

04-29191

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:
Case Number 04-32318-DDO

Raymond Werlein
Agnes Werlein,

Debtor(s)

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

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

1. Argent Mortgage Company moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 22, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than September 17, 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 13, 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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on April 16, 2004. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. On May 15, 2003, Raymond F. Werlein and Agnes M. Werlein, Husband and Wife made, executed and delivered to Argent Mortgage Company, LLC their Note (hereinafter referred to as the "Note"), in the original principal amount of \$192,000.00 bearing interest from the date thereof at the rate of 6.9% per annum until paid, payable in monthly installments of \$1,264.52 commencing on July 1, 2003 and on the first day of each and every calendar month thereafter

until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On May 15, 2003, to secure the payment of the Note, Raymond F. Werlein and Agnes M. Werlein, Husband and Wife executed and delivered to Argent Mortgage Company, LLC their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Washington County, Minnesota, legally described as follows:

The Southeast 1/2 of Lot 10, Block 124, of Wildwood, and all of Lot 9, Block 124 of Wildwood, and Lot 8, Block 124, Wildwood.

which property has an address of: 1865 Morgan Street, Mahtomedi, MN 55115. The mortgage was filed for record in the office of the Registrar of Titles, County of Washington, on November 14, 2003, as Document No. 1138662 and was recorded November 14, 2003 as Document No. 3401729. A copy of the mortgage is attached hereto as Exhibit "B" and made a part hercof by reference.

Ameriquet Mortgage Company is the servicer for said Mortgage and is authorized to act on behalf of movant.

8. The debtors have filed a modified plan dated June 11, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the May, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$1,264.52	\$3,793.56
3 late charges @ \$63.23	\$189.69
Property Inspections	\$40.00
Accrued Late Charges	\$62.23
Attorneys Fees & Costs	\$700.00
TOTAL POST - PETITION	<hr/> \$4,785.48

Through Debtors' failure to make current post-petition payments. Amounts currently due and owing include the following:

Principal Balance	\$190,687.22
Interest	\$6,599.95
Escrow Shortage	\$500.00
Accumulated late fees	\$505.84
Property inspections	\$40.00
Attorneys Fees & Costs	\$700.00
TOTAL	\$199,033.01

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Argent Mortgage Company moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 8/20/11.

Signed: /e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439 2306
(952) 831-4060

VERIFICATION

I, Adrienne Perera, the bankruptcy counselor of Ameriquest Mortgage Company, the authorized service for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 17, 2004

Signed: Adrienne Perera

Ameriquest Mortgage Company
505 City Parkway West STE 100
Orange, CA 92868

FIXED RATE NOTE

THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

May 15, 2003
[Date]Rolling Meadows
[City]IL
[State]1865 MORGAN STREET, MAHTOMEDI, MN 55115
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$192,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Argent Mortgage Company, LLC.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 6.900%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on July 1, 2003.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on June 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at: 505 City Parkway West, Suite 100, Orange, CA 92868
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payments will be in the amount of U.S. \$1,264.52.

4. PREPAYMENT PRIVILEGE

I may repay all or any part of the principal balance of this Note in accordance with the terms of this Section. A "prepayment" is any amount that I pay in excess of my regularly scheduled payments of principal and interest that the Lender will apply to reduce the outstanding principal balance on this Note in accordance with this Section.

(A) Prepayment Made Three (3.00) year(s) After the Date of this Note

If I make a prepayment commencing on or after the Three (3.00) year anniversary of the date of this Note, I may make that prepayment, in full or in part, without the imposition of a prepayment charge by the Lender.

(B) Prepayment Made Within Three (3.00) year(s) of the Date of this Note

I agree to pay Lender a prepayment charge if I make a prepayment before the Three (3.00) year(s) anniversary of the date of this Note. The prepayment charge will be the lesser of two percent (2%) of the unpaid principal balance or sixty (60) days interest on the unpaid principal balance.

(C) Application of Funds

I agree that when I indicate in writing that I am making a prepayment, the Lender shall apply funds it receives first to pay any prepayment charge and next in accordance with the order of application of payments set forth in Section 2 of the Security Instrument.

(D) Monthly Payments

If I make a prepayment of an amount less than the amount needed to completely repay all amounts due under this Note and the Security Instrument, my regularly scheduled payments of principal and interest will not change as a result.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

05-11-04 09:18pm From:AMERQUEST MORTGAGE
MAY. 11. 2004 9:48AM ANOKA_TITLE

7-657 P.002/002 F-411
NO. 625 P. 3

Additional Certificate #'s	
59262	

1138662



Office of the
Recorder of Deeds
Washington County, MN

Certified true and correct recorded as:
2003/11/14 11:18:00 AM

1138662

Certificate #: 25160
Book #: 87 Page #: 318



Clary E. Johnson
Recorder of Deeds

Clary E. Johnson

3401729



Office of the
County Recorder
Washington County, MN

Certified true and correct recorded as:
2003/11/14 11:41:00 AM

3401729



Clary E. Johnson
County Recorder

Clary E. Johnson

WASHINGTON COUNTY

Receipt No: 140891 Date: 06/11/2003
Registration tax hereon of 3661.50 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Molly F. O'Rourke, Auditor by BJW/ezs

(Space Above This Line for Recording Data)

MORTGAGE

Return To:

Argent Mortgage Company, LLC
P.O. Box 14130
Orange, CA 92663-1530

030575
ANOKA TITLE AGENCY
901 WEST HIGHWAY 10
ANOKA, MN 55303

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 13, 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 15, 2003 together with all Riders to this document.

0047569017 - 9702

MINNESOTA Single Family/Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 7/01

FORM 3024 7/01

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WWW.MORTGAGEFORMS.COM (800) 441-7281

05/15/2003 10:20:54

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-32318-DDO
Chapter 13

Raymond Werlein
Agnes Werlein

Debtor(s)

MEMORANDUM OF LAW

Argent Mortgage Company ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$4,785.48.

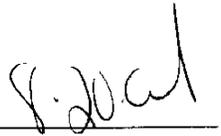
ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 2 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$199,033.01.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____



Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on August 20, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

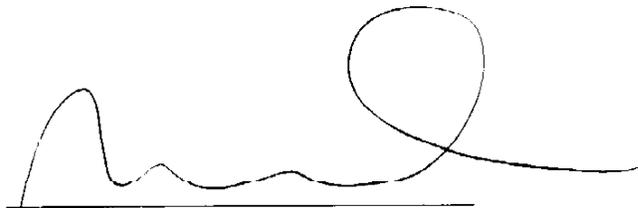
Raymond Werlein
1865 Morgan Street
Mahtomedi, MN 55115

Agnes Werlein
1865 Morgan Street
Mahtomedi, MN 55115

Mr. Robert J. Hoglund
Attorney at Law
1611 County Road B #106
Roseville, MN 55113

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

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



Stephanie Pilegaard

Subscribed and sworn to before me August 20, 2004.

Notary



04-29191
0047569017

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-32318-DDO

Raymond Werlein
Agnes Werlein,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 22, 2004.

THIS CAUSE coming to be heard on the Motion of Argent Mortgage Company, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Argent Mortgage Company, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

The Southeast 1/2 of Lot 10, Block 124, of Wildwood, and all of Lot 9, Block 124 of Wildwood, and Lot 8, Block 124, Wildwood.

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court