

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carl R. Schultz
SSN XXX-XX-7282
Pamela L. Schultz
SSN XXX-XX-4675

CASE NO. 03-37947 GFK

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 October 4, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B 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 September 29, 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 September 23, 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 November 21, 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 \$218,800.00, as evidenced by that certain mortgage deed dated September 16, 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 September 16, 2002, executed by Carl R. Schultz and Pamela L. Schultz, husband and wife, recorded on February 20, 2003, as Document No. 2002737, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Dakota County, Minnesota and is legally described as follows to-wit:

Unit No. 276, Orchard Pointe Condominium, CIC No. 311, according to the recorded plat thereof, Dakota County, Minnesota. Together with the benefits contained in Declaration Document No. 1737661, dated August 2, 2000, filed December 13, 2000.

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 September 20, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$1,566.36 each; accruing late charges of \$212.88 and attorneys fees and costs of \$675.00. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective

reorganization. The value of the property as scheduled by Debtor is \$240,000.00 subject to Secured Creditor's mortgage in excess of \$220,543.88.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

11. 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.

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

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 20th day of September, 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.

2002737

DOC. NO. 2002737

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

2002 FEB 20 AM 10:15

JOEL L. REICHMAN, COUNTY RECORDER

By *[Signature]* Deputy

FEES: \$100 SURCHARGE \$100

CASH CHECK ESCROW

WELL CHARGE

CHARGE TO: _____

OR _____

METRO LEGAL

COPY DEL'D

DAKOTA COUNTY RECORDER - ONLY THE
RE/14/2003 11:27 AM 74.3627
REGISTRATION FEE
COUNTY CONGRESSIONAL FEE
RECEIPT NUMBER 52267
JAN 21
5:00

.....ove This Line For Recording Date)

Loan Number 306723835
MERS Number 100050500007238351

MORTGAGE

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 SEPTEMBER 16, 2002, together with all Riders to this document.
- (B) "Borrower" is CARL R SCHULTZ AND PAMELA L SCHULTZ, HUSBAND AND WIFE. 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 RYLAND MORTGAGE COMPANY, AN OHIO CORPORATION. Lender is a CORPORATION organized and existing under the laws of THE STATE OF OHIO. Lender's address is 6300 CANOGA AVENUE, 14TH FLOOR, WOODLAND HILLS, CALIFORNIA 91367.
- (E) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 16, 2002. The Note states that Borrower owes Lender TWO HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED AND 00/100ths Dollars (U.S.\$218,800.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 1, 2032.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (G) "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.
- (H) "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):

- | | | |
|--|---|--|
| <input type="checkbox"/> Adjustable Rate Rider | <input checked="" type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | |
| <input type="checkbox"/> 1-4 Family Rider | <input type="checkbox"/> Biweekly Payment Rider | |

RECEIVED
JAN 09 2003
TREASURER

Borrower Initials

[Signature] *[Signature]*

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

Form 3024 1/01 (page 1 of 11 pages)

EXHIBIT A

- (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. § 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, extensions 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 DAKOTA;
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE ATTACHED EXHIBIT "A" FOR FULL LEGAL DESCRIPTION...

which currently has the address of 15254 FLORIST CIRCLE [Street]

APPLE VALLEY, Minnesota 55124 ("Property Address");
[City] [Zip Code]

Borrower Initials JA JA

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:

Carl R. Schultz (Seal)
CARL R SCHULTZ -Borrower

Pamela L. Schultz (Seal)
PAMELA L SCHULTZ -Borrower

(Seal) -Borrower

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)
This instrument was acknowledged before me on SEPTEMBER 20, 2002
by CARL R SCHULTZ and PAMELA L. SCHULTZ, HUSBAND AND WIFE
(Seal)

My commission expires: 1/31/05
Wanda Colwell
Wanda Colwell
(Typed or printed name)
Notary Public



This instrument was prepared by
or on behalf of Ryland Mortgage Company, an Ohio Corporation, 14555 North Hayden Road #100, Scottsdale, Arizona 85260

After Recording Return To:

Ryland Mortgage Company, an Ohio Corporation
14555 North Hayden Road #100
Scottsdale, Arizona 85255

EXHIBIT "A"

Unit No. 276, Orchard Pointe Condominium, CIC No. 311, according to the recorded plat thereof, Dakota County, Minnesota.

Together with the benefits contained in Declaration Document No. 1737661, dated August 2, 2000, filed December 13, 2000.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carl R. Schultz
SSN XXX-XX-7282
Pamela L. Schultz
SSN XXX-XX-4675

CASE NO. 03-37947 GFK

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 September 20, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$1,566.36 each; accruing late charges of \$212.88 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. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$240,000.00 subject to Secured Creditor's mortgage in excess of \$220,543.88.

Considering selling costs of 10%, Debtor has no real equity in the property. The burden is on Debtor to establish that this property is necessary to an effective reorganization.

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 is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

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

Dated this 20th day of September, 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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Carl R. Schultz
Pamela L. Schultz

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 03-37947

STATE OF GEORGIA

COUNTY OF FULTON

Todd Phillips, being first duly sworn, deposes and states he is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of his knowledge to the best of his information.

Todd Phillips

Subscribed and sworn to before me this
14th day of September, 2004.

Lonny M. Kelly
Notary Public

NOTARY
PUBLIC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carl R. Schultz
SSN XXX-XX-7282
Pamela L. Schultz
SSN XXX-XX-4675

CASE NO. 03-37947 GFK

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 September 20, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Todd Phillips, 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:

Carl R. Schultz
Pamela L. Schultz
15254 Florist Cir
Apple Valley, MN 55124

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Richard J. Pearson
PO Box 120088
New Brighton, MN 55112

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

Countrywide Home Loans, Inc.
c/o McCalla, Raymer et al
Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

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

Dated this 20th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Carl R. Schultz
SSN XXX-XX-7282
Pamela L. Schultz
SSN XXX-XX-4675

CASE NO. 03-37947 GFK

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 October 4, 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 with regard to that certain mortgage deed dated September 16, 2002, executed by Carl R. Schultz and Pamela L. Schultz, husband and wife, recorded on February 20, 2003, as Document No. 2002737 covering real estate located in Dakota County, Minnesota, legally described as follows, to-wit:

Unit No. 276, Orchard Pointe Condominium, CIC No. 311, according to the recorded plat thereof, Dakota County, Minnesota. Together with the benefits contained in Declaration Document No. 1737661, dated August 2, 2000, filed December 13, 2000

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