

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: JAMES ARNOLD WALLER,
WENDI CHRISTINE WALLER,

BKY. No.: 04-34728
Chapter 7

Debtors.

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: JAMES ARNOLD WALLER, WENDI CHRISTINE WALLER AND
THEIR ATTORNEY, JEFF DAVID BAGNIEFSKI, ATTORNEY AT
LAW, P.O. BOX 6, ROCHESTER, MN 55903.

1. Mortgage Electronic Registration Systems, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 13, 2004 at 10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later than September 8, 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 1, 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.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 12, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the deed of trust and assignment, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from April 9, 2004 to date in the amount of \$1,198.01 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$147,000.00. According to the Debtors fair market value of the property is estimated at \$130,000.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc.,

by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 24, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0383)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

0776306

248358 ~~11~~

Return To:
EquiFirst Corporation
Attn: Collateral Mgmt.
820 Forest Point Circle
Charlotte, NC 28273

Prepared By:
J. Brian McNeill
820 Forest Point Circle
Charlotte, NC 28273

[REDACTED] 1468223
Page: 1 of 21
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DEED OF TRUST

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.

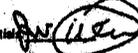
- (A) "Security Instrument" means this document, which is dated October 30, 2002 together with all Riders to this document.
- (B) "Borrower" is James A. Waller and Wendi Waller, as Joint Tenants

Borrower is the trustor under this Security Instrument.
(C) "Lender" is EquiFirst Corporation

Lender is a Corporation
248358
COLORADO-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3008 1/01

4(00) (0005)
Page 1 of 15

Initials 

VMP MORTGAGE FORMS - (800)521-7291

LOT 27, BLOCK 1, OAKSHIRE, ACCORDING TO THE RECORDED PLAT THEREOF, FILED FOR RECORD JULY 8, 1965, COUNTY OF PUEBLO, STATE OF COLORADO



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Page: 14 of 21
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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:

_____ (Seal)
James A. Waller -Borrower

_____ (Seal)
Wendi Waller -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

248358

8(CO) (0005)

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Form 3000 1/01

TRANSFER AND ASSIGNMENT

For valuable consideration in hand paid, receipt whereof is hereby acknowledged, EquiFirst Corporation does hereby transfer, convey, and assign unto:

Mortgage Electronic Registration Systems, Inc.
P.O. Box 2020, First, NH 48501-2020

its successors or assigns all of its right, title, and interest in and to that certain Deed of Trust, together with the Note it was given to secure executed by

James A. Waller and Wendi Waller, as Joint Tenants
to

EquiFirst Corporation
500 Forest Point Circle
Charlotte, NC 28273

dated the 30 day of October, 2002, and duly recorded in the County Clerk or Recorder Office for Pueblo County, State of Colorado, in Book No. 32, Page . The property encumbered by this Deed of Trust is described as follows:

4 Rec. dt. 11/10/02 Doc# 1468223

IN WITNESS WHEREOF, EquiFirst Corporation has caused this instrument to be signed in its name by its duly authorized Vice President and its corporate seal to be affixed hereto on this 9 day of November.

(Corporate Seal)



EquiFirst Corporation

By: Renee Parlato
Renee Parlato
Assistant Vice President

Witness:

Sherry Cole
Sherry Cole

Witness:

Patrice Cain
Patrice Cain

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Seal-Stamp

The foregoing instrument was acknowledged before me this day of 2 November, 2002, by, Renee Parlato, Assistant Vice President of EquiFirst Corporation, a North Carolina corporation, on behalf of the corporation.



J. Cooney
Notary Public

When Recorded, Mail and Return To:
Household Mortgage Services
577 Lamont Rd.
P.O. Box 1247
Elmhurst, IL 60126 *6776306*

MERS #: 1000480-000 *67763064*
PH #: 1-888-878-8377

(B)

UNITED STATES BANKRUPTCY COURT
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BKY. No.: 04-34728
Chapter 7

**AFFIDAVIT OF MOVANT'S
VICE PRESIDENT**

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc. in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default from April 9, 2004 to date in the amount of \$1,198.01 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$147,000.00. According to the Debtors fair market value of the property is estimated at \$130,000.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

Dated: August 24, 2004

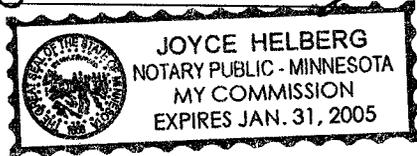
By: 

Scott Barnes
Vice President
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Subscribed to and sworn before me this

24th day of August, 2004.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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BKY. No.: 04-34728
Chapter 7

Debtors.

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

MEMORANDUM OF LAW

I. Factual Background

The Debtors filed their petition herein on August 12, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Pueblo County, Colorado that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 27, Block 1, Oakshire, according to the recorded plat thereof,
filed for record on July 8, 1965.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$147,000.00. According to the Debtors fair market value of the property is estimated at \$130,000.00. The payments due under said mortgage are in default from April 9, 2004 to date in the amount of \$1,198.01 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movant's loan is approximately \$147,000.00 and the fair market value of the property is estimated at only \$130,000.00. The Debtors lack any equity in said real property.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 24, 2004

By: /e/ Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605

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UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 25, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Charles W. Ries, Trustee
Maschka Riedy & Ries
P.O. Box 7
Mankato, MN 56002-0007

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

James Arnold Waller
Wendi Christine Waller
Rural Route 1 Box 120
Millville, MN 55957

Jeff David Bagniefski
Attorney at Law
P.O. Box 6
Rochester, MN 55903

Ford Motor Credit Co.
c/o Stewart Zlimen & Jungers
430 Oak Grove St., #200
Minneapolis, MN 55403

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 25, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605

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ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 13, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

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

Lot 27, Block 1, Oakshire, according to the recorded plat thereof, filed for record on July 8, 1965, County of Pueblo, State of Colorado.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of the U.S. Bankruptcy Court