

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul Joseph Wandersee,

Debtor: Chapter 7 Case
Case No. BKY 03-60037-DDO.

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

TO: The Debtor, Debtor's Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, f/k/a Norwest Mortgage, Inc. (Movant)**, a secured creditor of the Debtor herein, 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 at 1:00 o'clock p.m., on October 26, 2004, before the Honorable Dennis D. O'Brien in Court Room 2, U.S. Post Office Building, 118 South Mill Street, Fergus Falls, MN or as soon thereafter as counsel can be

heard.

3. Any response to this motion must be filed and delivered not later than October 21, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on January 13, 2003, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated May 13, 1997, in the original principal amount of

\$138,750.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

That part of the Northeast Quarter of the Southeast Quarter of Section 17, Township 104 North, Range 30 West, Martin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Section 17, thence on an assumed bearing of North 0 degrees 00 minutes East, along the East line of said section, a distance of 1544.00 feet to an iron monument, said iron monument being the point of beginning of the tract to be described; thence South 90 degrees 00 minutes West a distance of 458.00 feet to an iron monument; thence North 0 degrees 00 minutes East a distance of 542.00 feet to an iron monument; thence North 90 degrees 00 minutes East a distance of 458.00 feet to an iron monument located on the East line of said section; thence South 0 degrees 00 minutes West, along said East line, a distance of 542.00 feet to the point of beginning..

The Mortgage was filed for record in the office of the County Recorder, in and for Martin County, Minnesota, on May 15, 1997, as document number 330462.

7. The subject property has a market value of \$160,000.00. Furthermore, the subject real estate is encumbered in the amount of \$28,142.00 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$159,821.82, including Movant's mortgage. Hence, Debtor has little or no actual equity in the property.

8. Debtor's Three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 30th day of September, 2004.

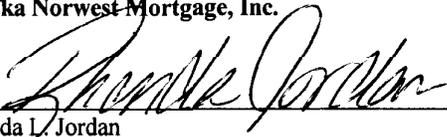
PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle, Atty. Reg. #130126
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101-1197
Telephone: (651) 291-8955

- A. Note Number xxx6615 in the original principal amount of \$138,750.00, dated May 13, 1997. Executed by Original Mortgagor(s):
Paul Wandersee
Jane Wandersee
to Norwest Mortgage Inc.
- B. Debtor is in default on his obligations to Fannie Mae in that Debtor has failed to make his installment payments when due and owing pursuant to the terms of the above-described Note.
- C. As of September 22, 2004, the total indebtedness was \$131,679.82. Debtor is in default on 3 contractual payments (July 2004 through and including September 2004 payments). The amount of the current monthly mortgage installment payment is \$1,212.94, and the monthly late charge is \$50.91.
5. By failing to make the regular monthly installment payments due pursuant to the Note, Debtor has not provided adequate protection to Fannie Mae.
6. Fannie Mae has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees for which it is entitled to reimbursement under the terms of its Note.

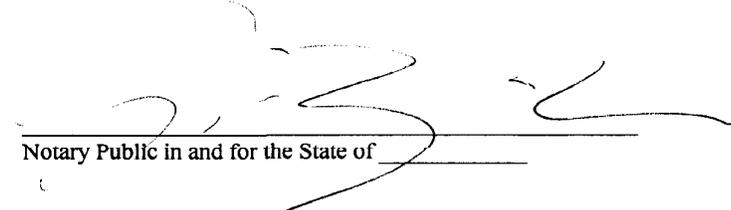
The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

Wells Fargo Bank, N. A. successor by merger to Wells Fargo Home Mortgage, Inc. fka Norwest Mortgage, Inc.

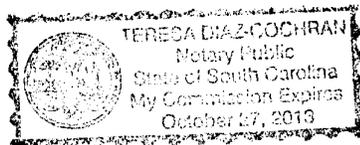
By: 
Rhonda L. Jordan
Analyst II/Bankruptcy Dept

DATED: 9/27/04

SUBSCRIBED AND SWORN TO BEFORE ME on 9/27, 2004.


Notary Public in and for the State of _____

8193-N-0451
minn



(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that I am in default. If the amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including as a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. It is a Security Instrument given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which may be incurred by the Note Holder if I make in this Note. That Security Instrument describes how and under what conditions I will pay the Note Holder the full amount of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. Lender may also require immediate payment by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days for Borrower to pay the sums secured by this Security Instrument. If Borrower must pay all sums secured by this Security Instrument within the period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

(Seal) *Paul Wandssee* (Seal)
-Borrower PAUL WANDSSEE
SSN: 468-50-3651

(Seal) *Jane K. Wandssee* (Seal)
-Borrower JANE K. WANDSSEE
SSN: 474-62-3661

[Sign Original Only]

NBS 8/31/2004

No. 32123 Date MAY 15 1997
Registration Tax reason of 319 24 Paid
Robert J. [Signature]
County Auditor/Treasurer

330462 Office of County Recorder
County of Martin, Minnesota
I hereby certify that the within instrument was filed in this
office for record on the 15th day of MAY
A.D. 19 97 at 10:45 a/m and
was duly recorded as Document No. 330462
[Signature]
County Recorder
By _____ Deputy

[Space Above This Line For Recording Date]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on MAY 13, 1997
The mortgagor is PAUL WANDERSEE AND JANE WANDERSEE, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to NORWEST MORTGAGE, INC.

which is organized and existing under the laws of THE STATE OF CALIFORNIA, and whose
address is P.O. BOX 5137, DES MOINES, IA 503065137

("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED THIRTY EIGHT THOUSAND SEVEN HUNDRED FIFTY AND 00/100
Dollars (U.S. \$****138,750.00).

