

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Darlene Carol Rose
SSN XXX-XX-9931

CHAPTER 7 CASE

CASE NO. 04-33784

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

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

1. U.S. Bank, N.A. (hereinafter "Secured Creditor"), 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 on September 22, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 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 served and filed 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, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 28, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$76,500.00, as evidenced by that certain Promissory Note dated June 15, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated June 15, 2001, executed by Christopher C. Rose and Darlene C. Rose, husband and wife, recorded June 19, 2001, as Document No. 338716, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Burnett County, Wisconsin and is legally described as follows to-wit:

Lot Three (3) of Certified Survey Map in Volume Sixteen (16), Page One Hundred Sixty-One (161) as recorded in the office of the Burnett County Register of Deeds, located in the Northwest Quarter of the Northeast Quarter (NW 1/4 NE 1/4) and the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 23, Township 41 North, Range 16 West, Town of Swiss, Burnett County, Wisconsin.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This Secured Creditor's interest in the property is not adequately protected where, as of August 20, 2004, Debtor is delinquent in the making of monthly payments as required for the months of April, 2003 through May, 2004 and June, 2004 through August, 2004, inclusive, in the amount of \$583.07 each and \$1298.87 each; accruing late charges and attorneys fees and costs. Debtor has failed to make any offer of adequate protection.

10. Debtor has no equity in the property and the property is not necessary to an effective organization. The value of the property as scheduled by Debtor is \$59,500.00 subject to Secured Creditor's mortgage in excess of \$93,607.37.

Since this is a liquidation case, no reorganization is being attempted.

11. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to state law.

12. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

13. Christopher Rose is a co-debtor pursuant to 11 U.S.C. § 1301. Secured Creditor moves the Court for an Order for judgment that the automatic stay be lifted with respect to his interests.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under state law and for such other relief as may be just and equitable.

Dated this 20th day of August, 2004.

WILFORD & GESKE

By /e/ Lawrence A. Wilford

Lawrence A. Wilford
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 117109

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LOAN:

ADJUSTABLE RATE NOTE

(1 Year Treasury Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JUNE 15, 2001
[Date]

WEBSTER
[City]

WISCONSIN
[State]

30756 SEVENTH PLACE, DANBURY, WISCONSIN 54830
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 76,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is FIRSTAR BANK, N.A.

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

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 7.125%. The interest rate I will pay will change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

Solely for the purpose of computing interest, a monthly payment received by the Note Holder within 30 days prior to or after the date it is due will be deemed to be paid on such due date.

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 first day of each month beginning on AUGUST 1, 2001

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 to interest before Principal. If, on

JULY 1, 2031, 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 4801 FREDERICA STREET
OWENSBORO, KY 42301

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 515.40. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

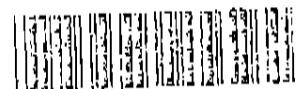
WISCONSIN ADJUSTABLE RATE NOTE - ARM 5-2 - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Fannie Mae 4-2/5-2/6-2 ARM

322N(W) (0003)

Form 3502.50 1/01

VMP MORTGAGE FORMS - (300)521-7551

EXHIBIT A



12/18/2003 THU 16:29 FAX

MORTGAGE

338716

DOCUMENT NUMBER

LOAN: #

NAME & RETURN ADDRESS

FIRSTAR BANK, N.A.
1550 EAST 79TH STREET
BLOOMINGTON, MN 55425

BURNETT COUNTY
WISCONSIN
RECEIVED AND RECORDED

JUN 19 2001

AT 9:30 A.M.

Jeanine Chell
REGISTER OF DEEDS

PARCEL IDENTIFIER NUMBER 032-5323-01 320

Return Docs to:
Village Title & Abstract Co.
26768 N. Lakeland Ave. Hwy. 35
Webster, WI 54893

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 JUNE 15, 2001 together with all Riders to this document.

(B) "Borrower" is CHRISTOPHER C ROSE AND DARLENE C ROSE , HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is FIRSTAR BANK, N.A.

Lender is a NATIONAL ASSOCIATION organized and existing under the laws of THE UNITED STATES OF AMERICA

WISCONSIN-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3050 1/01

0249 -5(WI)(0005).....

Page 1 of 15

Initials: *CCR*

VMP MORTGAGE FORMS • (800)521-7291



EXHIBIT B

338716

Lender's address is 4801 FREDERICA STREET, OWENSBORO, KY 42301

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated JUNE 15, 2001

The Note states that Borrower owes Lender SEVENTY SIX THOUSAND FIVE HUNDRED AND NO/100 Dollars

(U.S. \$ 76,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 1, 2031

(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.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

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

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance procured by Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regular payments due for (i) principal and interest under the Note, plus (ii) any amounts under Section 5 of the Note.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

Initials: CEW
dc

EXHIBIT B

338716

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 the PUBLIC RECORDS of BURNETT COUNTY

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

LOT THREE (3) OF CERTIFIED SURVEY MAP IN VOLUME SIXTEEN (16), PAGE ONE HUNDRED SIXTY-ONE (161) AS RECORDED IN THE OFFICE OF THE BURNETT COUNTY REGISTER OF DEEDS, LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER (NW 1/4 NE 1/4) AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE 1/4 NW 1/4), SECTION 23, TOWNSHIP 41 NORTH, RANGE 16 WEST, TOWN OF SWISS, BURNETT COUNTY, WISCONSIN.

