

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: HENRY LEONARD JOHANSON,  
LESLIE ANN JOHANSON,

BKY. No.: 04-44870  
Chapter 7

Debtors.

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

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TO: HENRY LEONARD JOHANSON, LESLIE ANN JOHANSON AND  
THEIR ATTORNEY, PAUL S. MOTIN, MOTIN LAW OFFICE, PA,  
327 MAIN ST., ELK RIVER, MN 55330.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on October 7, 2004 at 2:00 P.M. in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota, or as soon as counsel may be heard before The Honorable Robert J. Kressel, United States Bankruptcy Court Judge.
3. Any response to this motion must be filed and delivered not later than October 4, 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 September 28, 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.**

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 31, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the terms of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from March 1, 2004 to date in the amount of \$786.00 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$110,000.00. The property is encumbered by two additional liens in the amount of approximately \$35,700.00. According to a recent appraisal the fair market value of the property is estimated at \$163,100.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state

law.

WHEREFORE, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 10, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D1850)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**VERIFICATION**

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 10, 2004.

WELLS FARGO BANK, N.A.

By: Karan Abernethy  
Karan Abernethy

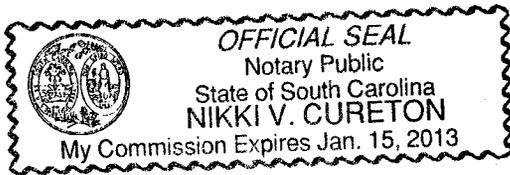
Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

10<sup>th</sup> day of September, 2004

Nikki V. Cureton

Notary Public



492099

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NO. 106695 DATE 12/31/02  
MTG REGISTRY TAX OF \$230.00 PAID

Romana Daehler  
County Auditor/Treasurer

Colleen Hymowitz  
Deputy Auditor/Treasurer

COUNTY RECORDER  
SHERBURNE CO. MINN.  
MICHELLE ASHE

Michelle Ashe

'03 JAN 9 PM 2 23

LOAN NO.: 2002-2404A

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**MORTGAGE**

LAND TITLE, INC.  
SUITE 200  
1900 SILVER LAKE ROAD  
NEW BRIGHTON, MN 55112  
FILE NO. 211290

**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **NOVEMBER 27, 2002**

together with all Riders to this document.

(B) "Borrower" is

**LESLIE A. JOHANSON AND HENRY L. JOHANSON, WIFE AND HUSBAND**

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **HOMESTEAD MORTGAGE CORPORATION**

Lender is a Corporation

organized and existing under the laws of **THE STATE OF MINNESOTA**

Lender's address is **4105 N LEXINGTON AVE. #100**

**ARDEN HILLS, MN 55126**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **NOVEMBER 27, 2002**

The Note states that Borrower owes Lender

**ONE HUNDRED THOUSAND AND 00/100**

Dollars (U.S. \$ **100,000.00** ) plus interest. Borrower has promised to pay this debt in regular

Periodic Payments and to pay the debt in full not later than **DECEMBER 1, 2032**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 and Lender's successors and assigns, with power of sale, the following described property located in

the **COUNTY**  
(Type of Recording Jurisdiction)

of

**SHERBURNE**  
(Name of Recording Jurisdiction)

**Lot 26, Block 1, Meadowvale Townhomes, Common Interest Community Number 17,  
Sherburne County, Minnesota.**

which currently has the address of

**19171 CONCORD STREET**

(Street)

**ELK RIVER**  
(City)

Minnesota

**55330**  
(Zip Code)

("Property Address"):



TOGETHER WITH all the improvements now or hereafter created 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."

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
*Leslie A. Johanson* (Seal)  
LESLIE A. JOHANSON -Borrower

\_\_\_\_\_  
*Henry L. Johanson* (Seal)  
HENRY L. JOHANSON -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

Ramsey

County ss:

On this 27th day of NOVEMBER, 2002, before me appeared  
LESLIE A. JOHANSON AND HENRY L. JOHANSON, WIFE AND HUSBAND

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/hcr/their free act and deed.

