04-28309

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 04-60724-DDO

Wanda Westall
Joe Westall
Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

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

1. Ameriquest Mortgage Company moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 1:00 p.m., on October 26, 2004, in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 21, 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 15, 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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 16, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On July 17, 2002, Joe G. Westall and Wanda L. Westall, Husband and wife made, executed and delivered to Ameriquest Mortgage Company their Note (hereinafter referred to as the "Note"), in the original principal amount of $153,000.00 bearing interest from the date thereof at the rate of 7.99% per annum until paid, payable in monthly installments commencing

on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On July 17, 2002, to secure the payment of the Note, Joe G. Westall and Wanda L. Westall, Husband and wife executed and delivered to Ameriquest Mortgage Company their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Douglas County, Minnesota, legally described as follows:

A PART OF THE W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST, DOUGLAS COUNTY, MINNESOTA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: TO FIND THE POINT OF BEGINNING COMMENCE AT THE IRON CORNER POST AT THE SE CORNER OF SAID W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST; THENCE NORTH ALONG THE SIXTEENTH LINE 611.3 FEET TO THE POINT OF BEGINNING; THENCE FROM THE POINT OF BEGINNING NORTH 205 FEET, THENCE SOUTH 87 DEGREES 25 MINUTES WEST 150 FEET; THENCE SOUTH 205 FEET; THENCE NORTH 87 DEGREES 25 MINUTES EAST 150 FEET TOTHE POINT OF BEGINNING; AND

A PART OF THE W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST, DOUGLAS COUNTY, MINNESOTA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: TO FIND THE POINT OF BEGINNING COMMENCE AT THE SE CORNER OF THE SAID W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST; THENCE NORTH ALONG THE QUARTER QUARTER LINE 611.3 FEET; THENCE SOUTH 87 DEGREES 25 MINUTES WEST, 150 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ON SAID BEARING 250 FEET; THENCE NORTH 543 FEET; THENCE NORTH 87 DEGREES 25 MINUTES EAST, 250 FEET; THENCE SOUTH 543 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM:

A PART OF THE W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST, DOUGLAS COUNTY, MINNESOTA MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: TO FIND THE POINT OF BEGINNING COMMENCE AT THE SE CORNER OF THE W 1/2 SE1/4 OF SAID SECTION 8; THENCE NORTH ALONG THE 1/16 LINE, 1,154.3 FEET TO A POINT; THENCE SOUTH 87 DEGREES 25 MINUTES WEST 150 FEET TO A POINT WHICH IS THE POINT OF BEGINNING; THENCE CONTINUE ON THE SAME COURSE 250 FEET; THENCE SOUTH 138 FEET; THENCE NORTH 87 DEGREES 25 MINUTES EAST 250 FEET; THENCE NORTH 138 FEET TO THE POINT OF BEGINNING.

which property has an address of: 1404 Mckay Ave. N, Alexandria, MN 56308. The mortgage was filed for record in the office of the Recorder, County of Douglas, on August 28, 2002, as Document No. 228503. A copy of the mortgage is attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated June 16, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as

follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the June, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ $1,218.76	$3,656.28
3 late charges @ $67.30	$201.90
Property Inspections	$25.00
Attorneys Fees & Costs	$700.00
TOTAL POST - PETITION	$4,583.18

No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal Balance	$151,719.27
Interest	$13,328.31
Escrow Shortage	$95.32
Accumulated late fees	$1,185.45
Property inspections	$25.00
Attorneys Fees & Costs	$2,918.60
TOTAL	$169,271.95

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Ameriquest Mortgage Company moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: ~~9/17/04~~ 9.22.04 N.N

Signed:/e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Ann Sonsma, the Bankruptcy Counselor of Ameriquest Mortgage Company, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 9/17/04 Signed: Ann Sonsma

Ameriquest Mortgage Company
505 City Parkway West STE 100
Orange CA 92868

OFFICE OF COUNTY RECORDER } SS
County of Douglas, Minn.

I hereby certify that the within instrument was filed in this office for record on the 28th day of Aug. 20 02 at 1:00 o'clock P. M and was duly recorded as Doc. No. 228503

Darlene Chermak, Recorder
Marcie Jomar, Deputy

REGISTRATION TAX HEREON NO. 36656
OF 351.90 DOLLARS
HAS BEEN PAID
8-29-2002
COUNTERSIGNED: TREASURER, DOUGLAS COUNTY, MINN
AUDITOR, DOUGLAS COUNTY, MINN

[Space Above This Line For Recording Data]

MORTGAGE

Northwest Title & Farm
4255 White Bear Ave
Ste 1300 A
Vadnais Heights
R24
Return

Return To:

Ameriquest Mortgage Company
P.O. Box 11507
Santa Ana, CA 92711

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 July 17, 2002 together with all Riders to this document.

0037022894 - 7339

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3024 1/01

VMP-6(MN) (0005)
Page 1 of 15 Initials: J.G.W. [illegible]
VMP MORTGAGE FORMS - (800)521-7291 07/16/2002 3:40:19

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-60724-DDO
Chapter 13

Wanda Westall
Joe Westall

Debtor(s)

MEMORANDUM OF LAW

Ameriquest Mortgage Company ("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 real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of $4,583.18.

ARGUMENT

1. Under Section 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. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is $169,271.95.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9-22-04

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed:/e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

04-60724-DDO

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) **SS**
COUNTY OF HENNEPIN)

I, Stephanie Pilegaard says that on September 22, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Wanda Westall
1404 North McKay Ave NE
Alexandria, MN 56308

Jon Westall
1404 North McKay Ave NE
Alexandria, MN 56308

Brenda Velde, Esq .
1118 Broadway
Alexandria, MN 56308

Michael Farrell, Trustee
PO Box 519
Barnesville, MN 56514

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

Stephanie Pilegaard

Subscribed and sworn to before me September 22, 2004.

Notary

JENNI A. DRURY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES 1-31-2005

04-28309
0037022894

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-60724-DDO

Wanda Westall
Joe Westall,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 26, 2004.

THIS CAUSE coming to be heard on the Motion of Ameriquest Mortgage Company, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Ameriquest Mortgage Company, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

A PART OF THE W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST, DOUGLAS COUNTY, MINNESOTA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: TO FIND THE POINT OF BEGINNING COMMENCE AT THE IRON CORNER POST AT THE SE CORNER OF SAID W 1/2 SE 1/4 OF SECTION 8, TOWNSHIP 128 NORTH, RANGE 37 WEST; THENCE NORTH ALONG THE SIXTEENTH LINE 611.3 FEET TO THE POINT OF BEGINNING; THENCE FROM THE POINT OF BEGINNING NORTH 205 FEET, THENCE SOUTH 87 DEGREES 25 MINUTES WEST 150 FEET; THENCE SOUTH 205 FEET; THENCE NORTH 87 DEGREES 25 MINUTES EAST 150 FEET TO THE POINT OF BEGINNING; AND

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NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

_____

Judge of Bankruptcy Court