

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: Chapter 13
Bky. Case No. 02-90849 DDO
David C. Engbard,

Debtor.

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

TO: DEBTOR ABOVE-NAMED AND OTHER PARTIES IN INTEREST SPECIFIED
IN LOCAL RULE 9013-3.

1. Green Tree Servicing, LLC, formerly known as Conseco Finance Corp., formerly known as Green Tree Financial Corp. ("Green Tree"), by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hear Green Tree's motion at 9:30 a.m. on October 13, 2004, or as soon thereafter as counsel can be heard, in Courtroom No. 228A of the United States Bankruptcy Court, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than October 7, 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 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.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. On April 11, 2002, the petition commencing this Chapter 13 case was filed by the Debtor. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §362(d) and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 and 9013-2. Green Tree requests that it be granted relief from the automatic stay of 11 U.S.C. Section 362(a) to permit it to foreclose a certain mortgage held by it.

6. On July 15, 1995, Debtor executed and delivered to Cross Windows and Siding a home improvement retail installment contract and security agreement in the original principal amount of \$16,500.00. The installment contract requires the payment of monthly installments of principal and interest of \$214.22. A copy of this installment contract is attached hereto as Exhibit A.

7. On July 15, 1995, Debtor and Katherine A. Engbard executed and delivered to Cross Windows and Siding a mortgage to secure the payment of the installment contract on the following described real property in Steele County, Minnesota:

Lot 3, Block 1, Peterson's First Addition.

Said mortgage was filed for record November 9, 1995, as Document No. 249917 in the office of the County Recorder of Steele County, Minnesota. A copy of this mortgage is attached hereto as Exhibit B.

8. The mortgage was thereafter assigned to Green Tree by assignment dated October 17, 1995, recorded November 9, 1995, as Document No. 249918. A copy of this assignment of mortgage is attached hereto as Exhibit C.

9. The Debtor's Chapter 13 plan provides that the Debtor will make monthly payments to Green Tree of all post-petition amounts due under the installment contract and mortgage, beginning with the payment due on April 20, 2002. Debtor has made the post-petition payments for the months of April, 2002, through May, 2004, but has failed to make the post-petition payments for the months of June, 2004, and thereafter. Debtor's failure to make these monthly payments constitutes a material default under the plan. The total amount of the post-petition payments in default, as of October 13, 2004, is \$719.70, in addition to the legal fees and costs incurred by the attorneys for Green Tree in pursuing this motion.

10. There is due and owing under the installment contract and mortgage, as of October 13, 2004, an unpaid principal balance of \$14,467.95 and accrued interest of \$854.10, for a total due of \$15,322.05, in addition to the legal fees and costs incurred by the attorneys for Green Tree in pursuing this motion. In addition, according to the claims filed in this bankruptcy, there is a first mortgage against the property which is held by Countrywide Home Loans and which has an approximate balance due of \$31,915.19.

11. According to Debtor's bankruptcy schedules, the fair market value of the subject property is \$109,000.00.

12. Debtor has made no offer of adequate protection under 11 U.S.C. §361.

13. Pursuant to Local Rule 9013-2, Green Tree gives notice that it may, if necessary, call Tina Howell, Bankruptcy Specialist, Green Tree Servicing, LLC, 7360 Kyrene Road, Tempe, Arizona, 85283, to testify regarding the indebtedness and collateral value.

14. A separate memorandum of facts and law is submitted with this motion as required by Local Rule 9013-2.

WHEREFORE, Green Tree, by its undersigned attorney, moves the Court for an order pursuant to 11 U.S.C. Section 362(d) modifying the automatic stay to permit Green Tree to foreclose that certain above described mortgage held by it and for such other and further relief as the Court deems just and equitable.

DATED: September 24, 2004.

MURNANE, CONLIN, WHITE & BRANDT
PROFESSIONAL ASSOCIATION
Attorneys for Movant

By /e/ Ricardo Figueroa
RICARDO FIGUEROA (#0282224)
444 Cedar Street, Suite 1800
St. Paul, Minnesota 55101
Telephone (651) 227-9411

VERIFICATION

I, Jennifer Santesteban, Bankruptcy Specialist of Green Tree ~~Loan Company~~ ^{Servicing, LLC,}
f/k/a Conseco Finance Corp., f/k/a Green Tree Financial Corp.,

declare under penalty of perjury that Paragraphs 6 through 13 of the foregoing
Notice of Hearing and Motion for Relief from the Automatic Stay are true and correct
according to the best of my knowledge, information, and belief.

DATED: September 23, 20 04.



