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**AFFIDAVIT OF
JASON MONTEE**

Debtor.

Jason Montee, being first duly sworn on oath, deposes and states:

1. That he is the Bankruptcy Specialist of Countrywide Home Loans, Inc.

2. Countrywide Home Loans, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated December 21, 1998, executed by Russell E. Saggerson, and Beverly J. Saggerson, husband and wife, recorded January 4, 1999, as Document No. 1397198. The property is located in Anoka County, Minnesota and is legally described as follows, to-wit:

Lot 32, Block 2, Oakwood Park, according to the recorded plat thereof, Anoka County, Minnesota.

3. That he has reviewed the account records relating to the Saggerson's mortgage loan, account no. 1894657.

4. That as of October 4, 2004, the following amounts were owing on this account:

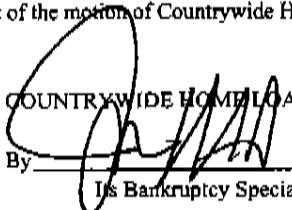
Unpaid Principal:	\$123,063.69
Interest through October 4, 2004	7,398.24
Attorney's Fees:	700.00
Fees Due:	2,420.50
Escrow Balance:	2,078.52
Partial Payment Bal. (-):	(1,640.93)

TOTAL: **\$134,020.02**

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of July, 2004 through October, 2004 in the amount of \$1,284.91 each.

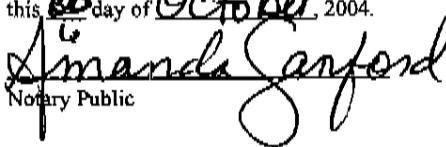
6. This affidavit is given in support of the motion of Countrywide Home Loans, Inc. for relief from the automatic stay.

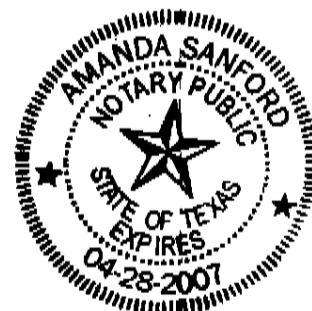
COUNTRYWIDE HOME LOANS, INC.

By: 

Is Bankruptcy Specialist

Subscribed and sworn to before me
this 10 day of October, 2004.


Notary Public



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

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 13, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Jason Montee, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Russell E. Saggerson
Beverly J. Saggerson
139 126th Ave NW
Coon Rapids, MN 55448

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Ian Traquair Ball
12 South 6th Street, Suite 326
Minneapolis, MN 55402

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.

Dated this 13th day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

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ORDER

The above entitled matter came on for hearing upon motion of Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on November 4, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated December 21, 1998, executed by Russell E. Saggerson, and Beverly J. Saggerson, husband and wife, recorded on January 4, 1999, as Document No. 1397198 covering real estate located in Anoka County, Minnesota, legally described as follows, to-wit:

Lot 32, Block 2, Oakwood Park, according to the recorded plat thereof, Anoka County, Minnesota and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court