

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF MINNESOTA**

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In Re: Case No. 04-44394-NCD  
Chapter 7

David Pecoraro,

Debtor(s)

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

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

1. Town & Country Credit Corp. moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 2:30 p.m., on October 21, 2004, in Courtroom No. 7 West, at the United States Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota.
3. Any response to this motion must be filed and delivered no later than October 18, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than October 12, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or 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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 6, 2004. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. By mortgage dated May 12, 2004, in the original principal amount of \$277,200.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 3982143, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

Lot 1, Block 1, "Temple Villiage", Hennepin County, Minnesota.

The Mortgage was filed in the offices of the Registrar of Titles, for Hennepin County, Minnesota on June 25, 2004, as Document No. 3982143. A copy of the Mortgage is are attached hereto as Exhibit A.

Ameriquet Mortgage Company is the servicer for said Mortgage and is authorized to act on behalf of movant.

7. The last payment received from Debtors was applied to the June, 2004 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

|                          |                   |
|--------------------------|-------------------|
| 3 payments @ \$1,938.23  | \$5,814.69        |
| 3 late charges @ \$96.91 | \$290.73          |
| NSF Fees                 | \$25.00           |
| Suspense Balance         | -\$500.00         |
| Attorneys Fees & Cost    | \$700.00          |
| TOTAL                    | <u>\$6,330.42</u> |

The outstanding principal balance due to Movant under the terms of the note is \$277,200.00 as of September 15, 2004, and interest accrues at the rate of 7.50% per diem per day. The amount therefore due and owing on said note is as follows:

|                        |                     |
|------------------------|---------------------|
| Principal              | \$277,200.00        |
| Late charges           | \$290.73            |
| NSF Fees               | \$25.00             |
| Interest               | \$4,771.81          |
| Suspense Balance       | -\$500.00           |
| Attorneys Fees & Costs | \$700.00            |
| TOTAL                  | <u>\$282,487.54</u> |

The fair market value of the Property as averred by the debtor is approximately \$200,000.00.

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 9-24-04

Signed: /s/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

**VERIFICATION**

Kristie Potolice the Bankruptcy Counselor of Ameriquest Mortgage Company, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 9/21/04

Signed: Kristie Potolice  
Ameriquest Mortgage Company  
505 City Parkway West STE 100  
Orange, CA 92868

### ADJUSTABLE RATE NOTE (LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY. THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

May 12, 2004  
Date

Irvine  
City

CA  
State

10006 Temple Ln, Minnetonka, MN 55045  
Property Address

#### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 277,200.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Town and Country Credit Corp..

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

#### 2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.500 %. This interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note

#### 3. PAYMENTS

##### (A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on July 1, 2004.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on, June 1, 2034, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my payments at: 2010 Main St., Suite 800, Irvine, CA 92614

or at a different place if required by the Note Holder.

##### (B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,938.23. This amount may change.

##### (C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

#### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

##### (A) Change Dates

The interest rate I will pay may change on the first day of, June, 2006 and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

##### (B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the date 45 days before the Change Date is called the "Current Index."

If at any point in time the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

##### (C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six percentage point(s) (6.000%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.



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Initials:

Initials:

ORIGINAL



UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

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In Re:

Case Number BKY 04-44394-NCD  
Chapter 7

David Pecoraro

Debtor(s)

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MEMORANDUM OF LAW

Town & Country Credit Corp. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$6,330.42.

ARGUMENT

1. Under 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. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$282,487.54. The fair market value of the property is approximately \$200,000.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9.29.01.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

Signed: /s/ NANCY A. NORDMEYER  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060



04-29484  
0079588281

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-44394-NCD

David Pecoraro  
Debtor(s)

**ORDER FOR RELIEF FROM STAY**

The above-entitled matter came for hearing on October 21, 2004.

**THIS CAUSE** coming to be heard on the Motion of Town & Country Credit Corp., a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Town & Country Credit Corp., its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 1, Block 1, "Temple Villiage", Hennepin County, Minnesota.

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court