Jennifer Santesteban

7. **SIMPLE INTEREST CONTRACT:** This is a simple interest contract. The Finance Charge, Total of Payments and Payment Schedule set forth in the disclosures on the reverse side of this contract were computed, as permitted by law, upon the expectation of payment exactly as disclosed. Even if payments are made exactly as disclosed, the final payment may differ. The final payment may differ depending upon the dates payments are received and events which occur after this Contract is made. For example, any payment will reduce your final payment, but late payments will cause your final payment to be higher. Your promise requires you to pay the final payment on the date due, which payment will be equal to all unpaid sums due under the Contract, even if the amount of the final payment differs from the amount of final payment disclosed on the reverse side hereof.
8. **OWNERSHIP AND DUTIES TOWARD PROPERTY:** By giving you this security interest, I represent and agree:
- (a) I will defend this Property against any claim made by anyone else, and will do whatever is necessary to preserve your status in the property.
 - (b) I will keep the Property in my possession in good condition and repair, and use it only for the lawful purposes for which it was intended.
 - (c) I will pay all taxes and assessments on the Property as they become due.
 - (d) I will provide you reasonable access to the Property for the purpose of inspection, and notify you of any loss or damage.
 - (e) If I fail to pay the taxes and assessments on the Property, or if I fail to make repairs to the Property, you may pay the taxes and assessments or make the repairs. I agree to pay the costs of such activity and upon demand, to pay those costs plus interest at the highest contract rate permitted by law from the date of payment of those costs by you.
9. **INSURANCE:** I agree to purchase insurance on the Property in an amount sufficient to cover the full insurable value of the Property against such risks as you may reasonably require. In addition, I agree as follows:
- (a) I will arrange for you to be named as mortgagee under a standard loss payable clause on any such policy so that any benefits arising from the insured risks will first be paid to you for application toward the secured obligations.
 - (b) I agree that you may, in the event of a loss, require additional security or assurances of payments of the secured obligations as a condition of permitting any insurance benefits to be used for repair or replacement of the Property.
 - (c) I agree to purchase insurance from a company which is authorized to do business in this state and which is reasonably acceptable to you.
 - (d) I will maintain this insurance until all the secured obligations are paid in full.
 - (e) If I fail to obtain or maintain this insurance, or I fail to arrange for you to be named as mortgagee, you may (but in no event are required to) purchase such insurance which will secure only your interest in the Property. I agree to pay the costs of such insurance upon demand, plus interest from the date purchased at the highest contract rate permitted by law until paid in full.
 - (f) I appoint you my attorney in fact to receive any money which may be paid under any policy insuring the secured property, to execute proofs of claim, to endorse drafts and other instruments for payment of money, to execute releases, to negotiate settlements, to cancel any policy insuring the property, and to do all things necessary and require to effect a settlement under the insurance policy. I also authorize you to receive any refund on cancellation of any insurance policy and apply it to scheduled installments due under this Contract.
10. **DEFAULT:** I will be in default in this Contract if any one or more of the following occurs:
- (a) I fail to make a payment on the Contract in full when due or I default under the mortgage which secures this Contract;
 - (b) I fail to make a payment in full when due on any other debt I owe you;
 - (c) I die or am declared incompetent;
 - (d) I fail generally to pay my debts as they become due;
 - (e) I fail to keep any other promise contained in this Contract, any other contract, any other written agreement with you, including any security agreement;
 - (f) any statement of fact made on an application for credit or any other written agreement with you appears to be untrue at the time it was made;
 - (g) any other creditor attempts, with or without legal process, to gain possession or control of any money or property of mine;
 - (h) I transfer a significant part of my money or property;
 - (i) I file for relief from my debts (or an application is filed against me for involuntary relief under the United States Bankruptcy Code);
 - (j) if a fact appears or any event occurs which causes you to reasonably consider yourself, in good faith, insecure; or
 - (k) I am in default under any other loan or agreement secured by the Property.

If an event of default occurs as to any one of us, you may exercise your remedies against any or all of us.

11. **REMEDIES:** If I am in default on this Contract or security agreement, you have all the remedies provided by law and this Contract or the Mortgage of even date hereof. These remedies include the right to take possession of the Property, after notice as provided by law, with or without legal process, sell it, and apply the proceeds toward the cost of repossession, expenses of sale, reasonable attorney's fees, and the payment for the secured obligations. If the sale of the Property does not pay all of the secured obligations, you may under appropriate circumstances seek a deficiency judgment against me for the unpaid balance. You may also require me to assemble the Property and make it available to you at a place you designate; demand additional security or parties obligated to pay this Contract (or both) as a condition of waiving, for any period of time, any other remedy you may have under this Contract. I agree that if any notice is required to be given to me of your intended sale or disposition of the property, notice will be considered commercially reasonable if mailed 10 days before the date of intended disposition in accordance with the notice provision of this Contract.

You may accelerate, after waiting any required period, the due date of the remaining unpaid balance of the amount financed plus accrued finance charges, making all sums due. By electing any one of the remedies above, you do not waive your right to later elect any other remedy until this Contract is paid in full.

