

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Case No. 04-34580-GFK
Chapter 7
Geraldine Collum,
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. Town & Country Credit Corp. 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 27, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota .
3. Any response to this motion must be filed and delivered no later than September 22, 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 16, 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 August 5, 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 July 17, 2003, in the original principal amount of \$253,500.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 337420, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

W 1/2 of E 1/2 of SW 1/4 of SE 1/4, Sec. 33, Twp 110 Range 31, NW 1/4 of NE 1/4, Sec. 4, Twp. 109, Range 31, and W 1/2 of SW 1/4 of SE 1/4 Sec.33, Twp.110, Range 31, except the following; Beginning at the South Quarter corner of Sec.33; thence on an assumed bearing of North 0 Degrees 09 minutes 20 seconds West, along the North-South Quarter Line of Sec. 33, a distance of 97.00 Feet to an iron monument; thence North 90 Degrees 00 Minutes 00 Seconds East a distance of 602.72 Feet to an iron monument; thence South 0 Degrees 22 Minutes 15 Seconds West a distance of 1440.39 Feet, more or less, to the South Line of said NW 1/4 of NE 1/4 of said Sec.4; thence South 88 Degrees 38 Minutes 00 Seconds West, along said South Line a distance of 602.09 Feet, more or less the Southwest corner of said NW 1/4 of NE 1/4 of said Sec. 4; thence North 0 Degrees 22 Minutes 15 Seconds East, along the North South Quarter Line of said Sec. 4 a distance of 1357.75 Feet, more or less, to the point of beginning, containing 20.0 Acres, more or less; Brown County, Minnesota

The Mortgage was filed in the offices of the recorder, for Brown County, Minnesota on August 8, 2003, as Document No. 337420. A copy of the Mortgage is attached hereto as Exhibit A.

Ameriquist Mortgage Company is the servicer for said Mortgage and is authorized to act on behalf of movant.

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:

4 payments @ \$2,307.24	\$9,228.96
Accrued late charges	\$639.48
Escrow Advance	\$1,756.66
Attorneys Fees & Cost	\$700.00
TOTAL	\$12,325.10

The outstanding principal balance due to Movant under the terms of the note is \$252,474.36 as of August 26, 2004, and interest accrues at the rate of 9.50% per diem per day. The amount therefore due and owing on said note is as follows:

Principal	\$252,474.36
Late charges	\$639.48
Escrow advance	\$1,756.66
Interest	\$8,644.41
Attorneys Fees & Costs	\$700.00
TOTAL	\$264,214.91

The fair market value of the Property as averred by the debtor is approximately \$149,100.00.

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: 9/30/04

Signed: /s/ 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, Carrie Allan, the DC Bankruptcy Loan Counsel of Ameriquest Mortgage Company, 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: 8/31/04

Signed: Carrie Allan

Ameriquest Mortgage Company
505 City Parkway West STE 100
Orange, CA 92868

Loan Number: 0051002830 - 60147

ADJUSTABLE RATE NOTE (LIBOR 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. THIS LOAN HAS A PREPAYMENT PENALTY PROVISION.

July 17, 2003
Date

Orange
City

CA
State

22166 195th Avenue, NEW ULM, MN 56073
Property Address

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 253,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Town and Country Credit Corp..

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 9.500 %. This interest rate I will pay may 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.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on September 1, 2003.

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. My monthly payments will be applied to interest before principal. If, on, August 1, 2033, 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 payments at: 505 City Parkway West Suite 700, Orange, CA 92868

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. \$ 2,131.57. 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.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of, August, 2005 and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an index. The "index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent index figure available as of the date 45 days before the Change Date is called the "Current Index."

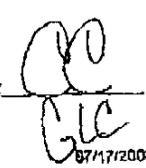
If at any point in time the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and one-half percentage point(s) (6.500%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

Certified To Be A True And
Exact Copy Of The Original.
Town & Country Credit Corp.

