

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: ANDREW MARK ERICKSON,

Debtor.

BKY. No.: 04-32249
Chapter 13

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: ANDREW MARK ERICKSON AND HIS ATTORNEY, PAUL W.
BUCHER, DUNLAP & SEEGER, PA, 206 S. BROADWAY, STE. 505,
ROCHESTER, MN 55904.

1. Mortgage Electronic Registration Systems, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion 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. in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later September 29, 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 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.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 13, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtor is in default on said payments from May 13, 2004 to date in the amount of \$1,206.66 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., by its

undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 20, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0419)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 20, 2004

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

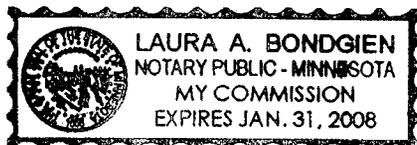
By: *SB*
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

20th day of September, 2004.

Laura A. Bondgien
Notary Public



OFFICE OF COUNTY RECORDER
 Olmsted County, Minnesota
 I hereby certify that this document was filed in this office
 on 12/9/2002 at 9:30:00 AM and was duly
 recorded as document number A-948323
 DANIEL J. HALL - County Recorder, by _____ Deputy.
 Well Certificate: _____ Received _____ Not Required
 Absent: - yes _____ no _____
 Fees: _____ Total \$20.00

WHEN RECORDED MAIL TO:
 MORTGAGE EXPRESS, INC., D/B/A Fundament Lending GR
 801 N. Cass Ave. Suite 204
 Westmont, IL 60558

HMS 1887103

1887103 Rachel's 3rd
 LOAN NO.: F02014823

MORTGAGE

return to:
 Foundation Title, LLC
 5701 Shingle Creek Parkway
 Suite 520
 Brooklyn Center, MN 55430

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 **DECEMBER 9, 2002** together with all Riders to this document.
- (B) "Borrower" is **ANDREW M. ERICKSON, A SINGLE MAN**

Borrower is the mortgagor under this Security Instrument.
 (C) "Lender" is **MORTGAGE EXPRESS, INC.**

Lender is a **CORPORATION** organized and existing under the laws of **THE STATE OF ILLINOIS**.
 Lender's address is **801 N. CASS AVE., SUITE 300 WESTMONT, IL 60558**.

Lender is the mortgagee under this Security Instrument.
 (D) "Note" means the promissory note signed by Borrower and dated **DECEMBER 9, 2002**.
 The Note states that Borrower owes Lender

ONE HUNDRED FIFTY THOUSAND ONE HUNDRED AND 00/100 Dollars (U.S. \$ **150,100.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **DECEMBER 13, 2037**

(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.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
 Form 3024 1/01
 Lender Form Inc. (610) 446-0658
 L1 8786A3024 1/01 (A)

Page 1 of 13

Initials

[Handwritten Signature]

12-30-02
 WJ

Wilkinson + Hegner

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 **OLMSTED** (Name of Recording Jurisdiction)

LOT 6, BLOCK 1, RACHEL'S THIRD ADDITION, STEWARTVILLE, OLMSTED COUNTY, MINNESOTA.

PIN# 54 34 14 029 802

which currently has the address of

401 4TH AVE NE
 (Street)
STEWARTVILLE, Minnesota **55976** ("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.

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.

[Large Handwritten Initials]

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:

Andrew M. Erickson (Seal)
ANDREW M. ERICKSON -Borrower

-Borrower (Seal)

-Borrower (Seal)

-Borrower (Seal)

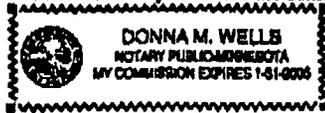
[Space Below This Line For Acknowledgment]

STATE OF MINNESOTA,

OLMSTED County ss:

On this *9th* day of *December*, 20 *02*, before me appeared
ANDREW M. ERICKSON, A SINGLE MAN

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.



Donna M. Wells

- Notary Public

My Commission expires: *1-31-2005*

This instrument was prepared by:
ANTHONY QUINTANA

Tax statement sent to:

OFFICE OF COUNTY RECORDER
Olmsted County, Minnesota



I hereby certify that this document was filed in this office on 7/14/2003 at 1:30:00 PM and was duly recorded as document number A-978100 DANIEL J. HALL - County Recorder, by _____ Deputy.

Well Certificate: Received Not Required
Abstr. - yes no
Fees:

PREPARED BY:
ANTHONY QUINTANA Ext. 311
Mortgage Express, Inc.

