

04-29100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Chapter 13 Case:  
Case Number BKY 03-31689-DDO  
Faith Zwemke,  
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. TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 22, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 N. Robert St., in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 17, 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 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, 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 10, 2003. 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 October 24, 1991, Faith N. Zwemke made, executed and delivered to Great Lakes Mortgage her Note (hereinafter referred to as the "Note"), in the original principal amount of \$107,225.00 bearing interest from the date thereof at the rate of 6.5% per annum until paid, payable in monthly installments of \$677.73 commencing on January 1, 1993 and on the first day of each and every calendar month thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit

"A" and made a part thereof by reference.

7. On October 24, 1991, to secure the payment of the Note, Faith N. Zwemke executed and delivered to Great Lakes Mortgage her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Chisago County, Minnesota, legally described as follows:

Lot Six (6) in Block One (1) of Kline's Beach, subject to road, sewer, water and electric easements, and subject to the present road as it crosses said property as well as the sewer and water pipes and electric poles presently thereon.

which property has an address of: 11987 306th St., Lindstrom, MN 55045. The mortgage was filed for record in the office of the Recorder, County of Chisago, on November 22, 1991, as Document No. 235680, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "B" and made a part hereof by reference.

Everhome Mortgage Company is the servicer for said note and mortgage and is authorized to act on behalf of Movant.

8. The debtor has filed a plan dated March 10, 2003, 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:

4 payments @ \$1,084.00	\$4,336.00
Accrued Late Charges	25.77
Attorneys Fees & Costs	<u>950.00</u>
TOTAL POST-PETITION	\$5,311.77

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

Principal	\$85,890.98
Interest to 8/31/04	1,845.18
Accumulated late fees	25.77
Attorneys Fees & Costs	<u>950.00</u>
TOTAL	\$88,711.93

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

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, TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer 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: 8-5-04 *8:00 AM*

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, Tash-Anne Medley, the Bankruptcy Processor of TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer, 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: 8-5-04

Signed: *Tash-Anne Medley*

TCF Mortgage Corporation  
c/o Everhome Mortgage Company  
8120 Nations Way, Bldg. 100  
Jacksonville, FL 32256

L# 9000164943

State of MINNESOTA

FHA Case No.  
FP2715335504

## ADJUSTABLE RATE NOTE

OCTOBER 24TH, 19 91

11987 306th STREET, BLDG 10, MN 55045  
(Property Address)

### 1. PARTIES

"Borrower" means each person signing at the time of this Note, and the person's successors and assigns. "Lender" means  
GREAT LAKES MORTGAGE

and its successors and assigns.

### 2. BORROWER'S PROMISE TO PAY: INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of  
ONE HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY FIVE AND NO/100  
Dollars (U.S.S. 107,225.00), plus interest, to the order of Lender. Interest will be charged on  
unpaid principal, from the date of disbursement of the loan proceeds by Lender, at a rate of  
SIX AND ONE HALF  
percent ( 6.5000 %) per year. The interest rate may change in accordance with Paragraph 5(C) of this Note.

### 3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same  
date as this Note and called the "Security Instrument." That Security Instrument protects the Lender from losses which might  
result if Borrower defaults under this Note.

### 4. MANNER OF PAYMENT

#### (A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on  
DECEMBER, 1991. Any principal and interest remaining on the first day of  
2021, will be due on that date, which is called maturity date. NOVEMBER

#### (B) Place

Payment shall be made at GREAT LAKES MORTGAGE, 8009 34TH AVENUE SO. SUITE 1150,  
BLOOMINGTON, MN 55425

or at such other place as Lender may designate in writing by notice to Borrower.

#### (C) Amount

Initially, each monthly payment of principal and interest will be in the amount of \$ 677.73.  
This amount will be part of a larger monthly payment required by the Security Instrument that shall be applied to principal,  
interest and other items in the order described in the Security Instrument. This amount may change in accordance with  
Paragraph 5(E) of this Note.

### 5. INTEREST RATE AND MONTHLY PAYMENT CHANGES

#### (A) Change Date

The interest rate may change on the first day of JANUARY, 1993, and on that day of each succeeding  
year. "Change Date" means each date on which the interest rate could change.

#### (B) The Index

Beginning with the first Change Date, the interest rate will be based on an Index. "Index" means the weekly average yield  
on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve  
Board. "Current Index" means the most recent Index figure available 30 days before the Change Date. If the Index (as  
defined above) is no longer available, Lender will use as a new Index any index prescribed by the Secretary (as defined in  
Paragraph 7(B)). Lender will give Borrower notice of the new Index.

#### (C) Calculation of Interest Rate Changes

Before each Change Date, Lender will calculate a new interest rate by adding a margin of  
TWO  
percentage points ( 2.0000 %) to the Current Index and rounding the sum to the nearest one-eighth of one percentage  
point (0.125%). Subject to the limits stated in Paragraph 5(D) of this Note, this rounded amount will be the new interest rate  
until the next Change Date.

#### (D) Limits on Interest Rate Changes

The interest rate will never increase or decrease by more than one percentage point (1.0%) on any single Change Date.  
The interest rate will never be more than five percentage points (5.0%) higher or lower than the initial interest rate stated in  
Paragraph 2 of this Note.

#### (E) Calculation of Payment Change

If the interest rate changes on a Change Date, Lender will calculate the amount of monthly payment of principal and  
interest which would be necessary to repay the unpaid principal balance in full at the maturity date at the new interest rate  
through substantially equal payments. In making such calculation, Lender will use the unpaid principal balance which would  
be owed on the Change Date if there had been no default in payment on the Note, reduced by the amount of any prepayments  
to principal. The result of this calculation will be the amount of the new monthly payment of principal and interest.

