

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LEO C. STENCEL,
SAME I. STENCEL,

BKY. No.: 04-35064
Chapter 7

Debtors.

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

TO: LEO C. STENCEL, SAME I. STENCEL AND THEIR ATTORNEY,
RICHARD H. DARBY, ATTORNEY AT LAW, P.O. BOX 617,
WINONA, MN 55987.

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 November 8, 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 November 3, 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 October 28, 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 28, 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 mortgage and assignment of mortgage, 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 June 19, 2004 to date in the amount of \$1,241.80 per month, plus accrued late charges.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$166,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,660.00. According to the Debtors the fair market value of the property is estimated at \$137,000.00.

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: October 19, 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
(F0455)

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 19, 2004

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

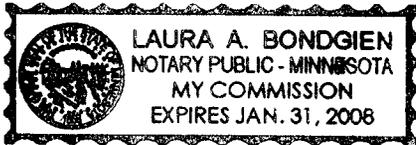
By: *SB*
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

19th day of October, 2004.

Laura A. Bondgien
Notary Public



HMS

6631956

213530

JH

NO 60474 DATE 8-15-02
Registration Tax heron of \$ 374.90 Paid
Susanne Rivers, County Treas.

\$5.00 PAID NO. 67363
County Conservation Fee
Susanne Rivers, County Treas.

Darlene Bartilson
Deputy County Treas.

Darlene Bartilson
By Deputy

[Space Above This Line For Recording Data]

MORTGAGE

Return To:

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

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 August 9, 2002 together with all Riders to this document.

(B) "Borrower" is Leo C. Stencel and Sam I. Stencel, husband and wife, as joint tenants

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is EquiFirst Corporation

Lender is a Corporation organized and existing under the laws of North Carolina Lender's address is 820 Forest Point Circle, Charlotte, NC 28273

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated August 9, 2002

The Note states that Borrower owes Lender one hundred sixty-three thousand and 00/100

(U.S. \$163,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than August 19, 2032

(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.

(A)

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:

Leo C. Stencel (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Sam I. Stencel (Seal)
-Borrower

(Seal)
-Borrower

EXHIBIT "A"

Lot 6 and the northerly 15 feet of Lot 5, Block 1, Grandview Addition to City of Winona, Winona County, Minnesota, according to the accepted and recorded plat thereof on file and of record in the office of the Register of Deeds in and for said county; subject, however, to the restriction that said land be used for residence purposes only and that buildings erected on said premises be designed for the use of one family only and used as such. Said restriction shall run with the land, shall bind the grantee, his heirs, executors, administrators and assigns of said premises and shall inure to the benefit of the grantors, their executors, administrators and assigns, and the owners and their successors of all other land in said Grandview Addition, said restriction being part of a general plan of restriction for said addition.

Leo C. Stencel *LC* *SS*
Loan #213530

CERTIFICATE OF RECORDING

State of Minnesota, County of Winona ss

I hereby certify that this instrument was recorded as document number 462799

on NOVEMBER 26, 2002 at 8:15 AM Fees paid: 30.00 RE

Robert J. Bambenek
Winona County Recorder

Return to: HOUSEHOLD FINANCE ELMHURST IL

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 2026, Flint, MI 48501-2026

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

Leo C. Stencel and Sam I. Stencel, husband and wife, as joint tenants
to

EquiFirst Corporation, 500 Forest Point Circle, Charlotte, NC 28273

dated the 9th day of August, 2002, and duly recorded in the Office of the County Recorder or the Registrar of Titles, for Winona County, State of Minnesota, as File No. 458269 in Book No. n/a, Page n/a. The property encumbered by this Mortgage/Deed of Trust/Deed to Secure Debt is described as follows, to-wit: rec dt 8-15-02

SEE EXHIBIT "A" FOR LEGAL DESCRIPTION

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 16th day of August.

(Corporate Seal)



EquiFirst Corporation

By: K. Villemagne
K. Villemagne
Assistant Vice President

Witness: Terra Gregg

Witness: Sherry Cole

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Seal-Stamp



This instrument was acknowledged before me on this day of 16 August, 2002, by K. Villemagne as Assistant Vice President of EquiFirst Corporation.

J. Cooney
Notary Public

When Recorded, Mail and Return To:
Household Mortgage Services
577 Lamont Rd.
P.O. Box 1247
Elmhurst, IL 60126 6631956

PREPARED BY:
P. ZEHNDER
577 LAMONT RD.
ELMHURST, IL 60126
830-617-7000
P. Zehnder

(B)

6631956-1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: LEO C. STENCEL,
SAME I. STENCEL,

BKY. No.: 04-35064
Chapter 7

Debtors.

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 June 19, 2004 to date in the amount of \$1,241.80 per month, plus accrued late charges.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$166,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,660.00. According to the Debtors the fair market value of the property is estimated at \$137,000.00.

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.

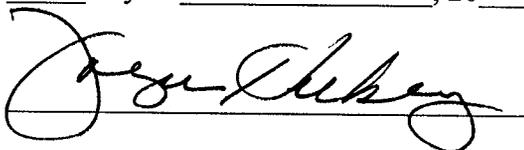
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

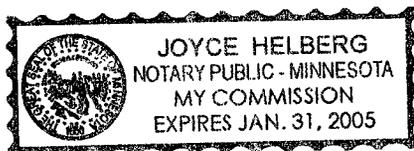
Dated: October 19, 2004

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

Subscribed to and sworn before me this

19th day of October, 20 04.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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In re: LEO C. STENCEL,
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BKY. No.: 04-35064
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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 28, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Winona County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$166,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$15,660.00. According to the Debtors the fair market value of the property is estimated at \$137,000.00. The payments due under said mortgage are in default from June 19, 2004 to date in the amount of \$1,241.80 per month, plus accrued late charges.

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 combined encumbrances on the property total approximately \$181,660.00 and the fair market value of the property is estimated at \$137,000.00. 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: October 19, 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
Atty. Reg. 152262/231605
(F0455)

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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 Academy Professional Building, 25 North Dale Street, 2nd Floor, St. Paul, MN 55102-2227 declares that on October 20, 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.

Michael S. Dietz, Trustee
505 Marquette Bldg.
P.O. Box 549
Rochester, MN 55903

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

Leo C. Stencil
Same I. Stencil
506 Collegeview St.
Winona, MN 55987

Richard H. Darby
Attorney at Law
P.O. Box 617
Winona, MN 55987

Citifinancial Services, Inc.
Box 6673
Rochester, MN 55903-6673

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

REITER & SCHILLER

Dated: October 20, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(F0455)

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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 November 8, 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 6 and the northerly 15 feet of Lot 5, Block 1, Grandview Addition to the City of Winona, Winona County, Minnesota, according to the accepted and recorded plat thereof on file and of record in the office of the Register of Deeds in and for said county; subject, however, to the restrictions that said land be used for residence purposes only and that building erected on said premises be designed for the use of one family only and used as such. Said restriction shall run with the land, shall bind the grantee, his heirs, executors, administrators and assigns of said

premises and shall inure to the benefit of the grantors, their executors, administrators and assigns, and the owners and their successors of all other land in said Grandview Addition, said restriction being part of a general plan of restriction for said addition.

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