

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Charles W. Jackson, Jr.
SSN XXX-XX-9792

CHAPTER 7 CASE

CASE NO. 04-31173 GFK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. GMAC Mortgage Corporation (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 September 20, 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 15, 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 9, 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 March 1, 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 \$155,324.00, as evidenced by that certain mortgage deed dated January 28, 2003, 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 January 28, 2003, executed by Charles W. Jackson, Jr., a single person, recorded March 27, 2003, as Document No. 141616, 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:

Unit No. 46, CIC No. 1071, Condominium of Shenandoah Place, 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 31, 2004, Debtor is delinquent in the making of monthly payments for the months of June, 2004 through August, 2004, inclusive, in the amount of \$1,213.95 each for the months of June, 2004 through July, 2004 and \$1,205.24 each month thereafter; accruing late charges of \$108.17 and 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 organization. The value of the property as scheduled by Debtor is \$150,000.00 subject to Secured Creditor's mortgage in excess of \$157,663.12.

Since this is a liquidation case, no reorganization is being attempted.

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 31st day of August, 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.

08/09/04 17:02:55

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Page 002

Registration tax of \$ 357.25 paid
Treasurer's Receipt No. 265853
Conservation Fee Paid

James King County Auditor

Doc. No. T141616

Vol. 116 Page 77 Cert. 38084

OFFICE OF THE REGISTRAR OF TITLES
SCOTT COUNTY, MINNESOTA

Certified Filed on 03-27-2003 at 08:00

Pat Boeckman, Registrar of Titles 01
Fee: \$20.00

x Stewart Title

State of Minnesota

(Space Above This Line For Recording Data)

MORTGAGE

RETURN TO: GMAC Mortgage Corp.
100 Witmer Road
Horsham, PA 19044-0963
ATTN: Capital Markets

FHA Case Number

271-885738-3-734

LOAN NO. 540712908

MIN 1000375-0540712908-2

THIS MORTGAGE ("Security Instrument") is given on January 28, 2003 . The Mortgagor is Charles W. Jackson Jr. , A SINGLE PERSON

whose address is 2311 Cascade Drive
Shakopee, MN 55379

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as beneficiary. 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.

GMAC Mortgage Corporation

("Lender") is organized and existing under the laws of Pennsylvania and has an address of 100 Witmer Road, P.O. Box 963, Horsham, PA 19044

Borrower owes Lender the principal sum of One Hundred Fifty Five Thousand Three Hundred Twenty Four and 00/100 Dollars (U.S. \$ 155,324.00).

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 February 1, 2033 and for interest at the yearly rate of 6.875 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 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 Scott

County, Minnesota:
Unit No. 46, CIC No. 1071, Condominium of Shenandoah Place, Scott County, Minnesota.

27-272-046-0

which has the address of 2311 Cascade Drive
[Street] Shakopee
55379 [Zip Code] ("Property Address")

[City], Minnesota

FHA MINNESOTA MORTGAGE - 10/98
GMACM - FMS.0079.MN 10010
Page 1 of 7 191434740

INITIALS *[Signature]* 808

EXHIBIT A

20. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

21. **Interest on Advances.** The interest rate on advances made by Lender under paragraph 6 shall not exceed the maximum rate allowed by applicable law.

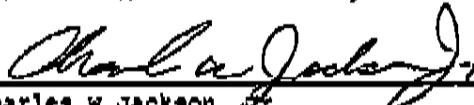
Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- Condominium Rider
- Adjustable Rate Rider
- Growing Equity Rider
- Planned Unit Development Rider
- Graduated Payment Rider
- Other(s) [specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:


 _____ (Seal)
 Charles W. Jackson, Jr. -Borrower

 _____ (Seal)
 -Borrower

 _____ (Seal)
 -Borrower

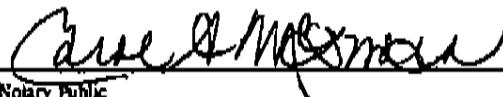
 _____ (Seal)
 -Borrower

STATE OF MINNESOTA, Scott County 651

On this 28th day of January, 2003, before me appeared Charles W. Jackson Jr., A SINGLE PERSON

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that HE executed the same as HIS free act and deed.

