

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Cynthia Susan Herfindahl
SSN XXX-XX-0490

CHAPTER 7 CASE

CASE NO. 04-60700 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. U.S. Bank, N.A. (hereinafter "Secured Creditor"), 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 on August 24, 2004, at 11:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 2, Second Floor of the above entitled Court located at U.S. P.O. Building, 118 South Mill, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 19, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than August 13, 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, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 9, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$51,567.57, as evidenced by that certain mortgage deed dated October 30, 1998, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated October 30, 1998, executed by Cynthia S. Herfindahl, a single person, recorded November 5, 1998, as Document No. 517417, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Clay County, Minnesota and is legally described as follows to-wit:

The South Twenty feet of Lot Three, and all of Lot Four, in Block One, of Freeman's First Addition to the City of Moorhead, situate in the County of Clay and the State of Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of July 22, 2004, Debtor is delinquent in the making of monthly payments as required for the months of December, 2003 through July, 2004, inclusive, in the amount of \$427.80 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$59,000.00 subject to Secured Creditor's mortgage in excess of \$58,282.97.

Considering a selling cost of 10%, Debtor has no real equity in the property. Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 22nd day of July, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

C 114707
1-6

19297 NOV 05 1998
Person of \$ 128,74 paid
Betty G. ...
County Treasurer
Soc. Johnson
County Auditor

STATE OF MINNESOTA }
COUNTY OF CLAY }
I hereby certify that the within instrument was
filed in this office for record on the 5TH day
of NOVEMBER A.D. 19 98 at 3:00
o'clock P.M. and was duly recorded on
Document # 517017
Bernie ...
County Recorder
Dputy.

Clay Title Co
300 ED

LOAN NUMBER: 1561193
U12
6801U1292

(Keep Above This Line For Recording Only)

ORIGINAL

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on OCTOBER 30TH, 1998. The mortgagor is CYNTHIA HERFINDAHL, A SINGLE PERSON ("Borrower"). This Security Instrument is given to U.S. Bank National Association, which is organized and existing under the laws of THE UNITED STATES OF AMERICA, and whose address is 6000 ATRIUM WAY MT. LAUREL NEW JERSEY 08054 ("Lender"). Borrower owns Lender the principal sum of FIFTY THREE THOUSAND SEVEN HUNDRED SEVENTY AND 00/100 Dollars (U.S. \$53,770.00). 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 01ST 2028 and for interest at the yearly rate of 6.25000 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 under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in CLAY County, Minnesota:

BEING MORE PARTICULARLY DESCRIBED ACCORDING TO A LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

BEING COMMONLY KNOWN AS: 719 12TH STREET NORTH, MOORHEAD, MN 56560.

BEING THE SAME PREMISES CONVEYED TO THE MORTGAGOR HERETO BY DEED BEING RECORDED SIMULTANEOUSLY HERewith; THIS BEING A PURCHASE MONEY MORTGAGE GIVEN TO SECURE THE PURCHASE PRICE OF THE ABOVE DESCRIBED PREMISES.

PREPARED BY: Dish Okey
TRISH OKEY

which has the address of 719 12TH STREET NORTH, MOORHEAD, Minnesota 56560 ("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 variation by jurisdiction to constitute a uniform security instrument covering real property.

EXHIBIT A

517417 ORIGINAL 5-6

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 the 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 excess 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 reconveyance costs.

23. Waiver of Escrowment. Borrower waives all rights of escrowment 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
- Graduated Payment Rider
- Ballroom Rider
- Other(s) (specify)
- Condominium Rider
- Planned Unit Development Rider
- Rate Improvement Rider
- 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.

Witness:

Cynthia E. Herpin Dahl
CYNTHIA E. HERPIN DAHL
3/10/98
CSH

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF MINNESOTA, CLAY COUNTY in

On this 20TH day of OCTOBER, 1998, before me, appeared CYNTHIA E. HERPIN DAHL, to be personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that HE executed the same as HIS free act and deed.

