

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

James Quarles  
Reta Quarles

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 03-30664

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TO: James Quarles and Reta Quarles, INCLUDING TRUSTEE AND OTHER INTERESTED  
PARTIES

1. Cendant Mortgage Corporation, (*Movant*), a corporation, by its undersigned attorneys, 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 10:30 am on October 21, 2004, in Courtroom 228B, 200 Federal Building, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 18, 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 14, 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 Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on January 30, 2003. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtor.

6. Debtor above-named are the owner of certain real property located at 844 3rd Street, Forest Lake, MN 55025, legally described as follows, to-wit:

Lot 8, Block 4, Johnson and Patrin's Addition

7. The indebtedness of James Quarles and Reta Quarles is evidenced by a Promissory Note and Mortgage dated June 26, 2001, filed for registration in the Washington Registrar of Titles' office on August 16, 2001, and memorialized as Document No. 1102328 on Certificate of Title No. 56438. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. Movant has filed a Proof of Claim for delinquent payments. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtor was to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtor has failed to pay the monthly payments on the indebtedness, outside the Plan for the months of to the present date and as of the hearing date October 1, 2004 will be due for a total delinquency of \$3,547.62 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtor is in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage 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: September 30, 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:

James Quarles  
Reta Quarles

AFFIDAVIT OF PETITIONER

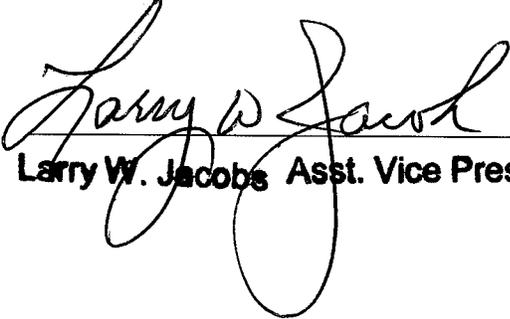
Debtor

Chapter 13, Case No. 03-30664  
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STATE OF NEW JERSEY     )

COUNTY OF BURLINGTON )

**Larry W. Jacobs**, being first duly sworn, deposes and states on oath that she/he is employed by Cendant Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

  
\_\_\_\_\_  
**Larry W. Jacobs Asst. Vice President**

Subscribed and sworn to before me this  
15<sup>th</sup> day of September, 2004.

  
\_\_\_\_\_  
Notary Public

**STACY L. MILLER**  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # DD179015  
EXPIRES 01/21/2007  
BONDED THRU 1-888-NOTARY1

1102328



Office of the  
Registrar of Titles  
Washington County, MN

Certified filed and/or recorded on:  
2001/08/16 3:58:00 PM  
1102328

**WASHINGTON COUNTY**

Receipt No: 68708 Date: 07/12/2001  
Registration tax hereon of \$315.79 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Molly F. O'Rourke, Auditor by KHaan

19.50

Burnet Title

Certificate #:	56438
Book #:	179
Page #:	237



Cindy Koemann  
Registrar of Titles

By: *Cindy Koemann*

[Space Above This Line For Recording Data]

State of Minnesota

**MORTGAGE**

FHA Case No.

271-8534662-703

Record and Return to:  
Burnet Home Loans  
2001 Bishops Gate Blvd. Mount Laurel, NJ 08054

Loan #: 0014826390

THIS MORTGAGE ("Security Instrument") is given on June 26th, 2001  
The Mortgagor is **JAMES M. QUARLES** and  
, **RETA QUARLES**, husband and wife

("Borrower"). This Security Instrument is given to **Cendant Mortgage D/B/A Burnet Home Loans**

which is organized and existing under the laws of **New Jersey**, and  
whose address is **3000 Leadenhall Road Mount Laurel, NJ 08054**

("Lender"). Borrower owes Lender the principal sum of  
**One Hundred Thirty-Seven Thousand Two Hundred Seventy-Eight Dollars and Zero**  
**Cents** Dollars (U.S. \$137,278.00).

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 **July 1st, 2031**  
and for interest at the yearly rate of **7.375** 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

FHA Minnesota Mortgage - 4/96

U/MIP-4R(MN) (9803)

Page 1 of 8

Initials: *JM2* *RQ*

VMP MORTGAGE FORMS - (800)521-7287

RETURN TO:

Burnet Title  
01-19029  
212114

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 WASHINGTON County, Minnesota:

See Attached **Exhibit A**

which has the address of **844 3RD STREET SOUTHEAST** [Street]  
**FOREST LAKE** [City], Minnesota **55025** [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.

**EXHIBIT "A"**

**Legal Description**

Lot Eight (8), Block Four (4), of JOHNSON AND PATRIN'S ADDITION to Forest Lake, as per the map or plat thereof on file and of record in the office of the Washington County Registrar of Titles, excepting and reserving to the State of Minnesota in trust for the taxing districts concerned all minerals and mineral rights as provided by law.

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

James Quarles  
Reta Quarles

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 03-30664  
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11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtor's filing of the petition on January 30, 2003 no payment has been made to movant for the month(s) of to the present and as of the hearing date October 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Cendant Mortgage Corporation respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 30, 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:

James Quarles  
Reta Quarles

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 13, Case No. 03-30664  
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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 September 30, 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

Jasmine Z. Keller  
Chapter 13 Trustee  
310 Plymouth Building, 12 South 6th Street  
Minneapolis, MN 55402

Curtis K. Walker, Esq.  
Attorney at Law  
4356 Nicollet Avenue South  
Minneapolis, MN 55409

James Quarles  
Reta Quarles  
844 3rd Street  
Forest Lake, MN 55025

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

James Quarles  
Reta Quarles

ORDER

Debtor.

Chapter 13, Case No. 03-30664  
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The above entitled matter came on for hearing upon motion of Cendant Mortgage Corporation, (*Movant*) pursuant to 11 U.S.C. Section 362 on October 21, 2004 at the U.S. Bankruptcy Court, St. Paul, 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 or assigns, has an interest, said property legally described as:

Lot 8, Block 4, Johnson and Patrin's Addition

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