

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Randy Ewald  
Heather Ewald

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-34607  
-----

TO: Randy Ewald and Heather Ewald, INCLUDING TRUSTEE AND OTHER  
INTERESTED PARTIES

1. Chase Manhattan Mortgage 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 9:30 am on September 27, 2004, in Courtroom 228A, 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 22, 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 September 16, 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 August 6, 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 Rural Route 1 Box 2025, Le Roy, MN 55951, legally described as follows, to-wit:

Comm. At the SE Corner of the SE 1/4 of Sec. 27-101-13 as the point of beginning; thence N. 365 ft, thence W. 1687 ft, thence S. 365 ft, thence E. 1687 ft to the place of beg. And there terminating, excepting Therefrom that part of the a fore described premises conveyed to the State of Minnesota by deed recorded in book 241 of deeds page 1405, as Document No. 276493 in the Office of the County Recorded in and for Fillmore County, Minnesota.

7. The indebtedness of Randy Ewald and Heather Ewald is evidenced by a Promissory Note and Mortgage dated September 26, 2002, filed of record in the Fillmore County Recorder's office on October 4, 2002, and recorded as Document No. 326203. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors have failed to pay monthly mortgage payments since March 1, 2004, and are in default in the amount of \$10,081.64 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 \$186,850.00

10. The Debtors have executed a second mortgage in favor of Premier Bank Rochester on April 7, 2003, which mortgage was filed of record on April 17, 2003, as Document

No. 330558 in the original amount of \$21,915.48. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Debtors have estimated the value of the homestead as \$200,000.00, and accordingly, Debtors have no equity in the premises and the property is not necessary to an effective reorganization.

12. Upon information and belief, Debtors intend to permit the foreclosure sale of the real property and have no intention of reaffirmation of the debt.

13. The undersigned attorneys have commenced foreclosure proceedings, which proceeding was terminated as a result of the filing of the bankruptcy petition on August 6, 2004.

14. 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: September 7, 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:

Randy Ewald  
Heather Ewald

AFFIDAVIT OF PETITIONER

Debtors

Chapter 7, Case No. 04-34607  
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STATE OF ~~OHIO~~ *California*

COUNTY OF ~~FRANKLIN~~ *San Diego*

*Candice L. Hobbs*, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage 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.

*Candice L. Hobbs*

Subscribed and sworn to before me this  
*24* day of *Aug*, 2004.

*Carly S. Crown*

Notary Public



only  
A

X 1041770045

326203

COUNTY RECORDER OFFICE  
FILLMORE COUNTY, MINN  
I hereby certify that the within instrument was filed on

OCT 04 2002

Registration tax hereon of \$413.99 paid

Treasurer's Receipt No. 23555

Philip R Burkholder (TP)  
County Treasurer

Countersigned  
Philip R Burkholder (SA)  
County Auditor

At 1:50 o'clock P M  
RW MENSINK, County Recorder  
Susan Phillips

[Space Above This Line For Recording Data]

# MORTGAGE

Return To:

AMERICAN RESIDENTIAL MORTGAGE, LP

235 E. ROSELAWN AVENUE, SUITE 13  
MAPLEWOOD, MN 55117

MIN  
MERS Phone: 1-888-679-6377

LOAN NO.: MW20259

## 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 together with all Riders to this document.

SEPTEMBER 26, 2002

Initials  
[Handwritten initials]

101721

(B) "Borrower" is

RANDY D. EWALD AND HEATHER EWALD HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is AMERICAN RESIDENTIAL MORTGAGE, LP

Lender is a LIMITED PARTNERSHIP organized and existing under the laws of MINNESOTA Lender's address is

235 E. ROSELAWN AVENUE, SUITE 13, MAPLEWOOD, MN 55117

(E) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 26, 2002

The Note states that Borrower owes Lender

ONE HUNDRED SEVENTY NINE THOUSAND NINE HUNDRED NINETY FIVE AND NO/100 X X X X X X X X Dollars (U.S. \$179,995.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 01, 2032

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "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.

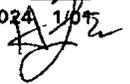
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Condominium Rider
- 1-4 Family Rider
- Graduated Payment Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Balloon Rider
- Rate Improvement Rider
- Second Home Rider
- Other(s) [specify]

(I) "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.

(J) "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.

(K) "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.

Initials   
Form 3024 1/04 

- (L) "Escrow Items" means those items that are described in Section 3.
- (M) "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.
- (N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (O) "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.
- (P) "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.
- (Q) "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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the

COUNTY of

of

FILLMORE [Name of Recording Jurisdiction]:

COMM. AT THE SE CORNER OF THE SE1/4 OF SEC. 27-101-13 AS THE POINT OF BEGINNING; THENCE N. 385 FT.; THENCE W. 1687 FT.; THENCE S. 365 FT., THENCE E. 1687 FT. TO THE PLACE OF BEG. AND THEN TERMINATING, EXCEPTING THEREFROM THAT PART OF THE AFORESAID PREMISES CONVEYED TO THE STATE OF MINNESOTA BY DEED RECORDED IN BOOK 241 OF DEEDS PAGE 1405, AS DOC. NO. 276493 IN THE OFFICE OF THE COUNTY RECORDED IN AND FOR FILLMORE COUNTY, MINNESOTA.

Parcel ID Number: 32-0159-10

which currently has the address of

RR 1 BOX 2025

[Street]

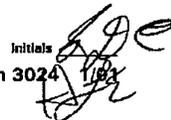
LE ROY

[City], Minnesota

55951

[Zip Code]

("Property Address")

Initials  


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Randy Ewald  
Heather Ewald

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-34607  
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Chase Manhattan Mortgage 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 \$10,081.64.

**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 7 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 approximately \$186,850.00 and including the amount due the second mortgage holder, the approximate total amount encumbering the property is \$208,765.48. The value of the property is approximately \$200,000.00. 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: September 7, 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:

Randy Ewald  
Heather Ewald

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34607  
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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 September 7, 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

Charles W. Ries  
Chapter 7 Trustee  
Mascha, Riedy & Ries PLLP  
PO Box 7  
Mankato, MN 56002

William L. Bodensteiner  
Attorney at Law  
309 S. Main Street  
Austin, MN 55912

Randy Ewald  
Heather Ewald  
Rural Route 1 Box 2025  
Le Roy, MN 55951

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Randy Ewald  
Heather Ewald

ORDER

Debtors.

Chapter 7, Case No. 04-34607  
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The above entitled matter came on for hearing upon motion of Chase Manhattan Mortgage Corporation, ("Movant"), pursuant to 11 U.S.C. Section 362 on September 27, 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:

Comm. At the SE Corner of the SE 1/4 of Sec. 27-101-13 as the point of beginning; thence N. 365 ft, thence W. 1687 ft, thence S. 365 ft, thence E. 1687 ft to the place of beg. And there terminating, excepting Therefrom that part of the a fore described premises conveyed to the State of Minnesota by deed recorded in book 241 of deeds page 1405, as Document No. 276493 in the Office of the County Recorded in and for Fillmore 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