

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Joseph John Rockhold
SSN XXX-XX-6294
Kelly Jo Rockhold
Kelly Jo Duske
SSN XXX-XX-3267

CASE NO. 01-30442 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 August 23, 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 , 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 , 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 January 28, 2004. 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 \$155,733.00, as evidenced by that certain mortgage deed dated July 12, 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 July 12, 2002, executed by Joseph J. Rockhold, a single person and Kelly J. Duske, a single person, recorded on July 24, 2002, as Document No. 557054, 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 Scott County, Minnesota and is legally described as follows to-wit:

Lot 26, Block 1, Brittany Village Fourth Addition, CIC No. 1101, according to the recorded plat thereof, Scott County, Minnesota.

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 August 3, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of May, 2004 through July, 2004, inclusive, in the amount of \$1,089.83 each; accruing attorneys fees and costs of \$700.00. 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 \$180,000.00 subject to Secured Creditor's mortgage in excess of \$163,498.43.

The property is also subject to a second mortgage in favor of Citifinancial Services in excess of \$15,339.00.

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 3rd day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 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.

Doc. No. A 557054

OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

07-24-2002 at 11:00 Receipt 198750

Pat Boeckman, County Recorder 01

Fee: \$20.00

Registration tax of \$ 358.19 paid
Treasurer's Receipt No. 198757
Conservation Fee Paid

[Signature]
County Auditor

[Space Above This Line For Recording Data]

Metro South Title

State of Minnesota
LOAN NO.: 13789

MORTGAGE

FHA Case No.
271-8764614-796

THIS MORTGAGE ("Security Instrument") is given on JULY 12, 2002
The Mortgagor is
JOSEPH J. ROCKHOLD, A SINGLE PERSON AND KELLY J. DUSKE, A SINGLE PERSON

("Borrower"). This Security Instrument is given to
HOME TOWN MORTGAGE, INC.

which is organized and existing under the laws of MINNESOTA, and
whose address is
8939 COLUMBINE ROAD, EDEN PRAIRIE, MN 55347

("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED FIFTY FIVE THOUSAND SEVEN HUNDRED THIRTY THREE AND NO/100 X X X X X X X X
Dollars (U.S. \$ 155,733 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
AUGUST 01, 2032 and for interest at the yearly rate of SEVEN AND THREE QUARTERS 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
VMP-4H(MN)

Initials: *WR*
FORM FHA-MN

EXHIBIT *A*

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 SCOTT County, Minnesota:

LOT 26, BLOCK 1, BRITTANY VILLAGE FOURTH ADDITION, CIC NO. 1101, ACCORDING TO THE RECORDED PLAT THEREOF, SCOTT COUNTY, MINNESOTA

21327626D

which has the address of 1551 DUBLIN COURT , SHAKOPEE [Street, City],
Minnesota 55379 [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.

**UNITED STATES BANKRUPTCY COURT
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Kelly Jo Rockhold
Kelly Jo Duske
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CASE NO. 01-30442 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 August 3, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of May, 2004 through July, 2004, in the amount of \$1,089.83 each; accruing attorneys fees and costs of \$700.00.

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 (Bkrctcy. 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 \$180,000.00 subject to Secured Creditor's mortgage in excess of \$163,498.43.

The property is also subject to a second mortgage in favor of Citifinancial Services in excess of \$15,339.00.

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 3rd day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske

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

UNITED STATES BANKRUPTCY COURT
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CASE NO. 01-30442 DDO

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Kelly Jo Rockhold
Kelly Jo Duske
SSN XXX-XX-3267

AFFIDAVIT OF
CAROLYN GLENN

Debtor.

Carolyn Glenn, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of Countrywide Home Loans, Inc.

2. Countrywide Home Loans, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated July 12, 2002, executed by Joseph J. Rockhold, a single person and Kelly J. Duske, a single person, recorded July 24, 2002, as Document No. 557054. The property is located in Scott County, Minnesota and is legally described as follows, to-wit:

Lot 26, Block 1, Brittany Village Fourth Addition, CIC No. 1101, according to the recorded plat thereof, Scott County, Minnesota.

3. That she has reviewed the account records relating to the Rockhold/Duske mortgage loan, account no. 20642969.

4. That as of July 27, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$154,002.40
Interest through July 27, 2004	8,796.03
Attorney's Fees:	700.00
TOTAL:	\$163,498.43

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of May, 2004 through July, 2004 in the amount of \$1,089.83 each.

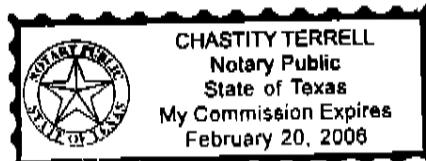
6. This affidavit is given in support of the motion of Countrywide Home Loans, Inc. for relief from the automatic stay.

COUNTRYWIDE HOME LOANS, INC.

By Carolyn Glenn
Its Bankruptcy Specialist

Subscribed and sworn to before me
this 29 day of July, 2004.

Chastity Terrell
Notary Public
9733_1



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Joseph John Rockhold
SSN XXX-XX-6294
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CASE NO. 01-30442 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 3, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Carolyn Glenn, 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:

Joseph J. Rockhold
Kelly Jo Rockhold
1551 Dublin Court
Shakopee, MN 55379

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

Curtis K. Walker
4356 Nicollet Ave S
Minneapolis, MN 55409

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

Citifinancial Services
PO Box 5009
Burnsville, MN 55337-0697

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

Dated this 3rd day of August, 2004.

Diana Waletzko

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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 August 23, 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 July 12, 2002, executed by Joseph J. Rockhold, a single person and Kelly J. Duske, a single person, recorded on July 24, 2002, as Document No. 557054 covering real estate located in Scott County, Minnesota, legally described as follows, to-wit:

Lot 26, Block 1, Brittany Village Fourth Addition, CIC No. 1101, according to the recorded plat thereof, Scott County, Minnesota

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