\_\_\_\_\_  
*Karen Tomscak*  
- Notary Public

My Commission expires:

This instrument was prepared by:  
KARI TIEGS  
HOMESTEAD MORTGAGE CORPORATION  
4105 N LEXINGTON AVE. #100  
ARDEN HILLS, MN 55126



Tax statement sent to:

Homestead Mortgage Corporation

492100

COUNTY RECORDER  
SHERBURNE CO. MINN.  
MICHELLE ASHE

DEPUTY  
*Michelle Ashe*

'03 JAN 9 PM 2 23

(Space Above This Line For Recording Data)

Parcel Tax ID #:

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

Loan No.: 2002-2404A  
LAND TITLE, INC.  
SUITE 200  
1900 SILVER LAKE ROAD  
NEW BRIGHTON, MN 55112  
FILE NO. 21298

### 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 NOVEMBER 27, 2002 made and executed by  
LESLIE A. JOHANSON AND HENRY L. JOHANSON, WIFE AND HUSBAND

to and in favor of HOMESTEAD MORTGAGE CORPORATION  
upon the following described property situated in  
SHERBURNE County, State of MN  
Lot 26, Block 1, Meadowvale Townhomes, Common Interest Community Number 17,  
Sherburne County, Minnesota.

which Mortgage is of record in Book, Volume, or Liber No. . at page  
(or as No. 492099 ) of the Public Records of SHERBURNE  
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, its successor and assigns, forever, subject only to the  
terms and conditions of the above-described Mortgage.

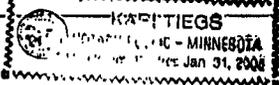
(Assignor)  
HOMESTEAD MORTGAGE CORPORATION  
By: *Todd W. Gunderson*  
(Signature)  
(Print Name & Title)

Todd W. Gunderson  
President

(Space Below This Line Reserved For Acknowledgment)

STATE OF . MN  
COUNTY OF RAMSEY

On 11/27/02 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  
Mn. Commission Expires



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: HENRY LEONARD JOHANSON,  
LESLIE ANN JOHANSON,

BKY. No.: 04-44870  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default from March 1, 2004 to date in the amount of \$786.00 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$110,000.00. The property is encumbered by two additional liens in the amount of approximately \$35,700.00. According to a recent appraisal the fair market value of the property is estimated at \$163,100.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

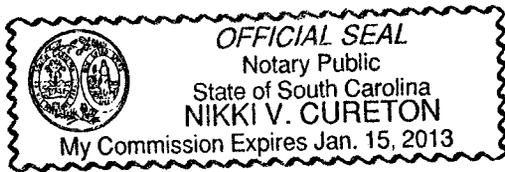
Dated: September 10, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

10<sup>th</sup> day of September, 2004.

Nikki V. Cureton  
Notary



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: HENRY LEONARD JOHANSON,  
LESLIE ANN JOHANSON,

BKY. No.: 04-44870  
Chapter 7

Debtors.

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

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition on August 31, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Sherburne County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 26, Block 1, Meadowvale Townhomes, Common Interest Community Number 17.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$110,000.00. The property is encumbered by two additional liens in the amount of approximately \$35,700.00. According to a recent appraisal the fair market value of the property is estimated at \$163,100.00. The payments due under said mortgage are in default from March 1, 2004 to date in the amount of \$786.00 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The combined encumbrances on the property total approximately \$145,700.00 and the fair market value of the property is estimated at \$163,100.00. Due to the considerable amount in default any purported equity that currently exists in said real property would be consumed by per diem interest and marketing costs.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 10, 2004

By:           /e/ Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
152262/231605  
(D1850)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re: HENRY LEONARD JOHANSON,  
LESLIE ANN JOHANSON,

BKY. No.: 04-44870  
Chapter 7

Debtors.

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on September 15, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Dorraine A. Larison  
Trustee  
1010 W. St. Germain, Rm. 600  
St. Cloud, MN 56301

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

Henry Leonard Johanson  
Leslie Ann Johanson  
19171 Concord Street  
Elk River, MN 55330

Paul S. Motin  
Motin Law Office, PA  
327 Main St.  
Elk River, MN 55330

Affinity Plus Fed. Credit Union  
175 W. Lafayette Rd.  
St. Paul, MN 55107

Meadowvale Townhome HOA  
P.O. Box 5233  
Hopkins, MN 55343

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 15, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1850)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re: HENRY LEONARD JOHANSON,  
LESLIE ANN JOHANSON,

BKY. No.: 04-44870  
Chapter 7

Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 7, 2004 in Courtroom 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

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

Lot 26, Block 1, Meadowvale Townhomes, Common Interest  
Community Number 17,  
Sherburne County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

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

\_\_\_\_\_  
The Honorable Robert J. Kressel  
Judge of the U.S. Bankruptcy Court