WENDY LAWSON
Notary Public, State of North Dakota
My Commission Expires May 17, 2001
STATE OF NORTH DAKOTA
NOTARY PUBLIC SEAL

Wendy Lawson
Notary Public

This instrument was prepared by TRISH OXLEY

6-6

The South Twenty feet of Lot Three, and all of Lot Four, in Block One, of Freeman's First Addition to the City of Moorhead, situate in the County of Clay and the State of Minnesota.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Cynthia Susan Herfindahl
SSN XXX-XX-0490

CHAPTER 7 CASE

CASE NO. 04-60700 DDO

Debtor.

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

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of July 22, 2004, Debtor is delinquent for the monthly payments as required for the months of December, 2003 through July, 2004, in the amount of \$427.80 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$59,000.00 subject to Secured Creditor's mortgage in excess of \$58,282.97.

Considering a selling cost of 10%, Debtor has no real equity in the property. Since this is a liquidation case, no reorganization is being attempted.

CONCLUSION

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

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

Dated this 22nd day of July, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

CHAPTER 7 CASE

Cynthia Susan Herfindahl
SSN XXX-XX-0490

CASE NO. 04-60700 DDO

AFFIDAVIT OF
LISA ROGERS

Debtor.

Lisa Rogers, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Manager at National Default Servicing Corporation.

2. U.S. Bank, N.A., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated October 30, 1998, executed by Cynthia S. Herfindahl, a single person, recorded November 5, 1998, as Document No. 517417. The property is located in Clay County, Minnesota and is legally described as follows, to-wit:

The South Twenty feet of Lot Three, and all of Lot Four, in Block One, of Freeman's First Addition to the City of Moorhead, situate in the County of Clay and the State of Minnesota.

3. That she has reviewed the account records relating to the Herfindahl mortgage loan, account no. 4800036280.

4. That as of July 9, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$51,567.57
Interest through July 9, 2004	2,156.84
Attorney's Fees:	700.00
Late Charges:	201.85
Pro Rata MIP/PMI:	34.95
Escrow Advance:	351.14
Other fees:	122.00
Recoverable balance:	1,651.06
Foreclosure fees and costs:	1,497.56
TOTAL:	\$58,282.97

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of December, 2003 through July, 2004 in the amount of \$472.80 each.

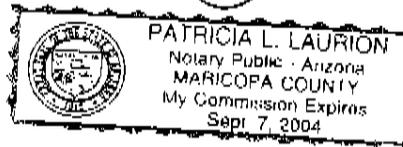
6. This affidavit is given in support of the motion of U.S. Bank, N.A. for relief from the automatic stay.

NATIONAL DEFAULT SERVICING CORPORATION

By: *Lisa Rogers*
Its Bankruptcy Manager

Subscribed and sworn to before me
this 11 day of June, 2004.

Patricia L. Laurion
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Cynthia Susan Herfindahl
SSN XXX-XX-0490

CHAPTER 7 CASE

CASE NO. 04-60700 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on July 22, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Lisa Rogers , and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Cynthia Susan Herfindahl
719 12th Street North
Moorhead, MN 56560

Tamara L. Yon
PO Box 605
Crookston, MN 56716

Alan J. Sheppard
921 2nd Avenue South
Fargo, ND 58103

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

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

Dated this 22nd day of July, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Cynthia Susan Herfindahl
SSN XXX-XX-0490

Debtor.

CHAPTER 7 CASE

CASE NO. 04-60700 DDO

ORDER

The above entitled matter came on for hearing upon motion of U.S. Bank, N.A. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on August 24, 2004, at U.S. P.O. Building, 118 South Mill, 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 Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated October 30, 1998, executed by Cynthia S. Herfindahl, a single person, recorded November 5, 1998, as Document No. 517417 covering real estate located in Clay County, Minnesota, legally described as follows, to-wit:

The South Twenty feet of Lot Three, and all of Lot Four, in Block One, of Freeman's First Addition to the City of Moorhead, situate in the County of Clay and the State of Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court