

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Heidi Hautala

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-44676  
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TO: Heidi Hautala, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Wells Fargo Bank, N.A., ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 pm on October 14, 2004, in Courtroom 8 West, 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 5, 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, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on August 20, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 219 Hickory Street South, Lester Prairie, MN 55354, legally described as follows, to-wit:

Lot Six and the South 1/2 of Lot Five, in Block Two of "First Southwest Addition" to Lester Prairie, McLeod County, Minnesota.

7. The indebtedness of Heidi Hautala is evidenced by a Promissory Note and Mortgage dated October 29, 2002, filed of record in the Mc Leod County Recorder's office on October 31, 2002, and recorded as Document No. A-325007. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to movant.

8. The Debtor has failed to pay monthly mortgage payments since March 1, 2004, and is in default in the amount of \$8,199.24 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$135,050.42.

11. The Debtor has estimated the value of the homestead as \$137,000.00, and accordingly, Debtor has limited equity in the premises and, presuming typical selling costs, has no equity in the property and therefore cause exists to find lack of adequate protection.

12. Upon information and belief, Debtor intends to permit the foreclosure sale of the real property and has no intention of reaffirmation of the debt.

13. The undersigned attorneys have commenced foreclosure proceedings, which proceeding was terminated as a result of the filing of the bankruptcy petition on August 20, 2004.

14. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 22, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE:

Heidi L. Hautala

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-44676  
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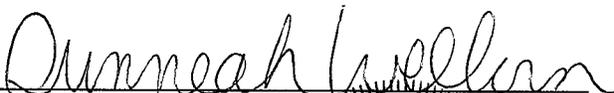
STATE OF GEORGIA

COUNTY OF FULTON

Chris Robertson, being first duly sworn, deposes and states He is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that He has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of His knowledge to the best of His information.

  
\_\_\_\_\_

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

  
\_\_\_\_\_  
Notary Public



2

Mortgage Reg Tax of \$ 296.13  
 paid this 1st day of Nov. 2002  
 Receipt No. 72279  
*Diana J. Raymer* McLeod Co Treas.



OFFICE OF COUNTY RECORDER  
MCLEOD COUNTY MINNESOTA

7 pgs.

DOCUMENT NUMBER A-325007

CERTIFIED FILED AND/OR RECORDED ON  
October 31, 2002, AT 9:15:00 AM

JAN PETRICK, ACTING COUNTY RECORDER

Fees:  
 EQUIPMENT FUND \$3.00  
 SURCHARGE 4.50  
 SURCHARGE ERER .50  
 GENERAL ABSTRACT 12.00  
 Total \$20.00

A-325007

Received transmission to:  
 ALLIANCE TITLE COMPANY  
 75 HASSAN STREET SE  
 P O BOX 130  
 HUTCHINSON, MN 55350

Loan No.: 2002-1857M [Space Above This Line For Recording Date]

**MORTGAGE**

FHA Case No.
271-8814286

THIS MORTGAGE ("Security Instrument") is given on **OCTOBER 29, 2002**. The mortgagor is **HEIDI L. HAUTALA, A SINGLE PERSON**

whose address is **541 105TH AVE NW MINNEAPOLIS, MN 55448** ("Borrower"). This Security Instrument is given to **HOMESTEAD MORTGAGE CORP.**

which is organized and existing under the laws of **THE STATE OF MINNESOTA**, and whose address is **4105 N LEXINGTON AVE. #100 ARDEN HILLS, MN 55126** ("Lender").

Borrower owes Lender the principal sum of **ONE HUNDRED TWENTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY-TWO AND 00/100 Dollars (U.S. \$ 128,752.00)**. 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 **NOVEMBER 1, 2032**. 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 the Lender, with the power of sale, the following described property located in **MCLEOD** County, Minnesota:  
**LOT SIX (6) AND THE SOUTH HALF OF LOT FIVE (5) IN BLOCK TWO (2) OF "FIRST SOUTHWEST ADDITION" TO LESTER PRAIRIE**

Initials *HLH*

which has the address of 219 HICKORY ST. SOUTH  
(Street)  
Minnesota 55354 ("Property Address");  
(Zip Code)

LESTER PRAIRIE  
(City)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds".

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for anticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

MINNESOTA - Single Family - FHA Security Instrument  
Form 04124 1/80  
Lender Form No. (800) 445-3333  
LFI#FHA04124 1/80



OFFICE OF COUNTY RECORDER  
MCLEOD COUNTY MINNESOTA

2 pgs.

