

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**CHAPTER 13 CASE**

Jonathon A. Caswell  
asf/Choice Exteriors, Inc.  
SSN XXX-XX-7305

**CASE NO. 03-32719 DDO**

Debtor.

---

**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

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

1. Countrywide Home Loans, Inc. (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 June 16, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than June 11, 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 June 7, 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 April 16, 2003. 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 \$146,250.00, as evidenced by that certain Promissory Note dated August 5, 2002, 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 August 5, 2002, executed by Jonathon Albert Caswell, and Kim Marie Caswell, recorded on August 9, 2002, as Document No. 3532395, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

All that certain parcel of land situate in Ramsey County, State of Minnesota, being known and designated as Lot 3, Block 4, Kroiss Westwood Addition Plat 3.

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 May 26, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of March, 2004 through May, 2004, inclusive, in the amount of \$1,412.80 each; accruing late charges and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. 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.

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

12. Kim Marie Caswell is a co-debtor pursuant to 11 U.S.C. § 1301. Secured Creditor moves

the Court for an Order for judgment that the automatic stay be lifted with respect to his interests.

**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 26th day of May, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 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.



**Certified Copy of Original**

(Space Above This Line For Recording Data)

**MORTGAGE**

MIN 1000157-0000856395-5

After Recording Return To:  
**COUNTRYWIDE HOME LOANS, INC.**  
MS SV-79 DOCUMENT PROCESSING  
1800 Tapo Canyon  
Simi Valley, CA 93063-6712

000303127351080  
(Doc ID #)

**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 8, 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 **AUGUST 05, 2002**, together with all Riders to this document.

(B) "Borrower" is **JONATHAN ALBERT CASWELL, AND KIM MARIE CASWELL;**

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **FULL SPECTRUM LENDING, INC.**  
Lender is a **CORPORATION**  
organized and existing under the laws of **CALIFORNIA**  
Lender's address is  
**4600 Park Granada, Calabasas, CA 91302.**

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

FORM 8A(MIN) (0005), 01 CHL (12/01) VAN MORTGAGE FORMS - (000001-0001)  
CONVVA

*Handwritten initials and signature:*  
JAL  
C  
KMC  
Form 2004 1/01



**EXHIBIT B**

DOC ID # 000303127351080

(B) "Note" means the promissory note signed by Borrower and dated AUGUST 05, 2002. The Note states that Borrower owes Lender

ONE HUNDRED FORTY SIX THOUSAND TWO HUNDRED FIFTY and 00/100

Dollars (U.S.S. 146,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 01, 2032.

(C) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(D) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(E) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, amendments and modifications of the Note; and (ii) 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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the COUNTY of RAMSEY

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN RAMSEY COUNTY, STATE OF MINNESOTA, BEING KNOWN AND DESIGNATED AS LOT 3, BLOCK 4, KROISS WESTWOOD ADDITION PLAT 3.

TAX ID: 01-29-29-41-0006

*JAC*  
Form 3024 1/01  
*KMC*

Parcel ID Number: **DOC ID # 000303127351080**  
 which currently has the address of  
**2857 WOODBRIDGE STREET, ROSEVILLE** (Town/City)  
 Minnesota 55113 ("Property Address");  
 (Zip Code)

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 understands and agrees that MERS holds only legal title to the interest granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

**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 combine a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payment are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

DOC ID # 000303127351080

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument, and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_ (Seal)  
 JONATHAN ALBERT CASWELL - Borrower

\_\_\_\_\_ (Seal)  
 Kim Caswell  
 KIM MARIE CASWELL - Borrower

\_\_\_\_\_ (Seal)  
 - Borrower

\_\_\_\_\_ (Seal)  
 - Borrower

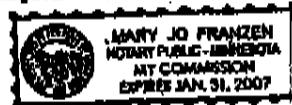
STATE OF MINNESOTA.

On this 5<sup>th</sup>

day of August, 2002, before me appeared, Ramsey County ss:

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

\_\_\_\_\_ (Seal)  
 Mary Jo Franzen  
 Notary Public  
 My Commission Expires:



This instrument was drafted by: T. REYES  
 FULL SPECTRUM LENDING, INC.  
 1518 WALNUT GROVE AVE., ROSEMEAD, CA 91770-

The statements for the real property described in this instrument should be sent to:  
 JONATHAN ALBERT CASWELL  
 2857 WOODBRIDGE STREET, ROSEVILLE, MN 55113

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

**CHAPTER 13 CASE**

Jonathon A. Caswell  
asf/Choice Exteriors, Inc.  
SSN XXX-XX-7305

**CASE NO. 03-32719 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 May 26, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of March, 2004 through May, 2004, in the amount of \$1,412.80 each; accruing late charges and attorneys fees and costs of \$675.00.

