

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Jarrold Mankie

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-60683

TO: Jarrold Mankie, 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 1:00 pm on September 28, 2004, in Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 23, 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 17, 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 June 4, 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 205 Lark Street, Sandstone, MN 55072, legally described as follows, to-wit:

Lot 7 and the East one-half of Lot 8, Block 1, First Subdivision of Sandstone Quarries, Pine County, Minnesota

7. The indebtedness of Jarrod Mankie is evidenced by a Promissory Note and Mortgage dated September 17, 1998, filed of record in the Pine County Recorder's office on October 7, 1998, and recorded as Document No. 374911. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. 8. The Debtor has failed to pay monthly mortgage payments since December 1, 2003, and is in default in the amount of \$7,349.70 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 approximately \$72,700.00.

10. The Debtor has scheduled a second mortgage in favor of Lake State Federal Credit Union in the amount of \$25,909.00. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Debtor has estimated the value of the homestead as \$87,000.00, and accordingly, Debtor has no equity in the premises and the property is not necessary to an

effective reorganization. 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. 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: August 25, 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:

Jarrold Thomas Mankie

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-60683

STATE OF GEORGIA

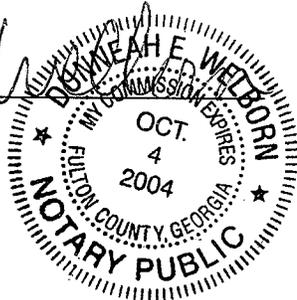
COUNTY OF FULTON

Diane Sanders, being first duly sworn, deposes and states she 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 she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.

Diane Sanders

Subscribed and sworn to before me this
4th day of August, 2004.

Dumneeh W. [Signature]
Notary Public



374911

OFFICE OF COUNTY RECORDER
STATE OF MINNESOTA
COUNTY OF PINE

This is to certify that this instrument was filed in this office on the 7 day of October 1999 at 1 o'clock P.M. and was recorded as

Document # 374911
EDIE LARSON TEICH
County Recorder
By [Signature] Dep.
Rec'd 9:50 Rel 1:10 WC Rec'd

No. 15759
Registration Tax hereon of \$ 159.62
Paid this 7 day of Oct 1999
Edie Larson Teich County Treasurer
Pine County Minnesota
[Signature]

[Space Above This Line For Recording Date]

State of Minnesota

MORTGAGE

PLA Case No.
271-7941779 703

THIS MORTGAGE ("Security Instrument") is given on **SEPTEMBER 17, 1998**
The Mortgagor is **JARROD T MANKIE AND KRISTI M MANKIE, HUSBAND AND WIFE**

UNIVERSAL TITLE COMPANY
855 3rd Avenue West
Pine City, MN 55063

("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 **SIXTY NINE THOUSAND THREE HUNDRED SEVENTY SIX AND 00/100**

Dollars (U.S. \$*******69,376.00**). 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 **OCTOBER 01, 2028** and for interest at the yearly rate of **7.250** 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



3 7 4 9 1 1

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in PINE County, Minnesota: PLEASE SEE THE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART THEREOF :

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT. TAX STATEMENTS SHOULD BE SENT TO: NORWEST MORTGAGE INC., P.O. BOX 5137, DES MOINES, IA 503065137

which has the address of 205 LARK STREET, SANDSTONE [Street, City], Minnesota 55072 [Zip Code] ("Property Address");

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.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

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. Section 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 unanticipated 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.

initialed *SM*
FLM/AL

374911

EXHIBIT "A"

Lot 7, and East One-Half of Lot 8, Block 1, First subdivision of Sandstone
Quarries, Pine County, Minnesota.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Jarrold Mankie

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-60683

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 \$7,349.70.

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 10 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 approximately \$72,700.00 and including the amount due the second

mortgage holder the approximate total amount encumbering the property is \$98,309.00. The value of the property is approximately \$87,000.00. 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: August 25, 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:

Jarrold Mankie

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-60683

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 August 25, 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

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

Thomas V. Omdahl
Attorney at Law
424 Demers Avenue
Grand Forks, MN 58203

Jarrold Mankie
320 17th Street NW, #7
East Grand Forks, MN 56721

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Jarrold Mankie

ORDER

Debtor.

Chapter 7, Case No. 04-60683

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 September 28, 2004, at the U.S. Bankruptcy Court, Fergus Falls, 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 7 and the East one-half of Lot 8, Block 1, First Subdivision of Sandstone Quarries, Pine 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