DOCUMENT NUMBER A-325008

CERTIFIED FILED AND/OR RECORDED ON  
October 31, 2002, AT 9:15:00 AM

JAN PETRICK ACTING COUNTY RECORDER

Fees:	
EQUIPMENT FUND	\$3.00
SURCHARGE	4.50
SURCHARGE EFER	.50
GENERAL ABSTRACT	12.00
Total	\$20.00

A-325008

Received from/submitter for:  
**ALLIANCE TITLE COMPANY**  
75 HASSAN STREET SE  
P O BOX 130  
HUTCHINSON, MN 55350

(Space Above This Line For Recording Data)

Parcel Tax ID #:

Loan No.: 2002-1857M

This form was prepared by: **HOMESTEAD MORTGAGE CORP.**  
address: **4105 N LEXINGTON AVE. #100**  
**ARDEN HILLS, MN 55126**  
tel. no: **651-490-4181**

### ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is  
**4105 N LEXINGTON AVE. #100**  
**ARDEN HILLS, MN 55126**  
does hereby grant, sell, assign, transfer and convey, unto the  
**WELLS FARGO HOME MORTGAGE, INC., A CALIFORNIA**  
a corporation organized and existing under the laws of **THE STATE OF CALIFORNIA**  
(herein "Assignee"), whose address is  
**800 LASALLE AVE. #1000 MINNEAPOLIS, MN 55402**  
a certain Mortgage dated **OCTOBER 29, 2002**, made and executed by  
**HEIDI L. HAUTALA, A SINGLE PERSON**

to and in favor of **HOMESTEAD MORTGAGE CORP.**

upon the following described property situated in  
**MCLEOD** County, State of **MN**  
**LOT SIX (6) AND THE SOUTH HALF OF LOT FIVE (5) IN BLOCK TWO (2) OF**  
**"FIRST SOUTHWEST ADDITION" TO LESTER PRAIRIE**

such Mortgage having been given to secure payment of

**\$ 128,752.00**  
(include the Original Principal Amount)

which Mortgage is of record in Book, Volume, or Liber No. \_\_\_\_\_, of page \_\_\_\_\_  
 (Or as No. A-325007) of the Public Records of MCLEOD  
 County, MN \_\_\_\_\_, together with the note(s) and obligations therein described and  
 the money due and to become due thereon with interest, and all rights accrued or to accrue under such  
 Mortgage.

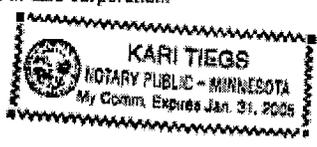
TO HAVE AND TO HOLD the same unto Assignee, his successor and assigns, forever, subject only to the  
 terms and conditions of the above-described Mortgage.

\_\_\_\_\_  
(Signature)  
**HOMESTEAD MORTGAGE CORP.**  
 By: *Todd W. Gunderson*  
(Signature)  
(Print Name & Title)  
**Todd W. Gunderson**  
**President**

\_\_\_\_\_  
(Space Below This Line Reserved For Acknowledgment)  
 \_\_\_\_\_

STATE OF MN  
 COUNTY OF RAMSEY

On 10/29/02 before me, the undersigned, a Notary Public in and for  
 said County and State, personally appeared \_\_\_\_\_  
 known to me to be the \_\_\_\_\_  
 and **Todd W. Gunderson** \_\_\_\_\_, known to me to be  
 President \_\_\_\_\_ of the corporation herein which  
 executed the within instrument, that the seal affixed to said instrument is the corporate seal of said  
 corporation, that said instrument was signed and sealed on behalf of said corporation pursuant to it's by-laws  
 or a resolution of it's Board of Directors and that he/she acknowledges said instrument to be the free act and  
 deed of said corporation.



*Kari Tiegs*  
 Notary Public  
 My Commission Expires \_\_\_\_\_

(THIS AREA FOR OFFICIAL  
 NOTARIAL SEAL)

**RAMSEY** County,

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Heidi Hautala

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-44676  
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Wells Fargo Bank, N.A. ("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, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$8,199.24.

**ARGUMENT**

1. Under Section 362.(d)(2) 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." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 8 months. Debtor has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §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 §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the balance due Movant is \$135,050.42. The value of the property is approximately \$137,000.00.

Clearly, the Debtor has no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

### **CONCLUSION**

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

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

Dated: September 22, 2004

USSET & WEINGARDEN P.L.L.P

By:    /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Heidi Hautala

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-44676  
-----

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 22, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Timothy D. Moratzka  
Chapter 7 Trustee  
901 Marquette Avenue Suite 1400  
Minneapolis, MN 55402

Richard J. Pearson  
Prescott & Pearson  
P.O. Box 120088  
New Brighton, MN 55112

Heidi Hautala  
219 Hickory Street South  
Lester Prairie, MN 55354

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Heidi Hautala

ORDER

Debtor.

Chapter 7, Case No. 04-44676  
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The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., ("Movant"), pursuant to 11 U.S.C. Section 362 on October 14, 2004, at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. 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:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot Six and the South 1/2 of Lot Five, in Block Two of "First Southwest Addition" to Lester Prairie, McLeod County, Minnesota.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

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