F 1000000

BT17889

Receipt No. 15661  
Registration tax \$ 32.19  
Countersigned: Dennis J. French  
Auditor, Chicago County, Minn.

OFFICE OF COUNTY RECORDER  
Chicago County, Minn.  
STATE OF MINNESOTA }  
I hereby certify that the within instrument  
was filed in this office for record on this 22nd  
day of Nov. A.D. 19 91 at 10:30  
o'clock A. M and was duly recorded as  
Instrument No. 235680  
Eleanor Tippler  
County Recorder

Indexed  
Filed

FHA MORTGAGE

STATE OF MINNESOTA

FHA CASE NO. 549690  
FP2715335504

235680

This Mortgage ("Security Instrument") is given on  
The Mortgagor is  
FAITH N. ZWEMKE, A SINGLE PERSON

OCTOBER 24TH, 1991

whose address is 1266 SEMINARY, ST. PAUL, MN 55104

("Borrower"). This Security Instrument is given to

GREAT LAKES MORTGAGE, A PARTNERSHIP

which is organized and existing under the laws of MINNESOTA, and whose  
address is 8009 34TH AVENUE SO. SUITE 1150, BLOOMINGTON, MN 55425

("Lender"). Borrower owes Lender the principal sum of

ONE HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY FIVE AND  
NO/100  
Dollars (U.S. \$ 107,225.00).

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 1ST, 2021.  
This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all  
renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 6 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 CHISAGO County, Minnesota.

LOT SIX (6) IN BLOCK ONE (1) OF KLINE'S BEACH, ACCORDING TO THE PLAT  
THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER  
IN AND FOR CHISAGO COUNTY, MINNESOTA.

SUBJECT TO ROAD, SEWER, WATER AND ELECTRIC EASEMENTS, AND SUBJECT TO  
THE PRESENT ROAD AS IT CROSSES SAID PROPERTY AS WELL AS THE SEWER  
AND WATER PIPES AND ELECTRIC POLES PRESENTLY THEREON.

which has the address of 11987 306th STREET, LINDSTROM (City)  
Minnesota 55045 ("Property Address");  
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights,  
appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all 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.

237078

Assignment of Mortgage

596000248

Date: OCTOBER 24, 1991

OFFICE OF COUNTY RECORDER

Chicago Street, St. Paul

STATE OF MINNESOTA

This instrument was filed in this office for record on this 29th

day of Jan., A.D. 1992 at 10:30

o'clock A. M and was duly recorded as

Microfilm No. 237078

Eleanor Jupp Indexed

County Recorder

Traced

Microfilm

(reserved for recording data)

FOR VALUABLE CONSIDERATION, Great Lakes Mortgage, 8009 34th Avenue South, Suite 1150, Bloomington, MN 55425  
a Partnership under the laws of the State of Minnesota  
Assignor (whether one or more), hereby sells, assigns and transfers to TCFC Mortgage Corporation,  
a Minnesota Corporation, 801 Marquette Avenue, Minneapolis, Minnesota 55402  
Assignee (whether one or more), the Assignor's interest in the Mortgage dated OCTOBER 24, 1991,  
executed by FAITH N. ZWEMKE, A SINGLE PERSON

as Mortgagor, to Great Lakes Mortgage, a Partnership  
as Mortgagee, and filed for record November 22, 1991, as Document Number 23680  
(or in Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_), in the Office of the (County Recorder)  
(Registrar of Titles) of CHISAGO 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  
ONE HUNDRED SEVEN THOUSAND TWO HUNDRED TWENTY FIVE AND NO/100  
(107,225.00) DOLLARS, with interest thereon from  
OCTOBER 24, 1991, and that Assignor has good right to sell, assign and transfer the same.

ASSIGNOR

Great Lakes Mortgage

By TCFC Holding Co.

Its Partner

By Joan M Kallenberg

Its Vice President

STATE OF MINNESOTA

COUNTY OF Hennepin

The foregoing instrument was acknowledged before me this 24TH day of OCTOBER, 1991,  
by Joan M. Kallenberg, Vice President and of TCFC Holding Co.  
TCFC a Minnesota Corporation and a Partner  
of Great Lakes Mortgage, a Partnership  
under the laws of Minnesota, on behalf of the said Corporation and said Partnership

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Great Lakes Mortgage  
8009 34th Avenue South, Suite 1150  
Bloomington, MN 55425

Kimberly S. Reifers  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)

KIMBERLY S. REIFERS  
NOTARY PUBLIC - MINNESOTA  
RAMSEY COUNTY  
My Commission Expires Sept. 5, 1996

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Faith Zwemke,  
Debtor(s)

Case No. 03-31689-DDO  
Chapter 13

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MEMORANDUM OF LAW

TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer ("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 Debtor. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) is in arrears in the total amount of \$5,311.77.

ARGUMENT

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 has failed to make the payments required by the note and mortgage for a period of more than three months. Debtor(s) has 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).

In the present case the balance due Movant on the note and mortgage is \$88,711.93. [The property is encumbered by a second mortgage in favor of Morgan Stanley Dean Witter in the approximate amount of \$65,535.00.]

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

Dated: 8.20.04.

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



04-29100  
9000144943

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-31689-DDO

Faith Zwenke,  
Debtor(s)

**ORDER FOR RELIEF FROM STAY**

The above-entitled matter came for hearing on September 22, 2004.

**THIS CAUSE** coming to be heard on the Motion of TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer, 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 TCF Mortgage Corporation, by Everhome Mortgage Company, its authorized servicer, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot Six (6) in Block One (1) of Kline's Beach, subject to road, sewer, water and electric easements, and subject to the present road as it crosses said property as well as the sewer and water pipes and electric poles presently thereon, Chisago County, Minnesota.

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

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court