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

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

II. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY

PURSUANT TO 11 U.S.C. § 1301(c) WHERE THE INTEREST OF THIS SECURED CREDITOR WOULD BE IRREPARABLY HARMED BY CONTINUATION OF SUCH STAY.

Kim Marie Caswell is a co-debtor pursuant to 11 U.S.C. § 1301 and the non-debtor party in these proceedings and has received the consideration for the claim held by Secured Creditor. Neither the debtor nor Ms. Caswell provided for the payments referenced herein.

#### **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 respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 26th day of May, 2004.

#### **WILFORD & GESKE**

By /e/ James A. Geske

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

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA
ST. PAUL DIVISION

IN RE:

JONATHAN A. CASWELL
SSN XXX-XX-7305

DEBTOR

§
§
§
§
§
§
§
§

CASE NO. 03-32719-DDO

CHAPTER 13

AFFIDAVIT OF EDUARD MARISCAL

Eduard Mariscal, being duly sworn to oath, deposes and states:

1. That he/she is the custodian of records of Countrywide Home Loans, Inc..

2. Countrywide Home Loans, Inc. is now the holder and/or servicing agent of a mortgage on real property on which the Debtor has an interest. The Debtor's indebtedness is evidenced by that certain mortgage deed dated August 5, 2002, executed by Jonathan Albert Caswell and Kim Marie Caswell. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

All that certain parcel of land situated in Ramsey County, State of Minnesota, being known and designated as Lot 3, block 4, Kroiss Westwood Addition Plat 3.

3. That he/she has reviewed the account records relating to Caswell mortgage loan, account no. xxx1273.

4. That as of May 13, 2004, the following amounts were owing on this account:

Table with 3 columns: Description, Dollar sign (\$), and Amount. Rows include Unpaid principal (145,018.29), Interest from November 1, 2003 through May 13, 2004 (7,167.83), Attorney's Fees (1,210.04), Late Charges (119.00), Escrow Advance (915.91), Other Charges (40.00), and Total (154,471.07).

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of March 2004, April 2004, May 2004.

6. Countrywide Home Loans, Inc. has had to obtain counsel to represent it in bringing this Motion and will incur additional legal expenses and attorney fees.

7. This affidavit is given in support of the Motion of Countrywide Home Loans, Inc., as servicing agent for Federal National Mortgage Association ("Fannie Mae") for relief from the automatic stay and for Relief from Codebtor Stay.

The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct.

Countrywide Home Loans, Inc.

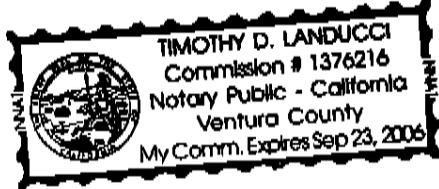
By: Eduard Mariscal  
Eduard Mariscal  
Bankruptcy Specialist

DATED: 5-14-04

SUBSCRIBED AND SWORN TO BEFORE ME on May 14<sup>th</sup>, 2004.

[Signature]

Notary Public in and for the State of \_\_\_\_\_



8308-N-1521  
minn

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

Jonathon A. Caswell  
asf/Choice Exteriors, Inc.  
SSN XXX-XX-7305

**CHAPTER 13 CASE**

**CASE NO. 03-32719 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

---

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on May 26, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Eduard Mariscal, 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:

Jonathon A. Caswell  
2857 Woodbridge St  
Roseville, MN 55113-2420

Jasmine Z. Keller  
12 S 6<sup>th</sup> St Ste 310  
Minneapolis, MN 55402

Kim M. Caswell  
2857 Woodbridge St  
Roseville, MN 55113-2420

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

James T. Skonnord  
311 Ramsey St  
St. Paul, MN 55102

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

Dated this 26th day of May, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

---

In Re:

Jonathon A. Caswell  
asf/Choice Exteriors, Inc.  
SSN XXX-XX-7305

**CHAPTER 13 CASE**

**CASE NO. 03-32719 DDO**

Debtor.

**ORDER**

---

The above entitled matter came on for hearing upon motion of Countrywide Home Loans, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on June 16, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. 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 and §1301 with regard to that certain mortgage deed dated August 5, 2002, executed by Jonathon Albert Caswell, and Kim Marie Caswell, recorded on August 9, 2002, as Document No. 3532395 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

All that certain parcel of land situate in Ramsey County, State of Minnesota, being known and designated as Lot 3, Block 4, Kroiss Westwood Addition Plat 3

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

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

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court