

03-24805

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 13 Case:
Case Number BKY 03-50264-RJK

Mark Wheale
Mary Wheale ,
Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. JPMorgan Chase Bank as Indenture Trustee, fka The Chase Manhattan Bank as Indenture Trustee 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 October 25, 2004, in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 20, 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 14, 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, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on March 3, 2003. 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. On May 11, 1999, Mark S. Wheale and Mary F. Wheale made, executed and delivered to Western Thrift and Loan their Note (hereinafter referred to as the "Note"), in the original principal amount of \$35,000.00 bearing interest from the date thereof at the rate of 14.625% per annum until paid, payable in monthly installments commencing on the nineteenth day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On May 11, 1999, to secure the payment of the Note, Mark S. Wheale and Mary F. Wheale executed and delivered to Western Thrift and Loan their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Carlton County, Minnesota, legally described as follows:

W 200 Feet of E 400 feet of S 544.5 feet of Part of E 1/2 of SW 1/4, Section 2, Township 48, Range 18, Lying and being North of Northern Pacific Right of way

which property has an address of: 2807 Highway 210, Cloquet, MN 55720. The mortgage was filed for record in the office of the Recorder, County of Carlton, on June 16, 1999, as Document No.333704, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated February 26, 2003, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the April, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

5 payments @ \$451.21	\$2,256.05
5 late charges @ \$22.56	112.80
Accrued Late Charges	270.72
BPO	315.00
Suspense balance	-116.16
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$3,638.41

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$32,799.37
Interest	3,290.04
Escrow Shortage	763.75
Accumulated late fees	428.64
BPO	315.00
Misc Fees	192.99
Suspense Balance	-116.16
Attorneys Fees & Costs	<u>1,100.00</u>
TOTAL	\$38,773.63

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

12. Debtors have represented the value of this property to be \$80,000.00 on the schedules which accompanied their petition. They therefore, have no equity in this property by their own admission.

13. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

14. **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, JPMorgan Chase Bank as Indenture Trustee, fka The Chase Manhattan Bank as Indenture Trustee moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated:

9-30-04

Signed: /e/ 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, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, 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:

9.24.04

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

When Recorded Mail to:

Drafted by:
WESTERN THRIFT AND LOAN
456 W. SAN JOSE AVENUE
SUITE B
CLAREMONT, CALIFORNIA 91711
Attn: Recorded Documents

MORTGAGE

THIS MORTGAGE is made this 11th day of May, 1999, between the Mortgagor,
Mark S. Wheale and Mary F. Wheale
husband and wife, as joint tenants.

WESTERN THRIFT AND LOAN

(herein "Borrower"). and the Mortgagee,

existing under the laws of the State of NEVADA,
456 W. SAN JOSE AVENUE, SUITE B,
CLAREMONT, CALIFORNIA 91711

, a corporation organized and
whose address is

(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 35,000.00, which indebtedness is evidenced by
Borrower's note dated May 11, 1999 and extensions and renewals thereof (herein "Note"), providing for monthly installments of
principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on May 17, 2019;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all
other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage and the performance of
the covenants and agreements of Borrower herein contained, Borrower does hereby grant and convey to Lender, with power of sale,
the following described property located in the County of CARLTON, State of MINNESOTA;

W 200 FEET OF E 400 FEET OF S 544.5 FEET OF PART OF E 1/2 OF SW 1/4, SECTION 2, TOWNSHIP 48, RANGE
18, LYING AND BEING NORTH OF NORTHERN PACIFIC RIGHT OF WAY, CARLTON COUNTY, MINNESOTA.

which has the address of

2807 Highway 210,

[Street]

CLOQUET,

[City]

MINNESOTA

55720 (herein "Property Address");
[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances
and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing,
together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

MINNESOTA - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM
INSTRUMENT

Form 3824

Initials *MFW MFW*

Recording requested by:

WESTERN THRIFT AND LOAN

~~Which is recorded in...~~

Exempt from Registration Tax Dec
6, 1999 Paul Stewart
TREASURER, CARLTON COUNTY, MINN
Reanne Oswald

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CORPORATION ASSIGNMENT OF MORTGAGE

Minnesota 22-017

2816927
1779-HIY

FOR VALUE RECEIVED, the undersigned corporation hereby grants, assigns and transfers to *

all beneficial interest under that certain Mortgage, dated May 11, 1999, executed by
MARK S. WHEALE AND MARY F. WHEALE HUSBAND AND WIFE, AS JOINT TENANTS

