

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

James Rhody
Laura Rhody

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-31398

TO: James Rhody and Laura Rhody, INCLUDING TRUSTEE AND OTHER INTERESTED
PARTIES

1. Wells Fargo Bank, N.A., (*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 am on September 7, 2004,
in Courtroom 228B, 200 Federal Building, 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
September 1, 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 August 26 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 March 9, 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 Debtors.

6. Debtors above-named are the owners of certain real property located at 3315 126th Street East, Burnsville, MN 55337, legally described as follows, to-wit:

Lot 7, Block 3, Country Wood Estates 6th Addition.

7. The indebtedness of James Rhody and Laura Rhody is evidenced by a Promissory Note and Mortgage dated January 28, 2000, filed of record in the Dakota County Recorder's office on March 31, 2000, and recorded as Document No. 1682180. 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 Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of April 1, 2004 to the present date and as of the hearing date September 1, 2004 will be due for a total delinquency of \$11,526.77 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are 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: August 19, 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:

James F. Rhody
Laura L. Rhody

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 04-31398

STATE OF *South Carolina*

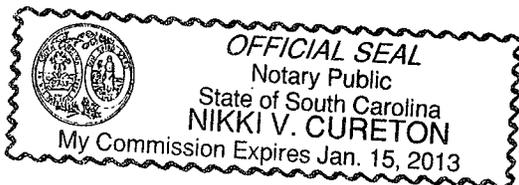
COUNTY OF *York*

Brian Theiler, 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.

Brian Theiler

Subscribed and sworn to before me this
23rd day of July, 2004.

Nikki V. Cureton
Notary Public



1682180

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

2000 MAR 31 P 12:50

1682180

DOC. NO. JOEL T. BECKMAN, COUNTY RECORDER
BY: *[Signature]* Deputy
FEE: *[Signature]* SURCHARGE *[Signature]*
CASH CHECK ESCROW

WELL CHARGE
OR
CHARGE TO: _____

DO NOT REMOVE

US RECORDINGS, INC.

10-2

DAKOTA COUNTY TREASURER-AUDITOR
BULLOCK ROOM 12:18:18 PM 2000
REGISTRATION TAX \$91.00
COUNTY CONSERVATION FEE \$5.00
RECEIPT NUMBER 416041

1682180

Please Return Recorded Document To:
NORWEST MORTGAGE, INC.
FINAL DOCUMENTS
3501 MINNESOTA DRIVE
BLOOMINGTON, MN 55435-5284

This Instrument Was Drafted By: ROSALIND THOMAS
NORWEST MORTGAGE, INC. DBA DIRECTORS ACCEPTANCE
3501 MINNESOTA DR. #200
BLOOMINGTON, MN 55438

[Space Above This Line for Recording Data]

MORTGAGE

0165720MEX

THIS MORTGAGE ("Security Instrument") is given on JANUARY 28, 2000
The mortgagor is JAMES F. RHODY AND LAURA L. RHODY, HUSBAND AND WIFE, AS JOINT TENANTS

("Borrower"). This Security Instrument is given to NORWEST MORTGAGE, INC. DBA DIRECTORS ACCEPTANCE, which is organized and existing under the laws of THE STATE OF CALIFORNIA, and whose address is 6516 FERMI COURT, SUITE 200, CARLSBAD, CA 92008-7325

("Lender"). Borrower owes Lender the principal sum of ONE HUNDRED SEVENTY-THREE THOUSAND FIVE HUNDRED AND NO/100 Dollars (U.S. \$ 173,500.00). 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, 2030 and for interest at the yearly rate of 10.500 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 Lender, with power of sale, the following described property located in DAKOTA County, Minnesota:

LEGAL DESCRIPTION IS ATTACHED HERETO AS SCHEDULE "A" AND MADE A PART HEREOF.

04981374
Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
222 E Little Canada Rd Ste 125
St. Paul, Mn 55117

RECEIVED

MAR 09 2000

which has the address of 3215 126TH STREET EAST
BURNSVILLE Minnesota 55317 ("Property Address");
[City] [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 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.

Single Family - FNMA/FHLMC UNIFORM INSTRUMENT
MINNESOTA

FORM 3024 08/90 (Page 1 of 8 Pages)
EC920L Rev. 02/04/97

Lot 7, Block 3, Country Wood Estates 5th Addition

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

James Rhody
Laura Rhody

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-31398

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 debtors' filing of the petition on March 9, 2004 no payment has been made to movant for the month(s) of April 1, 2004 to the present and as of the hearing date September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

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

Dated: August 19, 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:

James Rhody
Laura Rhody

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-31398

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 August 19, 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

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building, 12 South 6th Street
Minneapolis, MN 55402

Robert J. Hogle, Esq.
Attorney at Law
P.O. Box 130938
Roseville, MN 55113

James Rhody
Laura Rhody
3315 126th Street East
Burnsville, MN 55337

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

James Rhody
Laura Rhody

ORDER

Debtors.

Chapter 13, Case No. 04-31398

The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., (*Movant*) pursuant to 11 U.S.C. Section 362 on September 7, 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:

Lot 7, Block 3, Country Wood Estates 6th Addition.

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