

04-28831

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Case No. 04-33363-DDO  
Chapter 7

Timothy Schmitz  
Jennifer Schmitz,

Debtor(s)

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NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY

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

1. JPMorgan Chase Bank as Trustee 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 1, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than August 27, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than August 23, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or 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 7 case was filed on June 7, 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. By mortgage dated August 16, 2002, in the original principal amount of \$90,100.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 501251, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lot 10 in Block 6 in McClelland's Addition to the town (now City) of Faribault, Rice County, Minnesota

The Mortgage was recorded in the offices of the Recorder, for Rice County, Minnesota on August 28, 2002, as Document No. 501251. A copy of the Mortgage and assignment are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the May, 2004 payment as that was the next payment due. Debtor(s) are delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

3 payments @ \$724.96	\$2,174.88
3 late charges @ \$36.25	108.75
Attorneys Fees & Cost	<u>800.00</u>
TOTAL	\$3,083.63

The outstanding principal balance due Movant under the terms of the note is \$89,042.40 as of August 6, 2004, and interest accrues at the rate of 9% per diem per day. The amount therefore due and owing on said note is as follows:

Principal	\$89,042.40
Late charges	108.75
Interest	4,301.51
Attorneys Fees & Costs	<u>800.00</u>
TOTAL	\$94,252.66

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **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, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: \_\_\_\_\_

8-10-04.

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, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer 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:

8/6/04

Signed:

[Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120

20  
Not  
Real Estate  
Info. Sec.

501251

Document No. 501251  
OFFICE OF COUNTY RECORDER  
RICE COUNTY, MINN  
No. of Pages 17

I hereby certify that the within instrument was filed in this office  
for record on 08-28-2002 at 10:06 AM 13 PM  
Pam Mitchell, County Recorder



W. Schmitz  
Deputy

Date 8/28/02 Receipt # 2156  
Mortgage Registration Tax Paid of \$207.11  
Frian Wedschal, Rice County Auditor/Treasurer  
Laurie Brown  
Deputy

17 APR 2003  
10 00 N  
500  
3200

MORTGAGE

9087237

After Recording Return to:  
RESCUE MORTGAGE INC., DBA MORTGAGE  
DEPT  
THE TITUS BUILDING, 6550 YORK AVE S  
SUITE 600  
EDINA, MINNESOTA 55435  
Loan Number: 95-07067

RETURN TO:  
NATIONAL REAL ESTATE INFO SVCS.  
1001 EAST 79TH STREET, STE 4  
BLOOMINGTON, MN 55425

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 10.

- (A) "Security Instrument" means this document, which is dated AUGUST 16, 2002, together with all Riders to this document.
- (B) "Borrower" is JENNIFER K. SCHMITZ AND TIMOTHY J. SCHMITZ WIFE AND HUSBAND AS JOINT TENANTS  
\* FORMERLY KNOWN AS JENNIFER K. FREED

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is RESCUE MORTGAGE INC., DBA MORTGAGE DEPT

Lender is a corporation organized and existing under the laws of MINNESOTA  
Lender's address is THE TITUS BUILDING, 6550 YORK AVE S SUITE 600, EDINA, MINNESOTA 55435

Lender is the mortgagee under this Security Instrument.  
(D) "Note" means the promissory note signed by Borrower and dated AUGUST 16, 2002. The Note states that Borrower owes Lender NINETY THOUSAND ONE HUNDRED AND 00/100 Dollars (U.S. \$90,100.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 1, 2032

(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



8

DING REQUESTED BY:  
RESCUE MORTGAGE INC., DBA  
MORTGAGE DEPOT

RESCUE MORTGAGE INC., DBA MORTGAGE DEPOT  
THE TITUS BUILDING, 6550 YORK AVE S SUITE 600  
EDINA, MINNESOTA 55435

Order No.  
Escrow No.  
Application No.  
Loan No. 95-07067

SPACE ABOVE THIS LINE FOR RECORDER'S USE

22-131

Corporation Assignment of Mortgage

8083037

FOR VALUE RECEIVED, the undersigned ("Assignor") hereby sells, transfers and assigns to **JPMorgan Chase Bank as Trustee, c/o Residential Funding Corporation, 2255 North Ontario, Suite 400, Burbank, CA 91504-3190** ("Assignee") all of Assignor's right, title and interest in and to that certain Mortgage dated AUGUST 16, 2002 executed by JENNIFER K. SCHMITZ AND TIMOTHY J. SCHMITZ WIFE AND HUSBAND AS JOINT TENANTS

4656

to RESCUE MORTGAGE INC., DBA MORTGAGE DEPOT

, as mortgagor.

and recorded concurrently herewith as Document Number **501251** (or in Book of Page ), in the Official Records of either the County Recorder or the Registrar of Titles, as the case may be of RICE County, describing land therein as:

, as mortgagee.

~~LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A"~~

Recorded on 8-28-02

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all other rights accrued or to accrue under said Mortgage.

DATE AUGUST 16, 2002  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN

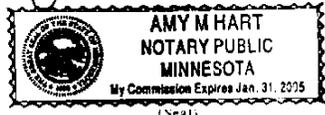
On August 16, 2002 before me, Notary Public, personally appeared

GREG SIEJA  
VICE PRESIDENT

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



EXP 1-31-05

RESCUE MORTGAGE INC., DBA  
MORTGAGE DEPOT

*[Handwritten Signature]*

GREG SIEJA  
VICE PRESIDENT

"no seal"

DRAWN AND PREPARED BY:

RESCUE MORTGAGE INC., DBA  
MORTGAGE DEPOT  
THE TITUS BUILDING, 6550 YORK  
AVE S SUITE 600  
EDINA, MINNESOTA 55435  
LINDA G. ALEXANDER

After Recording Return To:

PEELE MANAGEMENT CORPORATION  
ASSIGNMENT JOB #90822  
P.O BOX 30014  
RENO, NV, 89520-3014  
(775) 827-9600

523240

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33363-DDO  
Chapter 7

Timothy Schmitz  
Jennifer Schmitz,

Debtor(s)

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MEMORANDUM OF LAW

JPMorgan Chase Bank as Trustee ("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) was delinquent in respect of payments due under the note and mortgage. Since this case was filed Debtor(s) have made no payments to Movant and as of this date thereof are in arrears in the total amount of \$3,083.63.

ARGUMENT

Under Section 362.(c)(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 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

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

Dated: 8.10.04.

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

By /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



04-28831  
0434650925

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33363-DDO

Timothy Schmitz  
Jennifer Schmitz,

Debtor(s)

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ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 1, 2004.

**THIS CAUSE** coming to be heard on the motion of JPMorgan Chase Bank as Trustee, 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 JPMorgan Chase Bank as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 10 in Block 6 in McClelland's Addition to the town (now City) of Faribault, Rice County, Minnesota

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

Dated: \_\_\_\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge