

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Larry Joe Martinez and Sheryl Elaine
Martinez,

Debtors: Chapter 7 Case
Case No. BKY 04-32774-DDO.

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

TO: The Debtors, Debtors' Attorney, Chapter 7 Trustee, United States Trustee, and the
other parties in interest specified in Local Rule 9013-3(a).

1. **Minnesota Housing Finance Agency (Movant)**, a secured creditor of the
Debtors herein, 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 at 9:30 o'clock a.m., on
September 1, 2004, before the Honorable Dennis D. O'Brien, in Courtroom 228A, U.S.
Courthouse, 316 North Robert Street, St. Paul, MN, or as soon thereafter as counsel can be
heard.

3. Any response to this motion must be filed and delivered not later than August 27, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 23, 2004, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on May 7, 2004, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated June 2, 1997, in the original principal amount of \$44,000.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot 3, in Block 1, in Oak Knoll Addition to the Village, now City, of Jackson.

The Mortgage was filed for record in the office of the County Recorder, in and for Jackson County, Minnesota, on June 11, 1997, as document number 218350.

7. The subject property has a market value of \$46,000.00. Furthermore, the subject real estate is encumbered in the amount of \$0 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$40,788.02, including Movant's mortgage. Hence, Debtors have little or no actual equity in the property.

8. Debtors' Three (3) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 9th day of August, 2004.

PETERSON, FRAM AND BERGMAN

A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle, Atty. Reg. #130126
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101-1197
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: **Larry Joe Martinez and Sheryl Elaine
Martinez,**

Debtors: Chapter 7 Case
Case No. BKY 04-32774-DDO.

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF TEXAS)
) ss.
COUNTY OF TRAVIS)

I, LILIANA RAMIREZ, your affiant, being first duly sworn on
oath, state as follows:

1. I am an employee of Guaranty Residential Lending, Inc., the company which
is the duly authorized loan servicer for the subject mortgage which is held by **Minnesota
Housing Finance Agency (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the
bankruptcy stay.

3. Debtors are the mortgagors on a mortgage dated June 2, 1997 which covers real property located in Jackson County and legally described as follows:

Lot 3, in Block 1, in Oak Knoll Addition to the Village, now City, of Jackson,

and which is commonly known as: 116 Maple Street, Jackson, MN 56143. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant. A copy of the assignment is attached hereto as Exhibit C and incorporated herein by this reference.

4. On or about May 7, 2004, Debtors filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtors have failed to make Three (3) payments, resulting in an arrearage of \$1,200.53, including late charges. The total mortgage debt is \$40,788.02, which includes accrued interest through August 4, 2004. Thereafter, interest accrues on the unpaid principal balance at \$7.39 per day. Movant has also incurred attorney's fees and costs in the bringing of this motion.

6. Based upon information and belief, the subject property has a market value of \$46,000.00. Furthermore, it is believed that the subject real estate is encumbered in the amount of \$0 by other mortgage(s) and/or lien(s). The total amount of debt secured by the

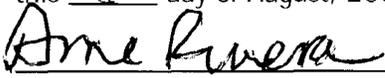
subject property is \$40,788.02, including Movant's mortgage.

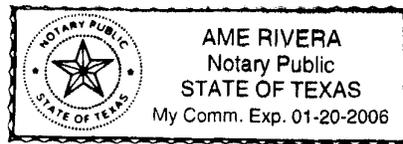
7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

8. Further, I saith not.


LILIANA RAMIREZ

Subscribed and sworn to before me
this 6th day of August, 2004.


Notary Public



NOTE

LOAN NO. 1056678

June 2, 1997
(Date)

Worthington
(City)

Minnesota
(State)

115 Maple Street, Jackson, MN 56143

(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$44,000.00 (This amount is called "principal"), plus interest, to the order of the Lender. The Lender is Community First National Bank, A Corporation.

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 6.7500%.

The interest rate required by this Section 2 is the rate I will pay both before and after any delinquency 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 1st day of each month beginning on July 1, 1997. 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. I, on June 1, 1997, still owe amounts under this Note. I will pay these amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at 1027 South Avenue, Worthington, MN 56143

or at a different place if required by the Note Holder

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$785.18.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

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 charge 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

Pay to
Agency
June

Car)

MU
ISC

LOAN NO. 1098876

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing a first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay those sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Pay to the order of Minnesota Housing Finance Agency, without recourse, this 2nd day of June, 1997.

Cary K. Schroeder (Print)
Community First National Bank (Borrower)

Cary K. Schroeder, Assistant Vice President.

I certify that this is a true and correct copy of the original.
By: *[Signature]* (Print)
Community First National Bank (Borrower)

AFTER RECORDING MAIL TO:

Community First National Bank
1027 Fourth Avenue
Worthington, MN 56187

18350

Office of County Recorder
STATE OF MINNESOTA

County of Dakota
I hereby certify the this with instrument
was filed in this office for recording
at 10⁰⁰ o'clock AM and year 1997
recorded on Microfilm No. 18350
Dakota County Recorder BMK

LOAN NO. 1096028

[Space Above This Line For Recording Data] 0745-67 Lot 151

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on June 2, 1997. The mortgagor is Cheryl E. Martinez And Larry J. Martinez, wife and husband

(Borrower) This Security Instrument is given to Community First National Bank, A Corporation which is organized and existing under the laws of the United States of America and whose address is 1027 Fourth Avenue, Worthington, MN 56187 (Lender). Borrower owes Lender the principal sum of Forty Four Thousand Dollars and no/100 Dollars (U.S. \$ 44,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with full debt, if not paid earlier, due and payable on June 1, 2000 and for interest at the yearly rate of six 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 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 County, Minnesota:

Lot 3, in Block 1, in Oak Knoll Addition to the Village, now City, of Jackson, Jackson County, Minnesota

which has the address of 118 Maple Street Jackson
[Street] [City]
Minnesota 56183 ("Property Address")
[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 seised 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.

