

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Vicky Seebeck

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-30280

TO: Vicky Seebeck, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Ohio Savings Bank, (*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 a.m. on November 1, 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 27, 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 21, 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 20, 2004. 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 18866 260th Street, Lucan, MN 56255, legally described as follows, to-wit:

All that part of the Southeast Quarter of Section 9, Township 111 North, Range 38 West, Redwood County, Minnesota, being more particularly described as follows: Commencing at the southeast corner of said Southeast Quarter; thence north 90°00'0" West, assumed bearing along the south line of said Southeast Quarter, a distance of 606.00 feet to the point of beginning; thence continuing North 90°00'00" West along said south line, a distance of 62.00 feet; thence North 0°00'00" West a distance of 130.50 feet; thence north 87°59'40 West a distance of 91.06 feet; thence North 57°32'17" West, a distance of 231.60 feet; thence North 00°11'47" West, a distance of 267 feet; thence North 65°59'21" East, a distance of 148.19 feet; thence South 88°54'00" East, a distance of 240.60 feet; thence south 02°22'00" West, a distance of 582.51 feet to the point of beginning.

7. The indebtedness of Vicky Seebeck is evidenced by a Promissory Note and Mortgage dated May 13, 2002, filed of record in the Redwood County Recorder's office on May 20, 2002, and recorded as Document No. 304119. 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 May 1, 2004 to the present date and as of the hearing date November 1, 2004 will be due for a total delinquency of \$4,740.27 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: October 18, 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:

Vicky Seebeck

AFFIDAVIT OF PETITIONER

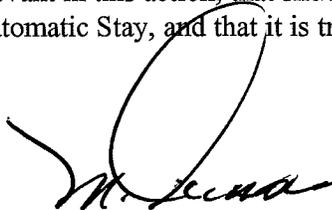
Debtor

Chapter 13, Case No. 04-30280

STATE OF Ohio)

COUNTY OF Cuyahoga)

Michael Headen, being first duly sworn, deposes and states on oath that she/he is employed by Ohio Savings Bank, 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.



Michael Headen, Assistant Vice President

Subscribed and sworn to before me this
4th day of Oct., 2004.



Notary Public

JOANNE FLORS
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires Apr. 13, 2008



No. 23154
 Registration Tax Person of \$ 165.00
 on this 20th day of May 2002
Richard County Treasurer
 Countersigned and payment recorded
Richard County Auditor-Treasurer

Doc. # 304119
 Office of County Recorder
 Count of Redwood Minnesota
 I hereby certify that the within instrument
 as filed in this office for record on the
20 day of May AD 2002
 at 9:25 o'clock A. M. was duly
 recorded in book 309 of MEGS. on
 page 494-507
 Shirley F. Redman, County Recorder
 By CS Deputy
 Abstract TRSESE
 Indexed
 Return to: Lyon Co Abert
Marshall

After Recording Return To:
 CENTENNIAL MORTGAGE & FUNDING,
 INC.
 1060 DAKOTA DRIVE, SUITE 201
 MENDOTA HEIGHTS, MN 55120

[Space Above This Line For Recording Data]

MORTGAGE

SEEBECK
 LOAN NUMBER: 1737353
 PARCEL NUMBER: 54-009-4040

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 MAY 13, 2002 together with all Riders to this document.
- (B) "Borrower" is VICKY SEEBECK, A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.
 (C) "Lender" is CENTENNIAL MORTGAGE & FUNDING, INC.

Lender is a CORPORATION organized and existing under the laws of MINNESOTA. Lender's address is 1060 DAKOTA DRIVE, SUITE 201 MENDOTA HEIGHTS, MN 55120

Lender is the mortgagee under this Security Instrument.
 (D) "Note" means the promissory note signed by Borrower and dated MAY 13, 2002. The Note states that Borrower owes Lender SEVENTY-TWO THOUSAND AND 00/100

Dollars (U.S. \$ 72,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2032

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

Assigned, See Vol. 309 of MEGS, Pg 508

(G) "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
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Other(s) [specify]
- Second Home Rider
- Biweekly Payment Rider

(H) "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.

(I) "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.

(J) "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.

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

(L) "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.

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

(N) "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.

(O) "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.

