

04-29076

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33579-DDO
Chapter 7

Theresa Stockton
Ronald Stockton,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

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

1. US Bank, N.A. 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 N. Robert St., in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than September 17, 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 September 13, 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 17, 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 April 30, 2002, in the original principal amount of \$173,375.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 3243203, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lot 43, Block 1, Woodview Acres Addition

The Mortgage was recorded in the offices of the Recorder, for Washington County, Minnesota on June 13, 2002, as Document No. 3243202. A copy of the Mortgage and assignment are attached hereto as Exhibit A.

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

3 payments @ \$1,432.29	\$4,296.87
1 payment @ \$1,431.07	1,431.07
Accrued late charges	164.37
Other fees	19.00
Attorneys Fees & Cost	<u>950.00</u>
TOTAL	\$6,861.31

The outstanding principal balance due Movant under the terms of the note is \$169,546.91 as of July 23, 2004, and interest accrues at the rate of \$30.19 per day. On information and belief, the Property is also encumbered by a secured home equity line in favor of Wells Fargo in the approximate amount of \$43,310.00. The amount therefore due and owing on said note is as follows:

Principal	\$169,546.91
Late charges	164.37
Other fees due	28.50
Pro Rata MIP/PMI	112.69
Interest to 08/15/04	4,136.03
Attorneys Fees & Costs	<u>950.00</u>
TOTAL	\$174,938.50

The fair market value of the Property as averred by the debtor is approximately \$178,500.00

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: ~~8/13/04~~ 8.10.04 NN

Signed: /e/ Nancy A. Nordmeyer

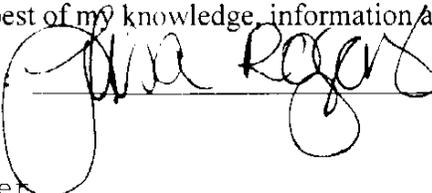
SHAPIRO & NORDMEYER, L.L.P.

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

VERIFICATION

I, Lisa Rogers, the Bankruptcy Outsourcing Manager at National Default Servicing Corp., contracted outsourcer for US Bank, N.A., 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: 8/13/04 Signed: _____



US Bank, N.A.
C/O Andrews Davis Legg Bixler
Milsten & Price
500 West Main, Suite 500
Oklahoma City, OK 73102

Loan No: 7010211614

NOTE
(MULTISTATE FIXED RATE)

April 30, 2002
(Date)

Eagan
City
1198 Lamplight Drive
Woodbury, MN 55125
(Precisely Address)

Minnesota
(State)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$173,076.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is Gopher State Mortgage Corporation, a Corporation

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. 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 6.500 %

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 a payment every month.

I will make my monthly payment on the 1st day of each month beginning on June 1, 2002. 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. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on May 1, 2032, I will 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 15125 Glazier Ave Suite 101
Apple Valley, MN 56124

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. \$1,005.85

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 let the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. If a Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no change 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: (a)

3243202



Office of the
County Recorder
Washington County, MN

Certified filed and/or recorded on:
2002/06/13 11:09:00 AM

3243202



Cindy Koemann
County Recorder

Cindy Koemann

WASHINGTON COUNTY

Receipt No: 97358 Date: 05/21/2002
Registration tax hereon of \$398.76 Paid
MN Conservation Fund M.S. 473H \$5.00 Paid
Molly F. O'Rourke, Auditor by BAFrans

RHS Title \$80.00

Loan No: 7810211614

[Space Above This Line For Recording Date]

MORTGAGE

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 April 30, 2002 together with all Riders to this document.

(B) "Borrower" is Theresa L Schneider, a single woman

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is Gopher State Mortgage Corporation

*RHS Title, LLC
1895 Plaza Drive, Suite 101
Eagan, MN 55122
9235*

Lender is a Corporation organized and existing under the laws of Minnesota Lender's address is 15025 Glazier Ave Suite 101 Apple Valley, MN 55124

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated April 30, 2002

The Note states that Borrower owes Lender One Hundred Seventy Three Thousand Three Hundred Seventy Five DOLLARS and Zero CENTS

Dollars (U.S. \$ 173,375.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 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.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3024 1/01

Laser Forms Inc. (800) 440-3555 LFI#FNMA3024 1/01 (A)

3243203



Office of the
County Recorder
Washington County, MN

Certified filed and/or recorded on:
2002/06/13 11:09:00 AM

3243203



Clidy Korman
County Recorder

RHS Title

Corporation Assignment of Real Estate Mortgage

PREPARED BY:
Gopher State Mortgage Corporation
15025 Glazier Ave Suite 101
Apple Valley, MN 55124

WHEN RECORDED MAIL TO:
Gopher State Mortgage Corporation
15025 Glazier Ave Suite 101
Apple Valley, MN 55124
Loan No. 7810211614

Parcel Tax ID #: 0802821330034
FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to
US Bank, N.A.