My Commission Expires:



 Notary Public

(Seal)

This instrument was prepared by: Jackie Campbell
5660 Greenwood Plaza Blvd.
Greenwood Village, CO 80111-1711
for: GMAC Mortgage Corporation



LOAN NO: 540712908

GMACM - FMS.0079.MN (0010)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Charles W. Jackson, Jr.
SSN XXX-XX-9792

Debtor.

CHAPTER 7 CASE

CASE NO. 04-31173 GFK

**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 31, 2004, Debtor is delinquent for the monthly payments for the months of June, 2004 through August, 2004, in the amount of \$1,213.95 each for the months of June, 2004 through July, 2004 and \$1,205.24 each month thereafter; accruing late charges of \$108.17 and attorneys fees and costs of \$700.00.

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

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 \$150,000.00 subject to Secured Creditor's mortgage in excess of \$157,663.12.

Since this is a liquidation case, no reorganization is being attempted.

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 31st day of August, 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:

CHAPTER 7 CASE

Charles W. Jackson, Jr.
SSN XXX-XX-9792

CASE NO. 04-31173 GFK

**AFFIDAVIT OF
HELEN LUTSENKO**

Debtor.

Helen Lutsenko, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of GMAC Mortgage Corporation.

2. GMAC Mortgage Corporation, 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 January 28, 2003, executed by Charles W. Jackson Jr., a single person, recorded March 27, 2003, as Document No. 141616. The property is located in Scott County, Minnesota and is legally described as follows, to-wit:

Unit No. 46, CIC No. 1071, Condominium of Shenandoah Place, Scott County, Minnesota.

3. That she has reviewed the account records relating to the Jackson mortgage loan, account no. 0540712908.

4. That as of August 18, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$153,286.13
Interest through August 18, 2004	3,147.05
Attorney's Fees:	700.00
Non-Escrow Advances:	572.03
Late Charges:	108.17
Escrow Balance:	6.46
Suspense Balance (-):	(48.55)
TOTAL:	\$157,663.12

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of June, 2004 through July, 2004 in the amount of \$1,213.95 each and August, 2004 in the amount of \$1,205.24.

6. This affidavit is given in support of the motion of GMAC Mortgage Corporation for relief from the automatic stay.

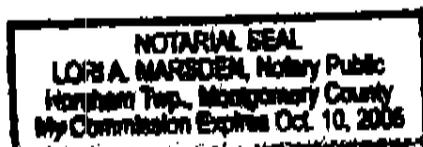
GMAC MORTGAGE CORPORATION

By Helen Lutsenko

Its Bankruptcy Specialist

Subscribed and sworn to before me
this 17 day of Aug, 2004.

Lori A. Marsden
Notary Public



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Charles W. Jackson, Jr.
SSN XXX-XX-9792

CHAPTER 7 CASE

CASE NO. 04-31173 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 August 31, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Helen Lutsenko, 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:

Charles W. Jackson, Jr.
2311 Cascade Dr
Shakopee, MN 55379

Patti J. Sullivan
PO Box 16406
St. Paul, MN 55116

Pro se
Charles W. Jackson, Jr.
2311 Cascade Dr
Shakopee, MN 55379

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

Snap-on Credit LLC
PO Box 506
Gurnee, IL 60031

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

Dated this 31st day of August, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Charles W. Jackson, Jr.
SSN XXX-XX-9792

Debtor.

CHAPTER 7 CASE

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ORDER

The above entitled matter came on for hearing upon motion of GMAC Mortgage Corporation (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 20, 2004, at U.S. Courthouse, 316 North Robert Street, 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 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 January 28, 2003, executed by Charles W. Jackson, Jr., a single person, recorded March 27, 2003, as Document No. 141616 covering real estate located in Scott County, Minnesota, legally described as follows, to-wit:

Unit No. 46, CIC No. 1071, Condominium of Shenandoah Place, Scott County, Minnesota
and may pursue its remedies under state law in connection with the subject note and mortgage deed.
Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court