When Recorded, Mail and Return To:
HFS Wholesale Document Verification
577 Lamont Rd.
P.O. Box 1247
Elmhurst, IL 60126

68871A3

Received from/return to:
HOUSEHOLD FINANCE

PO BOX 1247
ELMHURST, IL 60126- 9839

(Space Above This Line For Recording Data)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
SEE ATTACHED ADDENDUM

all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated 12/09/02 and executed by ANDREW M. ERICKSON, A SINGLE MAN to MORTGAGE EXPRESS, INC., a CORPORATION organized under the laws of THE STATE OF ILLINOIS and whose principal place of business is 801 N. Cass Ave., Suite 300, Westmont, Illinois 60559 and recorded in Book/Volume No. _____, page(s) _____, as Document No. **A-942323** Rec. Dt.: **12-31-2002** OLMSTED County Records, State of MINNESOTA LOT 8, BLOCK 1, RACHEL'S THIRD ADDITION, STEWARTVILLE, OLMSTED COUNTY, MINNESOTA.

PIN# 54 34 14 029 802
COMMONLY KNOWN AS: 401 4TH AVE NE, STEWARTVILLE, MN 55976

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 under said Real Estate Mortgage.

THIS ASSIGNMENT is made without recourse, representation or warranty, express or implied.

STATE OF ILLINOIS
COUNTY OF COOK

MORTGAGE EXPRESS, INC.
AN ILLINOIS CORPORATION

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Andrew Trakszelis, Vice President, Mortgage Express, Inc., personally known to me to be the duly sworn authorized agent(s) of the ASSIGNOR and personally known to me to be the same person(s) whose in person and acknowledged that as such duly authorized agent(s), signed and delivered the same instrument as duly authorized agent(s) of the ASSIGNOR as a free and voluntary act, and as a free and voluntary act and assignment of said ASSIGNOR, for the uses and purposes therein set forth. Given under my hand and official seal, this 10th day of January, 2003.
Notary Public
Notary Public Printed Name, **PATRICIA GUZMAN**
DuPage County, State of Illinois
My Commission Expires 01/15/06
MEASSGN1

By: [Signature]
Title: Andy Trakszelis, Vice President

Witness: [Signature]

Title: _____
Witness: [Signature]

Title: _____
Document Dated: _____
This area for official notary seal



7-14

ADDENDUM

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2026,
Flint, MI 48501-2026

Mers#: 1000460-0006887103 1
Ph#: 1-888-679-6377



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: ANDREW MARK ERICKSON,

Debtor.

BKY. No.: 04-32249
Chapter 13

**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SPECIALIST**

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc. in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtor.

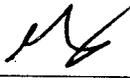
2. That pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from May 13, 2004 to date in the amount of \$1,206.66 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

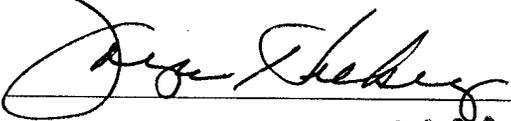
Dated: September 20, 2004

By: 

Scott Barnes
Vice President
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Subscribed to and sworn before me this

20th day of September, 20 04.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: ANDREW MARK ERICKSON,

Debtor.

BKY. No.: 04-32249
Chapter 13

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtor filed his petition herein on April 13, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Olmsted County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 8, Block 1, Rachel's Third Addition, Stewartville.

The amount due under said mortgage loan was approximately \$153,000.00. Pursuant to the Chapter 13 Plan confirmed on June 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from May 13, 2004 to date in the amount of \$1,206.66 per month, plus post-petition late charges.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic

stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet his contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward his loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 20, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(F0419)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: ANDREW MARK ERICKSON,

BKY. No.: 04-32249

Chapter 13

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2nd Floor, St. Paul, MN 55102-2227 declares that on September 21, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

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

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Andrew Mark Erickson
401 4th Ave. NE
Stewartville, MN 55976

Paul W. Bucher
Dunlap & Seeger, PA
206 S. Broadway, Ste. 505
Rochester, MN 55904

Household Financial Services, Inc.
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Olmsted County Treasurer
151 4th St. SE
Rochester, MN 55904

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

REITER & SCHILLER

Dated: September 21, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(F0419)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: ANDREW MARK ERICKSON,

Debtor.

BKY. No.: 04-32249
Chapter 13

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 4, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. 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 8, Block 1, Rachel's Third Addition, Stewartville,
Olmsted County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of U.S. Bankruptcy Court