

03-26651

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33885-GFK
Chapter 7

David Subbert
Doris Subbert,

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. Bank One, National Association, 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 10:30 a.m., on September 13, 2004, in Courtroom No. 228B, 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 September 8, 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 1, 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 July 1, 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 September 15, 2000, in the original principal amount of \$27,950.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 348463, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

The South 35 feet of Lot 7, Block 2, in Wards Addition to the Village, now city of Fairmont as per the recorded plat thereof

The Mortgage was recorded in the offices of the Recorder, for Martin County, Minnesota on October 3, 2000, as Document No. 348463. A copy of the Mortgage and assignment are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the March, 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:

5 payments @ \$333.33	\$1,666.66
5 late charges @ \$15.35	76.75
Accrued late charges	429.80
NSF fees	120.00
Suspense Balance	-22.64
Attorneys Fees & Cost	<u>2,630.00</u>
TOTAL	\$4,900.57

The outstanding principal balance due Movant under the terms of the note is \$27,615.42 as of August 18, 2004, and interest accrues at the rate of 12.9% per diem per day. The amount therefore due and owing on said note is as follows:

Principal	\$27,615.42
Late charges	506.55
NSF fees	120.00
Interest	1,669.39
Attorneys Fees & Costs	<u>2,630.00</u>
TOTAL	\$32,541.36

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: _____

[Handwritten signature]

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 Ainters, 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:

8.17.04

Signed:

[Signature]

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

Traced

Office of County Recorder
County of Martin, Minnesota
I hereby certify that the within
instrument was filed in this office
for record on 10-03-2000 at 2:19 PM
and was duly recorded as Document No.

348463

Kim Munko, Martin County Recorder
By Mary J. Diddell Deputy

REC. FEE: 19.50
PAGES: 11

No. 26604 Date 10/3/2000

Registration fee hereon of \$ 64.40 Paid OKS

Steve A. Hanger
County Auditor/Treasurer

[Space Above This Line For Recording Data]

Loan Number 95-05159 2-226 **MORTGAGE**

THIS MORTGAGE ("Security Instrument") is given on SEPTEMBER 15, 2000
The mortgagor is DAVID G. SUBBERT AND DORIS M. SUBBERT HUSBAND AND WIFE AS
JOINT TENANTS

("Borrower"). This Security Instrument is given to
RESCUE MORTGAGE, INC. DBA MORTGAGE DEPOT

which is organized and existing under the laws of MINNESOTA, and whose address is
THE TITUS BUILDING, 6550 YORK AVE #600, EDINA, MINNESOTA 55435

("Lender"). Borrower owes Lender the principal sum of
TWENTY SEVEN THOUSAND NINE HUNDRED FIFTY AND 00/100*****
Dollars (U.S. \$ 27,950.00). This debt is evidenced by Borrower's note dated the same date as this
Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and
payable on OCTOBER 1, 2030 and for interest at the yearly rate of 12.900 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

MARTIN County, Minnesota:
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT
"A".

which has the address of 413 ELM STREET NORTH, FAIRMONT
[Street] [City]

Minnesota: 56031 ("Property Address");
[Zip Code]

MNLMTG-A

2000-10-03

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

2000391
4471

Order No.
Escrow No.
Application No.
Loan No. 95-05159

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corporation Assignment of Mortgage

22-09

FOR VALUE RECEIVED, the undersigned ("Assignor") hereby sells, transfers and assigns to

(Assignee)
all of Assignor's right, title and interest in and to that certain Mortgage dated SEPTEMBER 15, 2000
executed by DAVID G. SUBBERT AND DORIS M. SUBBERT HUSBAND AND WIFE AS JOINT
TENANTS

to RESCUE MORTGAGE, INC, DBA MORTGAGE DEPOT, as mortgagor,

and recorded 10/5/00 as Document Number 348463 (or in Book _____, as mortgagee,

of _____ Page _____), in the Official Records of either the County
Recorder or the Registrar of Titles, as the case may be, of MARTIN County,

describing land therein as:
LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT
"A".

BANK ONE NATIONAL ASSOCIATION, AS TRUSTEE
1 Bank One Plaza, Suite 111-0126 (RMC), Chicago, Illinois 60601-0126

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 SEPTEMBER 15, 2000
STATE OF MINNESOTA
COUNTY OF HENNEPIN

On September 15, 2000 before me,
Lein Waters Notary Public, personally appeared

RESCUE MORTGAGE, INC, DBA
MORTGAGE DEPOT

Greg Sieja

GREG SIEJA, VICE PRESIDENT

REGINIA 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

Lein Waters



(Seal)

DRAWN AND PREPARED BY:
RESCUE MORTGAGE, INC. DBA
MORTGAGE DEPOT
THE TITUS BUILDING, 6550 YORK
AVE #600
EDINA, MINNESOTA 55435
LINDA G. ALEXANDER

(Title does not affect enforceability)

After Recording Return To:

PEZLE MANAGEMENT CORPORATION
ASSIGNMENT JOB #90803
P.O. BOX 1710
CAMPBELL, CA 95009-1710
1-408-568-6888

CCRMN1AQM-HCA

0015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33885-GFK

Chapter 7

David Subbert
Doris Subbert,

Debtor(s)

MEMORANDUM OF LAW

Bank One, National Association, 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 \$4,900.57.

ARGUMENT

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 have failed to make the payments required by the note and mortgage for a period of more than 4 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: _____.

8.20.01

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.

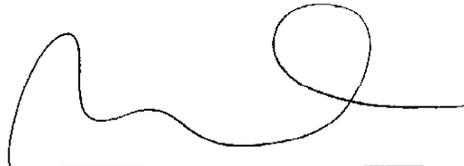
David Subbert
413 North Elm Street
Fairmont, MN 56031-2728

Doris Subbert
413 North Elm Street
Fairmont, MN 56031-2728

Larry Laroue, Esq.
312 Central Ave STE 478
Minneapolis, MN 55414

Michael Dietz, Trustee
PO Box 549
505 Marquette Bldg
Rochester, MN 55903

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



Stephanic Pilegaard

Subscribed and sworn to before me August 20, 2004.

Notary



03-26651
0432276624

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-33885-GFK

David Subbert
Doris Subbert,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 13, 2004.

THIS CAUSE coming to be heard on the motion of Bank One, National Association, as Trustee, by Fidelity National Foreclosure Solutions, the authorized servicer for movant, 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 Bank One, National Association, as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

The South 35 feet of Lot 7, Block 2, in Wards Addition to the Village, now city of Fairmont as per the recorded plat thereof, Martin County, Minnesota

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

Dated: _____.

United States Bankruptcy Judge