

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Simpson Brown and Takeela V. Brown,

Debtors: Chapter 7 Case
Case No. BKY 04-33172-GFK.

**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 1204(a).

1. **CitiFinancial Mortgage Industrial Loan Company**, f/k/a Associates Home Equity Industrial Loan Company (**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 10:30 o'clock a.m., on September 7, 2004, before the Honorable Gregory F. Kishel, in Courtroom 228B, 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 September 1, 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 26, 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 26, 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 March 29, 2001, in the original principal amount of \$167,710.23 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot 7, Block 4, South Battle Creek Heights, Ramsey County, Minnesota.

The Mortgage was filed for record in the office of the County Recorder, in and for Ramsey County, Minnesota, on June 6, 2001 as document number 3394667.

7. The subject property has a market value of \$180,000.00. The total amount of debt secured by the subject property is \$190,210.16 including Movant's mortgage and delinquent real estate taxes. 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 18th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Steven H. Bruns

Steven H. Bruns

Atty. Reg. #14888X

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: Simpson Brown and Takeela V. Brown,

Debtors: Chapter 7 Case
Case No. BKY 04-33172-GFK.

**AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Stephanie Maldorado, your affiant, being first duly sworn on oath, state as follows:

1. I am an employee of **CitiFinancial Mortgage Industrial Loan Company, f/k/a Associates Home Equity Industrial Loan Company (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 March 29, 2001 which covers real property located in Ramsey County and legally described as follows:

Lot 7, Block 4, South Battle Creek Heights, Ramsey County, Minnesota, and which is commonly known as: 2031 Upper Afton Road E., St. Paul, MN 55119-6673. 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.

4. On or about May 26, 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 \$6,584.22, including late charges. The total mortgage debt is \$181,021.56, which includes accrued interest through May 26, 2004. Thereafter, interest accrues on the unpaid principal balance at \$45.77 per day.

6. Based upon information and belief, the subject property has a market value of \$180,000.00. The total amount of debt secured by the subject property is \$190,210.16, including Movant's mortgage and delinquent real estate taxes.

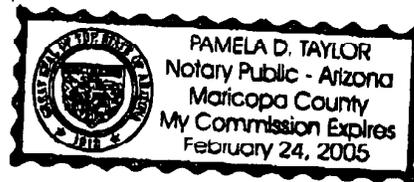
7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

Further, I saith not.

Stephanie Maldonado

Subscribed and sworn to before me this 18th day of August, 2004.

Pamela D. Taylor
Notary Public



NOTE

LENDER Associates Home Equity Industrial Loan Company 8333 Ridgepoint Dr Irving, Texas 75063	BORROWER SIMPSON BROWN TAKEELA BROWN 2031 UPPER AFTON ROAD SAINT PAUL, MN 55119
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LOAN DATE 03/29/01	PRINCIPAL \$167,710.23	MATURITY DATE AND FINAL PAYMENT DATE 04/05/31
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"I," "me" and "my" refer to the borrower(s) named above "You" and "your" refer to the lender named above

REPAYMENT I promise to pay you, at your office, the address of which is shown above, or at a different place if required by you, the Principal stated above together with interest calculated at the Agreed Rate of Interest shown below until fully paid

I will repay my loan by making the monthly payments set forth in the Payment Schedule below. Payments will be made on the same date of every month beginning on the first payment date until the loan is fully paid. If there is no such date in any month that follows, payment will be made on the last day of that month.

My monthly payments will be applied to interest before principal. If I still owe amounts under this Note on the Maturity Date, I will pay those amounts in full on that date.

Payment(s) in the amount(s) shown below will be due monthly as shown below.

AMOUNT	DUE DATE(S)
\$1485.42	Beginning 05/03/2001
\$N/A	Beginning N/A
\$N/A	Beginning N/A
\$N/A	Beginning N/A
\$N/A	N/A

All amounts owed will be due and payable on the Final Payment Date shown above.

If this box is checked, the following provision applies:

My loan is payable in full at the end of 30 year(s). A payment of \$ and all other amounts owed will be due and payable on the Final Payment Date shown above. The Alternative Mortgage Transaction Parity Act of 1982 governs this loan.

AGREED RATE OF INTEREST

The Agreed Rate of Interest on my loan is 10.110% except as stated below.