MINNESOTA-SINGLE FAMILY-FHMA/FHLMG UNIFORM INSTRUMENT
ISC/CMDTMIN/0391/0024(9-90)-L PAGE 1 OF 8

FORM 1024 9/90

No. 650 Date 6-11-97
Registration Tax (basis of \$ 44,000.00) Paid
Ludwig S. Hansen
County Auditor/Treasurer 21

LOAN NO. 1006026

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

24. Interest on Advances. The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements 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)]

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Other(s) (specify) | | |

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

Witnesses:

_____ *Cheryl E. Martinez* (Seal)
 Cheryl E. Martinez

Social Security Number 474-10-5331

_____ (Seal) *Larry J. Martinez* (Seal)
 Larry J. Martinez

Social Security Number _____ Social Security Number 465-15-6974

_____ (Seal)
 Social Security Number _____

_____[Space Below This Line For Acknowledgment]_____

STATE OF MINNESOTA, DOBLES County ss:

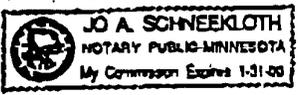
On this 2nd day of June, 1997, before me, appeared Cheryl E. Martinez and Larry J. Martinez, wife and husband.

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

Jo A. Schneekloth

 Notary Public

My Commission expires: (Seal)



This instrument was prepared by Community First National Bank, Northington, Minnesota, of

Office of County Recorder
 STATE OF MINNESOTA
 County of Jackson
 I hereby certify that the within instrument
 was filed in this office for record on
June 11, 1997
 at 10:20 o'clock AM and was duly
 recorded on Microfilm No. 181812
Wasa by, Darcabera
 County Recorder ame

When Recorded Mail To:

Community First National Bank
 1027 Fourth Avenue
 Worthington, MN 56187

LOAN NO. 1056026

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CORPORATE ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
 Minnesota Housing Finance Agency
 400 Sibley Street, St. Paul, MN 55101-1998
 all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated
 06/02/97, executed by Cheryl E. Martinez and Larry J. Martinez, wife and husband

to Community First National Bank, A Corporation
 and whose address is 1027 Fourth Avenue, Worthington, MN 56187

recorded on June 11, 1997 as Document No. 218350
 County Records, State of Minnesota, on real estate legally described as follows:

Lot 3, in Block 1, in Oak Knoll Addition to the Village, was City,
 of Jackson, Jackson County, Minnesota

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 or to accrue under said Real Estate Mortgage.

ASSIGNMENT OF REAL ESTATE MORTGAGE
 ISC/CASM**/0392-L

PAGE 1 OF 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Larry Joe Martinez and Sheryl Elaine
Martinez,

Debtors: Chapter 7 Case
Case No. BKY 04-32774-DDO.

MEMORANDUM OF LAW

Minnesota Housing Finance Agency (**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 certain real property owned by Debtors. The Debtors are delinquent with respect to payments due under the mortgage for the months of June 2004 through August 2004 in a total amount of \$1,200.53, including late charges. The total mortgage debt is \$40,788.02, which includes accrued interest through August 4, 2004. Thereafter, interest accrues on the unpaid principal balance at \$7.39 per day.

The subject property has a market value of \$46,000.00. Furthermore, the subject real estate is encumbered in the amount of \$0 by other mortgage(s) and/or lien(s). The total amount of debt secured by the subject property is \$40,788.02, including Movant's mortgage.

ARGUMENT

Under §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. §362(d)(1). Debtors have failed to make payments due under the terms of the mortgage for a period of over Three (3) months. Debtors have little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtors have otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 9th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

**In Re: Larry Joe Martinez and Sheryl Elaine
Martinez,**

**Debtors: Chapter 7 Case
Case No. BKY 04-32774-DDO.**

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on August 9, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Larry Joe Martinez and
Sheryl Elaine Martinez
116 Maple Street
Jackson, MN 56143

Paul W. Bucher
Chapter 7 Trustee
P.O. Box 549
Rochester, MN 55903-0549

Eugene Mailander, Esq.
P.O. Box 256
Slayton, MN 56172-0256

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

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Larry Joe Martinez and Sheryl Elaine
 Martinez,

Debtors: Chapter 7 Case
Case No. BKY 04-32774-DDO.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on September 1, 2004, on the motion of Minnesota Housing Finance Agency (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated June 2, 1997, filed for record in the office of the County Recorder in and for Jackson County, Minnesota, on June 11, 1997, and recorded as Document No. 218350 and covering real property located in Jackson County, Minnesota, which is legally described as follows:

Lot 3, in Block 1, in Oak Knoll Addition to the Village, now City, of Jackson.

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

Dated this ____ day of _____, 2004.

Dennis D. O'Brien
United States Bankruptcy Judge