(P) "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 Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY of REDWOOD

(Type of Recording Jurisdiction) of (Name of Recording Jurisdiction)

SEE ATTACHED LEGAL DESCRIPTION

which currently has the address of 18866 260TH STREET

LUCAN, Minnesota 56255 [City] [Zip Code] [street] ("Property Address")

LEGAL DESCRIPTION

REDWOOD COUNTY, MINNESOTA

All that part of the Southeast Quarter of Section 9, Township 111 North, Range 38 West, Redwood County, Minnesota, being more particularly described as follows: Commencing at the southeast corner of said Southeast Quarter; thence North 90°00'0" West, assumed bearing along the south line of said Southeast Quarter, a distance of 606.00 feet to the point of beginning; thence continuing North 90°00'00" West along said south line, a distance of 62.00 feet; thence North 0°00'00" West, a distance of 130.50 feet; thence North 87°59'40" West, a distance of 91.06 feet; thence North 57°32'17" West, a distance of 234.60 feet; thence North 00°11'47" West, a distance of 267.00 feet; thence North 65°59'21" East, a distance of 148.19 feet; thence South 88°51'00" East, a distance of 240.60 feet; thence South 02°22'00" West, a distance of 582.57 feet, to the point of beginning.

508

Doc. # 304120
 Office of County Recorder
 Count of Redwood Minnesota
 I hereby certify that the within instrument
 as filed in this office for record on the
20 day of May AD 2002
 at 9:30 o'clock A. M. was duly
 recorded in book 309 of Mtgs. on
 page 508
 Shirley F. Redman, County Recorder
 By CB Deputy
 Abstract
 Indexed
 Return to: Lydon Co. Abstract
Marshall

[Space Above This Line For Recording Data] LOAN NUMBER: 1737353
 PARCEL NUMBER: 54-009-4040

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, the undersigned hereby grants, and assigns and transfers to **OHIO SAVINGS BANK**
 whose address is **1801 EAST NINTH STREET CLEVELAND, OH 44114**

all beneficial interest under that certain Mortgage dated the **13TH** day of **MAY, 2002**
 executed by **VICKY SEEBECK, A SINGLE PERSON**

Borrower, to **CENTENNIAL MORTGAGE & FUNDING, INC.** as

, as Lender, was recorded on May 20, 2002
 in Book 309 -Mtgs, at pages 494-507, Docket No. 304119 of the records of the County Recorder of
REDWOOD County, **MINNESOTA** and covers real property situated in
 a said county described as follows:
SEE ATTACHED LEGAL DESCRIPTION

Together with the note or notes therein described or referred to, the money due and to become due thereon
 with interest, and all rights accrued or to accrue under said Mortgage.

Dated **MAY 13, 2002** **CENTENNIAL MORTGAGE & FUNDING, INC.**

By SARA J. GRUBER *Sara J. Gruber*
 Its ASSISTANT SECRETARY

STATE OF MINNESOTA }
 } SS.
 COUNTY OF DAKOTA }

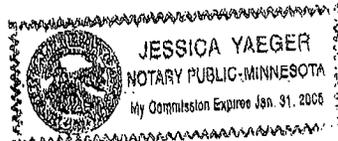
The foregoing instrument was acknowledged before me, a Notary Public, by
SARA J. GRUBER, the ASSISTANT SECRETARY
 and by _____, the _____
 of **CENTENNIAL MORTGAGE & FUNDING, INC.**
 on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand this **13TH** day of **MAY, 2002**

Jessica Yaeger
 Notary Public **JESSICA YAEGER**

My Commission Expires: **JANUARY 31, 2003**

When Recorded Mail To and also Prepared By
CENTENNIAL MORTGAGE & FUNDING, INC.
 1600 DAKOTA DRIVE SUITE 201



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Vicky Seebeck

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-30280

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 20, 2004 no payment has been made to movant for the month(s) of May 1, 2004 to the present and as of the hearing date November 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

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

Dated: October 18, 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:

Vicky Seebeck

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-30280

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 October 18, 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

Michael J. Farrell
Chapter 13 Trustee
P.O. Box 519
Barnesville, MN 56514

Wayne G. Nelson
Attorney at Law
5500 Wayzata Blvd Suite 1025
Minneapolis, MN 55416

Vicky Seebeck
18866 260th Street
Lucan, MN 56255

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Vicky Seebeck

ORDER

Debtor.

Chapter 13, Case No. 04-30280

The above entitled matter came on for hearing upon motion of Ohio Savings Bank, (*Movant*) pursuant to 11 U.S.C. Section 362 on November 1, 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:

All that part of the Southeast Quarter of Section 9, Township 111 North, Range 38 West, Redwood County, Minnesota, being more particularly described as follows: Commencing at the southeast corner of said Southeast Quarter; thence north 90°00'0" West, assumed bearing along the south line of said Southeast Quarter, a distance of 606.00 feet to the point of beginning; thence continuing North 90°00'00" West along said south line, a distance of 62.00 feet; thence North 0°00'00" West a distance of 130.50 feet; thence north 87°59'40 West a distance of 91.06 feet; thence North 57°32'17" West, a distance of 231.60 feet; thence North 00°11'47" West, a distance of 267 feet; thence North 65°59'21" East, a distance of 148.19 feet; thence South 88°54'00" East, a distance of 240.60 feet; thence south 02°22'00" West, a distance of 582.51 feet to the point of beginning.

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