If this box is checked, the following provision applies:

From the effective date(s) shown below and for months thereafter, the Agreed Rate of Interest on my loan will be:

AGREED RATE OF INTEREST	EFFECTIVE DATE
%	Beginning 04/03/2001
%	Beginning N/A
%	Beginning N/A

Then the Agreed Rate of Interest will be that first stated above.

I agree to pay interest on the principal balance remaining after the Maturity Date shown above at the Agreed Rate of Interest in effect on that date, until the loan is paid in full.

LATE CHARGE

If a payment is more than fifteen (15) days late, I agree to pay a late charge equal to 5% of the payment amount or \$5.00, whichever is greater.

DEFAULT

I will be in default if I fail to pay any payment or part of a payment on time or if I fail to comply with any of the terms of the Mortgage on the real estate given as security for this loan.

If I default, you have the right to declare the entire unpaid amount of my loan immediately due and payable without giving me notice of the default or asking me to pay. If you declare the balance of my loan due and payable, you have the rights and remedies provided for in the Mortgage that secures this loan, including the right to require me to pay any deficiency.



NOTE

NOTICE: See additional pages for additional loan terms.

Exhibit A

ATTORNEY FEES

I agree to pay lawful attorney's fees paid in connection with the foreclosure of the Mortgage securing this loan

PREPAYMENT

I have the right to make prepayments of principal at any time. When I make a prepayment I will tell you on my payment coupon. All prepayments will be applied to applicable charges with the remainder to principal. If I make a principal prepayment there will be no changes in the due dates or changes to the amount of my monthly payment unless you agree in writing to those delays or changes.

PREPAYMENT PENALTY

If this box is checked, the following provision applies

If the principal shown above is paid in full within 36 months from the date of this loan, I agree to pay a prepayment penalty of the lesser of two percent of the unpaid principal balance or 60 days interest on the unpaid principal balance.

This prepayment penalty shall not apply if the loan is partially prepaid, the loan is prepaid as a result of the property securing the loan being sold or the loan is refinanced by you or one of your affiliates.

DELAY IN ENFORCEMENT

You can delay enforcing your rights under this Note without losing them. If I default in complying with any of the terms of my loan and you do not declare the loan balance immediately due and payable, this does not mean you cannot do so in the future if I default again.

SECURITY FOR THIS LOAN

I give you a Mortgage dated the same date as this Note to assure payment of my loan.

ARBITRATION

The parties have on this date entered into a separate Arbitration Agreement, the terms of which are incorporated herein and made part hereof by reference.

The rate of interest and other charges on this loan are authorized by Minnesota Statutes, Section 47.20.

BY SIGNING IN THE SPACE BELOW, I ACKNOWLEDGE THAT I HAVE RECEIVED A FULLY COMPLETED COPY OF THIS NOTE.

Karen Burt _____ Witness x Simpson Brown _____ Date
STIMPSON BROWN
Social Security # 551-02-4374

Karen Burt _____ Witness x Takeela Brown _____ Date
TAKEELA BROWN
Social Security # 476-68-0170

NOTICE: See additional pages for additional loan terms.



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Spitzer

MORTGAGE

THIS MORTGAGE, made on 03/29/01 by Simpson Brown, Jr and Takeela V Brown, husband and wife as joint tenants

of RAMSEY County and State of Minnesota called the Borrower in this Mortgage (whether one or more) to Associates Home Equity Industrial Loan Company a Minnesota corporation called Lender in this Mortgage

Witnesseth, that Borrower, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby Grant, Bargain, Sell, Mortgage and Convey unto Lender, its successors and assigns, forever, the following described real property which is situated in the County of RAMSEY and State of Minnesota, called the Property in this Mortgage Lot 7, Block 4, South Battle Creek Heights, Ramsey County, Minnesota

which has the following street address 2031 UPPER AFTON ROAD, SAINT PAUL, MN 55119

(called "Property Address" in this Mortgage).