By _____ 1 of 3

Initials: 

ORIGINAL

337420

SCANNED

OFFICE OF COUNTY RECORDER
COUNTY OF BROWN, MN

I hereby certify that the within instrument
was filed in this office for record on

this 8th day of August
2003 at 8:00 o'clock A. M.

[Signature]
County Recorder

By _____ Deputy

[Signature] Deputy

[Signature] [Signature] [Signature]

Date: August 8, 2003 Rcpt#: 080703R1

Mortgage Registration Tax: \$ 583.05

MARLYN HELGET, BROWN COUNTY AUDITOR-TREASURER

By [Signature], Deputy

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
Town and Country Credit
Corp.
505 City Parkway West, Ste
700.
Orange, CA 92868

drafted by: J

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 July 17, 2003 together with all Riders to this document.

0051002830 - 60147

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

Form 3024 1/01

-6(MN) (0005)

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(Initials: [Signature])

VMP MORTGAGE FORMS - (900)521-7281

07/17/2003 4:38:30

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-34580-GFK
Chapter 7

Geraldine Collum

Debtor(s)

MEMORANDUM OF LAW

Town & Country Credit Corp. ("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) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$12,325.10.

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 have failed to make the payments required by the note and mortgage for a period of more than 3 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 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. 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) have 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 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$264,214.91. The fair market value of the property is approximately \$149,100.00. Clearly, the Debtor(s) have no equity in the property.

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

Dated: a.3.01

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

Signed: /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 September 3, 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.

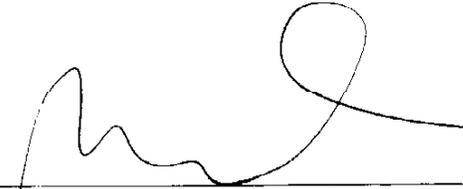
Geraldine Collum
PO Box 615
New Ulm, MN 56073-0615

Calvin Collum
1513 S. Minnesota Street
New Ulm, MN 56073

Mark Halverson, Esq.
PO Box 3544
Mankato, MN 56002-3544

Paul Bucher, Trustee
PO Box 549
Rochester, MN 55903-0549

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

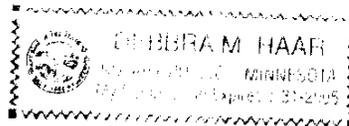


Stephanie Pilegaard

Subscribed and sworn to before me September 3, 2004.



Notary



04-29309
0051002830

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-34580-GFK

Geraldine Collum,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 27, 2004.

THIS CAUSE coming to be heard on the Motion of Town & Country Credit Corp., by Ameriquest Mortgage Company, 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 Town & Country Credit Corp, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

W 1/2 of E 1/2 of SW 1/4 of SE 1/4, Sec. 33, Twp 110 Range 31, NW 1/4 of NE 1/4, Sec. 4, Twp. 109, Range 31, and W 1/2 of SW 1/4 of SE 1/4 Sec.33, Twp.110, Range 31, except the following; Beginning at the South Quarter corner of Sec.33; thence on an assumed bearing of North 0 Degrees 09 minutes 20 seconds West, along the North-South Quarter Line of Sec. 33, a distance of 97.00 Feet to an iron monument; thence North 90 Degrees 00 Minutes 00 Seconds East a distance of 602.72 Feet to an iron monument; thence South 0 Degrees 22 Minutes 15 Seconds West a distance of 1440.39 Feet, more or less, to the South Line of said NW 1/4 of NE 1/4 of said Sec.4; thence South 88 Degrees 38 Minutes 00 Seconds West, along said South Line a distance of 602.09 Feet, more or less the Southwest corner of said NW 1/4 of NE 1/4 of said Sec. 4; thence North 0 Degrees 22 Minutes 15 Seconds East, along the North South Quarter Line of said Sec. 4 a distance of 1357.75 Feet, more or less, to the point of beginning, containing 20.0 Acres, more or less; Brown County, Minnesota

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court