

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Gale Patch  
Valerie Patch

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-34432  
-----

TO: Gale Patch and Valerie Patch, INCLUDING TRUSTEE AND OTHER INTERESTED  
PARTIES

1. First Franklin Financial Corporation, (“Movant”), a corporation, by its attorneys,  
moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 am on September 7, 2004,  
in Courtroom 228B, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as  
counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on  
September 1, 2004, which is three 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 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, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case  
was filed on July 30, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtors, subject to a mortgage to Movant.

6. Debtors above-named are the owners of certain real property located at 17089 Gage Avenue, Farmington, MN 55024, legally described as follows, to-wit:

Lot Six (6), Block Two (2), Dodd Park, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Dakota County, Minnesota

7. The indebtedness of Gale Patch and Valerie Patch is evidenced by a Promissory Note and Mortgage dated June 12, 2003, and recorded on August 28, 2003, and memorialized as Document No. 2102122. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. The Debtors have failed to pay monthly mortgage payments since July 1, 2004, and are in default in the amount of \$2,329.61 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtors have failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is approximately \$166,300.00.

10. The Debtors have executed a second mortgage in favor of First Franklin Financial Corporation on June 12, 2003, which mortgage was filed of record on October 15, 2003, as Document No. 2124634 in the original amount of \$41,000.00. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Dakota County Assessor's Office has estimated the value of the homestead as \$208,000.00, and accordingly, Debtors have limited equity in the premises and, presuming typical selling costs, have no equity in the property and therefore cause exists to find lack of adequate protection.

12. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Gale Patch  
Valerie Patch

AFFIDAVIT OF PETITIONER

Debtors

Chapter 7, Case No. 04-34432  
-----

STATE OF California )

COUNTY OF San Diego )

Robin Williams, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation as servicer for First Franklin Financial Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Robin Williams

Subscribed and sworn to before me this

0 day of August, 2004.

Shlain D. Rivers  
Notary Public



2102122

DOC. NO.

2102122

OFFICE OF THE COUNTY RECORDER  
DAKOTA COUNTY, MINNESOTA  
CERTIFIED THAT THE WITHIN INSTRUMENT  
WAS RECORDED IN THIS OFFICE ON AND AT

2003 AUG 28 PM 12:00

JOEL T. BECKMAN, COUNTY RECORDER

BY: *[Signature]* Deputy

FEES: *[Signature]* SURCHARGES: *[Signature]*

CASH  CHECK  ESCROW

WELL  CHARGE

CHARGE TO: \_\_\_\_\_

O/R \_\_\_\_\_

Excel Title, LLC  
6900 Wedgewood Rd. #425  
Maple Grove, MN 55311

DAKOTA COUNTY TREASURER-AUDITOR  
06/19/2003 13:04:31 067555  
REGISTRATION TAX 377.20  
COUNTY CONSERVATION FEE 5.00  
RECEIPT NUMBER 613079

[Space Above This Line For Recording Data]

# MORTGAGE

Return To:  
First Franklin Financial Corporation  
2150 North First Street  
San Jose, CA 95131  
Loan number: 0030759971/5,636

ML-8111  
AFTER RECORDING PLEASE RETURN TO:  
EXCEL TITLE, LLC  
8900 WEDGWOOD ROAD #425 450  
MAPLE GROVE, MN 55311

A

This loan is being made pursuant to section 47.204 of the Minnesota Statutes.

## 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 12, 2003 together with all Riders to this document.

RECEIVED - MAIL

JUL 28 2003

DAKOTA COUNTY  
TREASURER-AUDITOR

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

Form 3024 1/01

VMP -6(MN) (0005)

Page 1 of 15

Initials: *GEF VRP*

VMP MORTGAGE FORMS - (800)821-7291



Document # L074MN

(B) "Borrower" is  
GALE E. PATCH  
, and VALERIE R. PATCH, husband and wife

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **FIRST FRANKLIN FINANCIAL CORPORATION**

Lender is a **Corporation**  
organized and existing under the laws of **Delaware**  
Lender's address is **2150 North First St.,**  
**San Jose, CA 95131**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **June 12, 2003**

The Note states that Borrower owes Lender

**ONE HUNDRED SIXTY FOUR THOUSAND & 00/100**

**Dollars**

(U.S. \$ **164,000.00** ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than **July First, 2033**

(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 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 checked="" type="checkbox"/> Other(s) [specify] <b>Prepayment Rider</b>

(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 protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(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.

(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 and Lender's successors and assigns, with power of sale, the following described property located in the county \_\_\_\_\_ [Type of Recording Jurisdiction]

of Dakota

[Name of Recording Jurisdiction]:

Legal Description attached hereto and made a part hereof

Adjustable Rate Rider attached hereto and made a part hereof

Prepayment Rider attached hereto and made a part hereof

Parcel ID Number: 222085006002  
17089 GAGE AVENUE  
FARMINGTON  
("Property Address"):

which currently has the address of

[Street]

[City], Minnesota 55024 [Zip Code]

**Exhibit A**

**Legal Description:**

LOT SIX (6), BLOCK TWO (2), DODD PARK ACCORDING TO THE MAP OR PLAT THEREOF ON FILE OR OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR DAKOTA COUNTY, MINNESOTA.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Gale Patch  
Valerie Patch

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-34432  
-----

First Franklin Financial Corporation ("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, perfected mortgage on real property owned by the Debtors. On the date of filing, the Debtors were delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$2,329.61.

**ARGUMENT**

1. Under Section 362.(d)(2) 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." The Debtors in this case have failed to make payments required by the note and mortgage for a period of more than 3 months. Debtors have not otherwise provided 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: Video East, Inc., 41 B.R. 176 (Bkrcty. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrcty. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtors have no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the

balance due Movant is approximaely \$166,300.00 and including the amount due the second mortgage holder, the approximate total amount encumbering the property is \$207,300.00. The value of the property is approximately \$208,000.00. Clearly, the Debtors have no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

### **CONCLUSION**

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

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

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Gale Patch  
Valerie Patch

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34432  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 19, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

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

April M. Little  
Prescott & Pearson  
PO Box 120088  
New Brighton, MN 55112

Gale Patch  
Valerie Patch  
17089 Gage Avenue  
Farmington, MN 55024

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re:

Gale Patch  
Valerie Patch

ORDER

Debtors.

Chapter 7, Case No. 04-34432  
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The above entitled matter came on for hearing upon motion of First Franklin Financial Corporation, ("Movant"), pursuant to 11 U.S.C. Section 362 on September 7, 2004, at the U.S. Bankruptcy Court, 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:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot Six (6), Block Two (2), Dodd Park, according to the map or plat thereof on file or of record in the Office of the County Recorder in and for Dakota County, Minnesota

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court