To Have and to Hold the Same, Together with the hereditaments and appurtenances thereto belonging, to the Lender, its successors and assigns, forever And the Borrower for its heirs, administrators, executors and assigns, does hereby covenant with Lender, its successors and assigns, as follows

- 1 Borrower is lawfully seized of the Property and has good right to sell and convey the same, that the same are free from all encumbrances
- 2 The Lender, its successors and assigns, shall quietly enjoy and possess the same, and that the Borrower will Warrant and Defend the title to the same against all lawful claims not hereinbefore specifically excepted

Provided, Nevertheless, That if the said Borrower, its heirs, administrators, executors or assigns, shall pay to the Lender, its successors or assigns, the sum of One Hundred Sixty Seven Thousand Seven Hundred Ten and 23/100 DOLLARS, (\$ 167,710 23) according to the terms of that certain Note of even date herewith, executed by Borrower and payable to Lender (the "Note"), with interest thereon at the rate set forth in the Note and hereinbelow, and shall repay to said Lender, its successors or assigns, at the time and with interest as hereinafter specified, all sums advanced in protecting the lien of this Mortgage, in payment of taxes on the Property, insurance premiums covering buildings thereon, principal or interest on any prior liens, expenses and attorney's fees provided for hereinbelow and sums advanced for any other purpose authorized herein, and shall keep and perform all the covenants and agreements herein contained, then this deed shall be null and void, and shall be released at the Borrower's expense

- 3 Borrower shall pay the principal sum of money and interest as set forth herein and in the Note Interest accrues under the Note at the rate of 10 110 percent per annum

4 Borrower shall keep the buildings upon the Property insured against hazards covered by fire and extended coverage insurance policies in a company and in an amount satisfactory to Lender during the existence of the debt secured by this Mortgage and the policies of insurance will name the Lender as loss payee Borrower shall provide Lender with acceptable evidence of this insurance Full power is given to the Lender to settle and compromise all claims on all the policies, to demand receive and receipt for all monies becoming payable under the policies and to apply the monies to the payment of all amounts due under this Mortgage in inverse order of maturity Borrower shall pay the prior encumbrances of record (if any) as the same become due, and to pay the insurance premiums and pay all taxes and installments of special assessments levied or assessed against the Property, or any part thereof, before penalty attaches, and shall perform all of the covenants in this Mortgage and in prior encumbrances of record (if any) and in case of failure to do so the Lender may pay the prior encumbrances and the interest thereon, as the same become due and the taxes and assessments and hazard insurance premiums and the sum or sums which may be so paid by the Lender in payment of these prior encumbrances and the interest on these encumbrances, or in payment of taxes and assessments or insurance premiums, will be deemed and are hereby declared to be added to the unpaid balance of the indebtedness secured by this Mortgage, the amount which will be so paid will be immediately due and payable and will bear interest until repaid at the interest rate set forth in the Note for the principal indebtedness thereof

5 If the Borrower fails to perform the covenants contained in this Mortgage or if any action or proceeding is begun which materially affects Lender's interest in the Property, including, by not limited to, eminent domain, proceedings under the United States Bankruptcy Code, uniform commercial code security interest enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the Lender at Lender's option may make such appearances, disburse such sums and take action as is necessary to protect Lender's interest, including, but not limited to, entry upon the Property to make repairs Any amounts disbursed by Lender under this paragraph will be deemed and are hereby declared to be added to the unpaid balance of the indebtedness secured by this Mortgage, and the amount so paid will be immediately due and payable and will bear interest until repaid at the interest rate set forth in the Note for the principal indebtedness thereof Nothing contained in this paragraph or the preceding paragraph will require Lender to incur any expense or take any action

6 Borrower shall not sell, assign, convey or mortgage the legal or equitable title or both legal and equitable title to all or any portion of the Property without the written consent of Lender

7 If there is a default under any of the terms and provisions of this Mortgage, or the Note secured by this Mortgage, the Lender has the right to foreclose this Mortgage according to Minnesota statutes Before beginning such foreclosure the Lender will send a written notice of any default under the terms or conditions of the Note or Mortgage to the Borrower, setting forth (1) the nature of the default by the Borrower and the action required to cure the default, (2) the date by which the default must be cured (this date must be not less than 30 days from the date the notice is mailed to the Borrower), (3) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by the Mortgage and the sale of the Property (4) that the Borrower has the right to reinstate the Mortgage after acceleration, (5) that the Borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of the Borrower to acceleration and sale

