

04-29372

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 01-80379-RJK

Peter Zieglmeier
Cheryln Zieglmeier,

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. JPMorgan Chase Bank as Trustee, fka The Chase Manhattan Bank as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 2:00 p.m., on October 7, 2004, in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis Minnesota.

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.

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 March 8, 2001. 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 January 14, 1998, Peter Zieglmeier, aka Peter G. Zieglmeier and Cheryln Zieglmeier, aka Cheryln M. Zieglmeier made, executed and delivered to Equity Lending, Inc. their Note (hereinafter referred to as the "Note"), in the original principal amount of \$50,000.00 bearing interest from the date thereof at the rate of 12.375% 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 January 14, 1998, to secure the payment of the Note, Peter Zieglmeier, aka Peter G. Zieglmeier and Cheryl N Zieglmeier, aka Cheryl N. Zieglmeier executed and delivered to Equity Lending, Inc. their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Meeker County, Minnesota, legally described as follows:

Part of the sw 1/4 of NW 1/4, of Section 2, Township 121 N, Range 31W in the Village of Eden Valley, Minnesota described as follows: Beginning at a point 33.0 feet East and 100.0 feet North of the Southwest corner of the SW 1/4 of NW 1/4 of Section 2, Township 121N, Range 31W, thence continuing due North 100.0 feet, thence due East 150.0 feet, thence due South 100.0 feet, thence due West 150.0 feet to the point of beginning

which property has an address of: 619 State Street South, Eden Valley, MN 55329. The mortgage was filed for record in the office of the Recorder, County of Meeker, on January 23, 1998, as Document No.274346, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated March 1, 2001, 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 April, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

5 payments @ \$563.67	\$2,818.35
4 late charges @ \$28.18	112.72
Suspense Balance	-193.36
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$3,537.71

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$44,651.46
Interest	2,333.20
Accumulated late fees	1,399.13

Suspense balance	-193.36
Attorneys Fees & Costs	<u>1,180.00</u>
TOTAL	\$49,370.43

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, JPMorgan Chase Bank as Trustee, fka The Chase Manhattan Bank as Trustee 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: _____

a. g. ay.

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, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, 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:

9-3-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

380989046

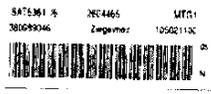
495
2604465

1-23-98
Treas. Receipt No. 09295
Registration Tax
received of \$ 150.00 paid
Alta Stang
County Treasurer

Countersigned:
Maureen Christensen
County Auditor

274346
OFFICE OF COUNTY RECORDER
MEEKER COUNTY, MINNESOTA
I hereby certify that the within instrument was filed in this
office for record on the 23rd day of January
A.D. 1998 at 8 o'clock A.M. and was
duly recorded in book 711 of MCGS page 495-502
David B. ...
County Recorder

Loan No. 598002 **MORTGAGE** STEARNS COUNTY ABSTRACT CO.
16422



THIS MORTGAGE ("Security Instrument") is given on January 14, 1998
The mortgagor is Peter Ziegler, A/K/A Peter G. Ziegler and Cheryln
Ziegler, A/K/A Cheryln M. Ziegler, Husband and Wife

("Borrower"). This Security Instrument is given to EQUITY LENDING, INC.
which is organized and existing under the laws of MINNESOTA, and whose address is
7380 FRANCE AVENUE SOUTH #100, EDINA, MN 55435
("Lender"). Borrower owes Lender the principal sum of Fifty Thousand and no/100
Dollars (U.S. \$ 50,000.00). 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 February 1, 2018 and for interest at the yearly rate of
12.375% 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

MINNESOTA - Single Family - FNMA/FHLMC UNIFORM INSTRUMENT Form 9024-9000 Amended 5/91
ELF-GROUND 10402 ELECTRONIC LASSER FORMS, INC. (800) 577-6543

CB

Stearns Co. Clerk PZ

2601465

1998 - H12

Assignment of Mortgage 27-093

Date: January 13, 1998
FOR VALUABLE CONSIDERATION, Equity Lending, Inc.

a corporation under the laws of the State of Minnesota,
Assignor (whether one or more), hereby sells, assigns, and transfers to *

Assignee (whether one or more), the Assignor's interest in the Mortgage dated January 14, 1998
executed by Peter Ziegler, A/K/A Peter G. Ziegler and Cheryl Ziegler, A/K/A Cheryl M. Ziegler

as Mortgage, to Equity Lending, Inc.,
as Mortgage, and filed for record 1/23/98 as Document Number 294246
(or in Book 311 of Meeker Page 445) in the Office of the (County
Recorder) (Register of Titles) of Meeker County, Minnesota together with all
right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants with
Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of
Fifty Thousand Dollars and no/100(\$50,000.00).
with interest thereon from January 13, 1998

ASSIGNOR
EQUITY LENDING, INC.

By: Kenneth W. Soreberg
Its President

* THE CHASE MANHATTAN BANK AS TRUSTEE, C/O RESIDENTIAL FUNDING
Corporation, 10 Universal City Plaza # 2100, Universal City, CA 91608

STATE OF MINNESOTA
COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 13th day of January, 1998
by Kenneth W. Soreberg, the President of Equity Lending, Inc., a corporation under the laws of the State of
Minnesota, on behalf of the corporation.

THIS INSTRUMENT WAS DRAFTED BY OR FOR AND ADDRESS:
Equity Lending, Inc.
7380 Franco Avenue South, Ste. 100
Edina, MN 55435

Residential Funding Corporation
8400 Normandale Lake Blvd. #600
Bloomington, MN 55437

Signature of Notary Public
BRIDGET WELSEN McLAUGHLIN
NOTARY PUBLIC - MINNESOTA
ANOKA COUNTY
My Commission Expires Jan. 31, 2000

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 01-80379-RJK

Chapter 13

Peter Zieglmeier
Cheryln Zieglmeier,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee, fka The Chase Manhattan Bank as Trustee ("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 \$3,537.71.

ARGUMENT

1. Under Section 362.(c)(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 three 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 \$49,370.43. [The property is encumbered by a first mortgage in favor of Bank of America in the approximate amount of \$687.00 and a third mortgage in favor of Community First National in the approximate amount of \$600.00.]

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

Dated: _____

a-saf

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

By: /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

04-29372
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 01-80379-RJK

Peter Zieglmeier
Cheryl Zieglmeier,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 7, 2004.

THIS CAUSE coming to be heard on the Motion of JPMorgan Chase Bank as Trustee, fka The Chase Manhattan Bank as Trustee, 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 JPMorgan Chase Bank as Trustee, fka The Chase Manhattan Bank as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Part of the sw 1/4 of NW 1/4, of Section 2, Township 121 N, Range 31W in the Village of Eden Valley, Minnesota described as follows: Beginning at a point 33.0 feet East and 100.0 feet North of the Southwest corner of the SW 1/4 of NW 1/4 of Section 2, Township 121N, Range 31W, thence continuing due North 100.0 feet, thence due East 150.0 feet, thence due South 100.0 feet, thence due West 150.0 feet to the point of beginning

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court