* THE CHASE MANHATTAN BANK AS INDENTURE TRUSTEE, C/O RESIDENTIAL
FUNDING CORPORATION, 1301 Office Center Drive, #200, Fort Washington, PA 19034

, Mortgagor,

and recorded as Instrument No. 333704 on 6/16/99, in the Office of the County
Recorder of **CARLTON** County, State of **MINNESOTA**

Legal description of property:

**W 200 FEET OF E 400 FEET OF S 544.4 FEET OF PART OF SW 1/4, SECTION 2,
TOWNSHIP 48, RANGE 18, LYING AND BEING NORTH OF NORTHERN PACIFIC RIGHT
OF WAY, CARLTON COUNTY, MINNESOTA.**

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued or to accrue under said Mortgage.

App No. AAA-99-0000116

Corporation: **WESTERN THRIFT AND LOAN**

456 W. San Jose Avenue Suite B
Claremont, CA 91711

Assignment Date: 5/19/99

By: [Signature]

Title: Mark J. Hollander, Director

STATE OF California, COUNTY OF Los Angeles) ss:

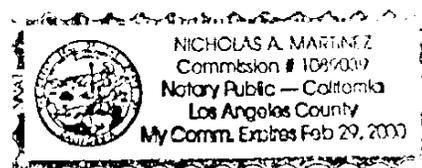
On 5/19/99 before me, Nicholas A. Martinez personally appeared
Mark J. Hollander

personally known to me -OR- proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

NOTARY SEAL STAMP

WITNESS my hand and official seal.

[Signature]
Notary Public
Nicholas A. Martinez



FILED FOR RECORD
CARLTON COUNTY MIN AT 11:00 A.M. DEC 06 1999

3337767

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 03-50264-RJK
Chapter 13

Mark Wheale
Mary Wheale,

Debtor(s)

MEMORANDUM OF LAW

JPMorgan Chase Bank as Indenture Trustee, fka The Chase Manhattan Bank as Indenture Trustee ("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 \$3,638.41.

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 4 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 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. 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 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$38,773.63. [The property is encumbered by a first mortgage in favor of US Bank Home Mortgage in the approximate amount of \$56,000.00.] The fair market value of the property is approximately \$80,000.00. 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: _____

9.30.01

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

By: /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 30, 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.

Mark Wheale
2807 Hwy 210
Cloquet, MN 55720

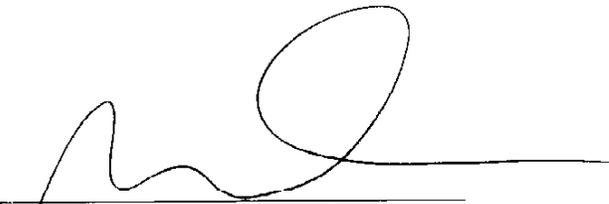
Mary Wheale
2807 Hwy 210
Cloquet, MN 55720

John Schulte, Esq.
301 W. 1st Street STE 713
Duluth, MN 55802

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

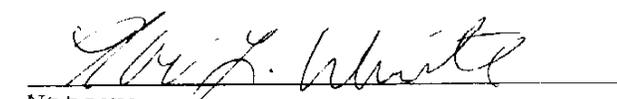
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

US Bank Home Mortgage
PO Box 1030
Minneapolis, MN 55480

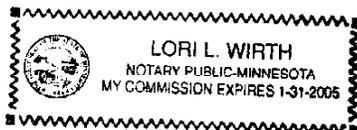


Stephanie Pilegaard

Subscribed and sworn to before me September 30, 2004.



Notary



03-24805
0380121053

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-50264-RJK

Mark Whcale
Mary Wheale,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 25, 2004.

THIS CAUSE coming to be heard on the Motion of JPMorgan Chase Bank as Indenture Trustee, fka The Chase Manhattan Bank as Indenture Trustee, 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 JPMorgan Chase Bank as Indenture Trustee, fka The Chase Manhattan Bank as Indenture Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

W 200 Feet of E 400 feet of S 544.5 feet of Part of E 1/2
of SW 1/4, Section 2, Township 48, Range 18, Lying and
being North of Northern Pacific Right of way

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court