Exhibit B

The Lender does not need to send this notice if the default consists of the Borrower selling the Property or any part thereof, without the required consent of the Lender or otherwise violating the covenant set forth in Paragraph 6 hereinabove. The notice will be sent by certified mail to the Property Address or such other address as the Borrower may have designated in writing to the Lender. After the date specified in the notice for curing the default has expired without cure of the default (or immediately upon default if no notice is required) the Lender is hereby authorized and empowered, at its option, to declare the whole unpaid amount secured by this Mortgage immediately due and payable without further notice to the Borrower, and to sell the Property at public auction or by judicial proceedings and to convey the same to the purchaser, in fee simple, according to the Statutes in such case made and provided, and out of the monies arising from the sale, to retain the sums and all other sums which will then be due under the terms of this Mortgage, together with all statutory costs and charges for such foreclosure to the extent permitted by law, including lawful attorneys fees incurred in connection with such foreclosure and to pay the overplus, if any, to the Borrower.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon the person, if any, in possession of the Property. Lender shall publish a notice of sale and the Property shall be sold at public auction in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage, (b) to all reasonable costs and expenses of the sale, including, but not limited to, costs of title evidence and attorney's fees as agreed hereinabove, and (c) the excess, if any, to the person or persons legally entitled thereto.

The covenants and agreements herein contained will bind, and the rights hereunder will belong to the respective heirs, successors and assigns of the Borrower and Lender. The terms of this Mortgage shall run with the Property and bind the parties hereto and their successors in interest.

Borrower waives all rights of homestead exemption in the property covered by this Mortgage.

Lender has provided Borrower with a conformed copy of the Loan Agreement, and Borrower's signature below is acknowledgment by Borrower of the receipt of such Loan Agreement copy. Lender shall provide Borrower with a conformed copy of this Mortgage upon its execution by Borrower or within a reasonable time after this Mortgage is recorded.

IN TESTIMONY WHEREOF, the Borrower has hereunto set its hand the day year first above written.

x Sydney Brown
SIMPSON BROWN
x Takeela Brown
TAKEELA BROWN

STATE OF MINNESOTA }
COUNTY OF Dakota } ss

The foregoing instrument was acknowledged before me this 29 day of March, 2001

by

and

(stated marital status)

Karen Coakley
Notary Public

This instrument was drafted by



Office of Register of Deeds,

State of Minnesota,

County of

I hereby certify that the within Mortgage was filed in this office for record on the _____ day of _____, at _____ o'clock _____ M., and was duly recorded in Book _____ of Mortgages, page _____ or _____

Xeroxed Microfilmed

and was duly recorded as instrument No _____

By _____ Deputy _____ Register of Deeds

ITEM 25332L2 (9003)

No

Registration tax hereon of

Dollars paid

By _____, Deputy

County Treasurer

Countersigned

By _____, Deputy

County Auditor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Simpson Brown and Takeela V. Brown,

Debtors: Chapter 7 Case
Case No. BKY 04-33172-GFK.

MEMORANDUM OF LAW

CitiFinancial Mortgage Industrial Loan Company, f/k/a Associates Home Equity Industrial Loan 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 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 \$6584.22 including late charges. The total mortgage debt is \$181,021.56 which includes accrued interest through May 26, 2004. Thereafter, interest accrues on the unpaid principal balance at \$45.77 per day.

The subject property has a market value of \$180,000.00. The total amount of debt secured by the subject property is \$190,210.16 including Movant's mortgage and delinquent real estate taxes.

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 18th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Steven H. Bruns
Steven H. Bruns
Atty. Reg. #14888X
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: Simpson Brown and Takeela V. Brown,

Debtors: Chapter 7 Case
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**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Steven H. Bruns, 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 18, 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

Michael J. Iannacone
Chapter 7 Trustee
8687 Eagle Point Boulevard
Lake Elmo, MN 55042

Simpson Brown and
Takeela V. Brown
2031 Upper Afton Road E.
St. Paul, MN 55119-6673

James T. Skonnord, Esq.
311 Ramsey Street
St. Paul, MN 55102

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

Signed: /e/ Steven H. Bruns

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Simpson Brown and Takeela V. Brown,

Debtors: Chapter 7 Case
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ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on September 7, 2004, on the motion of CitiFinancial Mortgage Industrial Loan Company, f/k/a Associates Home Equity Industrial Loan Company (**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 March 29, 2001, filed for record in the office of the County Recorder in and for Ramsey County, Minnesota, on June 6, 2001 and recorded as Document No. 3394667 and covering real property located in Ramsey County, Minnesota, which is legally described as follows:

Lot 7, Block 4, South Battle Creek Heights, Ramsey County, Minnesota.

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

September ____, 2004

Gregory F. Kishel
United States Bankruptcy Judge