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
JUNE 01, 2027

and for interest at the yearly rate of 8.000
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
MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

SR(MM) (0511)

Form 1024 8/90
Adopted 8/91

VMP MORTGAGE FORMS - 800651-7291

Page 1 of 2

Printed: [Signature] GRW



Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defenses of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon any person in possession of the Property. Lender shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any amount to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recording costs.

23. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es))

- Adjustable Rate Rider
- Crude/Refined Payment Rider
- Balloon Rider
- VA Rider

- Condominium Rider
- Planned Unit Development Rider
- Rate Improvement Rider
- Other(s) (specify)

- 1-4 Family Rider
- Biweekly Payment Rider
- Second Home Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

 _____ (Seal)
 _____ -Borrower
 _____ (Seal)
 _____ -Borrower
 _____ (Seal)
 _____ -Borrower
 _____ (Seal)
 _____ -Borrower

Paul Wanders _____ (Seal)
 PAUL WANDERS -Borrower
Janet R. Wanders _____ (Seal)
 JANET WANDERS -Borrower
 _____ (Seal)
 _____ -Borrower
 _____ (Seal)
 _____ -Borrower
 _____ (Seal)
 _____ -Borrower

STATE OF MINNESOTA, BLUE EARTH

County mt

On this 13TH day of MAY, 1997, before me appeared PAUL WANDERSEN AND JANE WANDERSEN, HUSBAND AND WIFE

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as THEIRS.

Debra A. Throldahl
Notary Public
My Commission Expires:

This instrument was prepared by
NORWEST MORTGAGE, INC., SHARI LEE
OF 1811 WEIR DRIVE, WOODBURY, MN 551280000

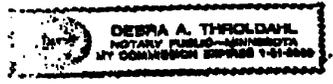


EXHIBIT A

That part of the Northeast Quarter of the Southeast Quarter of Section 17, Township 104 North, Range 30 West, Martin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Section 17, thence on an assumed bearing of North 0 degrees 00 minutes East, along the east line of said section, a distance of 1544.00 feet to an iron monument, said iron monument being the point of beginning of the tract to be described; thence South 90 degrees 00 minutes West a distance of 458.00 feet to an iron monument; thence North 0 degrees 00 minutes East a distance of 542.00 feet to an iron monument; thence North 90 degrees 00 minutes East a distance of 458.00 feet to an iron monument located on the east line of said section; thence South 0 degrees 00 minutes West, along said east line, a distance of 542.00 feet to the point of beginning.

9601093566/2149

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul Joseph Wandersee,

Debtor: Chapter 7 Case
Case No. BKY 03-60037-DDO.

MEMORANDUM OF LAW

Wells Fargo Bank, NA successor by merger to Wells Fargo Home Mortgage, Inc., f/k/a Norwest Mortgage, Inc. (**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 certain real property owned by Debtor. The Debtor is delinquent with respect to payments due under the mortgage for the months of July 2004 through September 2004 in a total amount of \$4,352.59, including late charges. The total mortgage debt is \$131,679.82, which includes accrued interest through September 22, 2004. Thereafter, interest accrues on the unpaid principal balance at \$27.95 per day.

The subject property has a market value of \$160,000.00. Furthermore, the subject real estate is encumbered in the amount of \$28,142.00 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$159,821.82, including Movant's mortgage.

ARGUMENT

Under §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. §362(d)(1). Debtor has failed to make payments due under the terms of the mortgage for a period of over Three (3) months. Debtor has little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtor has otherwise failed to provide 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 Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 30th day of September, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul Joseph Wandersee,

Debtor: Chapter 7 Case
Case No. BKY 03-60037-DDO.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on September 30, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Stewart, Zlimen & Jungers, Ltd.
430 Oak Grove Street, #200
Minneapolis, MN 55403

Paul Joseph Wandersee
P.O. Box 73
Winger, MN 56592

Tamara L. Yon
Chapter 7 Trustee
P.O. Box 605
Crookston, MN 56716

Thomas V. Omdahl, Esq.
424 Demers Avenue
Grand Forks, ND 58203

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

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Paul Joseph Wandersee,

Debtor: Chapter 7 Case
Case No. BKY 03-60037-DDO.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on October 26, 2004, on the motion of Wells Fargo Bank, NA successor by merger to Wells Fargo Home Mortgage, Inc., f/k/a Norwest Mortgage, Inc. (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated May 13, 1997, filed for record in the office of the County Recorder in and for Martin County, Minnesota, on May 15, 1997, and recorded as Document No. 330462 and covering real property located in Martin County, Minnesota, which is legally described as follows:

That part of the Northeast Quarter of the Southeast Quarter of Section 17,
Township 104 North, Range 30 West, Martin County, Minnesota, described
as follows:

Commencing at the Southeast corner of said Section 17, thence on an assumed bearing of
North 0 degrees 00 minutes East, along the East line of said section, a distance of 1544.00
feet to an iron monument, said iron monument being the point of beginning of the tract to
be described; thence South 90 degrees 00 minutes West a distance of 458.00 feet to an
iron monument; thence North 0 degrees 00 minutes East a distance of 542.00 feet to an
iron monument; thence North 90 degrees 00 minutes East a distance of 458.00 feet to an
iron monument located on the East line of said section; thence South 0 degrees 00 minutes
West, along said East line, a distance of 542.00 feet to the point of beginning..

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

Dated this ___ day of _____, 2004.

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Dennis D. O'Brien
United States Bankruptcy Judge