THIS IS A PURCHASE MONEY MORTGAGE.

which currently has the address of 30756 SEVENTH PLACE

DANBURY

("Property Address"):

(City), Wisconsin 54830

[Street] [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 seized 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.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this

Initials: *DL*

EXHIBIT B

338716

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

Witnesses:

_____ *Christopher C Rose* (Seal)
CHRISTOPHER C ROSE -Borrower

_____ *Darlene C Rose* (Seal)
DARLENE C ROSE -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Darlene Carol Rose
SSN XXX-XX-9931

CHAPTER 7 CASE

CASE NO. 04-33784

Debtor.

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

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of August 20, 2004, Debtor is delinquent for the monthly payments as required for the months of April, 2003 through May, 2004 and June, 2004 through August, 2004, in the amount of \$583.07 each and \$1298.87 each; accruing late charges and attorneys fees and costs.

2. Debtor has failed to make any offer of adequate protection.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. § 362(d)(2) WHERE (1) DEBTOR DOES NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under § 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The value of the property as scheduled by Debtor is \$59,500.00 subject to Secured Creditor's mortgage in excess of \$93,607.37.

Since this is a liquidation case, no reorganization is being attempted.

III. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 1301(c) WHERE THE INTEREST OF THIS SECURED CREDITOR

WOULD BE IRREPARABLY HARMED BY CONTINUATION OF SUCH STAY.

Christopher Rose is a co-debtor pursuant to 11 U.S.C. § 1301 and the non-debtor party in these proceedings and has received the consideration for the claim held by Secured Creditor. Neither the debtor nor Mr. Rose provided for the payments referenced herein.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) where Debtor has no equity in the property, and where the property is not necessary to an effective reorganization.

Secured Creditor respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 20th day of August, 2004.

WILFORD & GESKE

By /e/ Lawrence A. Wilford
Lawrence A. Wilford
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 117109

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASEDarlene Carol Rose
SSN XXX-XX-9931**CASE NO. 04-33784****AFFIDAVIT OF
LISA ROGERS**

Debtor.

Lisa Rogers, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Manager of National Default Servicing Corporation.

2. U.S. Bank, N.A., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated June 15, 2001, executed by Christopher C. Rose and Darlene C. Rose, husband and wife, recorded June 19, 2001, as Document No. 338716. The property is located in Burnett County, Wisconsin and is legally described as follows, to-wit:

Lot Three (3) of Certified Survey Map in Volume Sixteen (16), Page One Hundred Sixty-One (161) as recorded in the office of the Burnett County Register of Deeds, located in the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) and the Northeast Quarter of the Northwest Quarter (NE1/4 NW1/4), Section 23, Township 41 North, Range 16 West, Town of Swiss, Burnett County, Wisconsin.

3. That she has reviewed the account records relating to the Rose mortgage loan, account no. 7890195146.

4. That as of August 17, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$75,188.61
Interest through September 1, 2004	8,035.74
Attorney's Fees:	700.00
Late Charges:	154.62
Escrow Advance:	5,951.33
Other Fees:	76.00
Recoverable Balance:	3,501.07

TOTAL:	\$93,607.37
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5. That the mortgage loan is delinquent for monthly mortgage payments for the months of April, 2003 through May, 2004 in the amount of \$583.07 each and June, 2004 through August, 2004 in the amount of \$1,298.87 each.

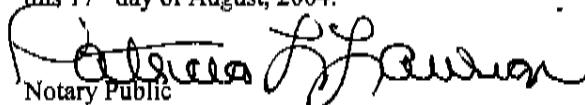
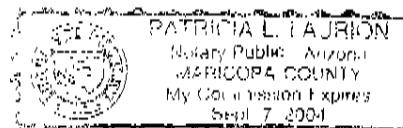
6. This affidavit is given in support of the motion of U.S. Bank, N.A. for relief from the automatic stay.

NATIONAL DEFAULT SERVICING CORPORATION

By


 Its Bankruptcy Manager

Subscribed and sworn to before me
this 17th day of August, 2004.


 Notary Public
9733_1


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Darlene Carol Rose
SSN XXX-XX-9931

CHAPTER 7 CASE

CASE NO. 04-33784

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of U.S. Bank, N.A. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 22, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 and § 1301 with regard to that certain mortgage deed dated June 15, 2001, executed by Christopher C. Rose and Darlene C. Rose, husband and wife, recorded June 19, 2001, as Document No. 338716 covering real estate located in Burnett County, Wisconsin, legally described as follows, to-wit:

Lot Three (3) of Certified Survey Map in Volume Sixteen (16), Page One Hundred Sixty-One (161) as recorded in the office of the Burnett County Register of Deeds, located in the Northwest Quarter of the Northeast Quarter (NW 1/4 NE 1/4) and the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 23, Township 41 North, Range 16 West, Town of Swiss, Burnett County, Wisconsin

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court