4801 Frederica Street, Owensboro, KY 42301, whose address is
all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated
April 30, 2002, executed by
Theresa L Schneider, a single woman
to Gopher State Mortgage Corporation, a Corporation

the laws of Minnesota, a corporation organized under
15025 Glazier Ave Suite 101, Apple Valley, MN 55124, and who's principal place of business is
and recorded in Book, Volume, or Liber No. _____, at page(s) _____ (or as No. 304 3202
of the Records of Washington County, State of Minnesota
Described as follows:
Lot 43, Block 1, Woodview Acres Addition, according to the recorded plat thereof, Washington County,
Minnesota. Abstract Property.

RHS Title, LLC
1895 Plaza Drive, Suite 100
Eagan, MN 55122
9235

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.

Gopher State Mortgage Corporation
Lisa Doyle
By: Lisa Doyle

Witness: _____

Its: V.P. of Gopher State Mortgage Corporation

Witness: _____

By: _____

Witness: _____

Its: _____

Witness: _____

STATE OF Minnesota COUNTY OF Dakota
On April 30, 2002 before me, the undersigned, a Notary Public in and for
said County and State, personally appeared Lisa Doyle
known to me to be the V.P. of Gopher State Mortgage Corporation
and

executed the within instrument, that the seal affixed to said instrument is the corporate seal of said
corporation, that said instrument was signed and sealed on behalf of said corporation pursuant to its by-laws
or a resolution of its Board of Directors, and that he/she/it acknowledges said instrument to be the free act and
deed of said corporation.



KIMBERLY A. ERICKSON
Notary Public
Minnesota

Kimberly A Erickson

Kimberly A Erickson - Notary Public
Dakota County, Minn

My Commission Expires: My Commission Expires Jan. 31, 2005
Laser Forms Inc. (800) 446-3655
LFI#LFISCMG 8/01

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33579-DDO
Chapter 7

Theresa Stockton
Ronald Stockton,

Debtor(s)

MEMORANDUM OF LAW

US Bank, N.A. ("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) has made no payments to Movant and as of this date thereof are in arrears in the total amount of \$6,861.31.

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 has failed to make the payments required by the note and mortgage for a period of more than three months. Debtor(s) has 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).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) has 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 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$174,938.50. [The property is encumbered by a secured home equity line in favor of Wells Fargo in the approximate amount of \$43,310.10] The fair market value of the property is approximately \$178,500.00.

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

Dated: 8.20.01.

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

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.

Theresa Stockton
1896 Lamplight Drive
Woodbury, MN 55125

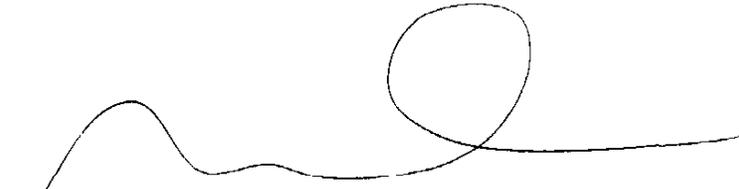
Ronald Stockton
1896 Lamplight Drive
Woodbury, MN 55125

Barbara Nevin, Esq.
6500 France Ave South
Edina, MN 55435

Patti Sullivan, Trustee
PO Box 16406
St. Paul, MN 55116

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

Wells Fargo
PO Box 514
Minneapolis, MN 55479



Stephanie Pilegaard

Subscribed and sworn to before me August 20, 2004.

Notary



04-29076
7810211614

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33579-DDO

Theresa Stockton
Ronald Stockton,

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 US Bank, N.A., 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 US Bank, N.A., its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 43, Block 1, Woodview Acres Addition, Washington County, Minnesota.

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

Dated: _____.

United States Bankruptcy Judge