12. **NOTICE:** All notices, demands, deliveries and any other communications which may be or are required to be given to or made by either of the parties herein to the other in connection with this Contract shall be delivered by depositing same in the United States Mail, certified, return receipt requested, and sent to the respective addresses set forth on the front of this Contract. Any notice shall be deemed effective upon deposit of the same in the mail. Any party hereto may change the address at which it desires to receive notice upon giving written notice of such request to the other party in the manner provided herein.

13. **OBLIGATIONS INDEPENDENT:** I understand that my obligation to pay this Contract is independent of the obligation of any other person who has also agreed to pay it. You may release any of us, release any security, waive any right you might have against any one of us, extend new credit to any one of us, renew this Contract, or all of the above, without affecting my obligation to pay the Contract.

14. **GUARANTEE:** By signing on the reverse side I/we (if more than one, jointly and severally) unconditionally guarantee the payment of this Contract. I/we waive (to the extent permitted by law) other rights I may have, including demand, presentment, protest, notice of dishonor and notice of protest.

15. **GENERAL TERMS:** I agree that this Contract contains all of the terms and provisions of my agreement with you, and you have not made any oral warranties or promises regarding the secured property. This Contract takes effect when signed by me, and terminates when all payments (and any other charges) have been made as scheduled.

Any term of this Contract and security agreement which does not comply with applicable law will not be effective if that law does not expressly or impliedly permit variations by agreement. If any part of this Contract or security agreement cannot be enforced according to its terms, this will not affect the balance of the Contract and security agreement. Seller may assign this Contract and accompanying documents, and any assignee shall take and have the benefit of all of Seller's rights hereunder. I agree to pay you all allowable charges for the return by a depository institution of a dishonored check or other negotiable instrument to the full extent provided by applicable law. I agree to cooperate with you regarding any requests after closing to correct errors made concerning this Contract or the transaction and to provide any and all additional documentation deemed necessary by you to complete this transaction. I agree that you may enforce this agreement by judicial process and are entitled to attorney's fees, costs and disbursements incident to such enforcement.

16. **ARBITRATION:** All disputes, claims or controversies arising from or relating to this Contract or the relationship which results from this Contract, or the viability of this arbitration clause or the entire Contract shall be resolved by binding arbitration by one arbitrator selected by us with consent of you. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes through a court, but that they prefer to resolve their disputes through arbitration, except as provided herein. THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL. The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with the Contract. The parties agree and understand that the arbitrator shall have all powers provided by law and the Contract. These powers shall include all legal and equitable remedies, including, but not limited to, money damages, declaratory relief, and injunctive relief. We retain an option to use judicial relief to enforce a mortgage, deed of trust or other security agreement relating to the real property secured in a transaction underlying this arbitration agreement or to enforce the monetary obligation secured by the real property, or both. The institution and maintenance of an action for judicial relief in a court to obtain possession of any security or collateral or to obtain a monetary judgment, shall not constitute a waiver of the right of any party to compel arbitration regarding any dispute or remedy subject to arbitration in this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

GUARANTY: I guarantee that all amounts owed under this Contract will be paid when due. I will still be obligated even if any of the Buyers are released or if you waive (give up) or delay enforcement of any of your rights under this Contract. You do not have to give me notice of any such waiver, delay or release. I also have to pay your attorney's fees and other court costs of enforcing this guarantee, as set forth in paragraph 11 above.

X

(Signature of Guarantor)

(Address)

Prepared by & Return to
Green Tree Financial Corp.
332 Minnesota St.
Suite 610
St., Paul, MN 55101-1311

600676

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OFFICE OF COUNTY RECORDER
STEELE COUNTY, M SOTA
I hereby certify that ... within instru-
ment was filed in this office for record, on the
9th day of November A.D. 19 95
at 10:45 o'clock A. M. and was duly recorded
as Document No. 249917
Jose S. Brandevorst
COUNTY RECORDER

GT-15-24-050 (8/90)

MORTGAGE

Deputy

15713392

THIS MORTGAGE is made this 15th day of July 19 95
between the Mortgagor, ~~PAUL D. ...~~ and the Mortgagee, ~~CROSS ...~~
(herein "Borrower"), and the Mortgagee, ~~CROSS ...~~
a ~~CORPORATION~~ organized and existing under the laws of ~~ILLINOIS~~
whose address is ~~S.D. ...~~ (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 16,500
which indebtedness is evidenced by Borrower's note dated 7-15-95
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 2-1-98 months from disbursement.

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
STEARNS State of Minnesota:

The borrower does hereby authorize the mortgagee/beneficiary or its
assigns to obtain a more detailed property description, including any
parcel numbers, after the borrower has executed this document and attach
said description hereto as an exhibit.

Lot 3 Block 1 PETERSON'S FIRST ADDITION, MADRORD MINNESOTA

No. 37456 Date 11-9-95
Registration Tax of \$ 37.95 paid.
Steven J. Sollik
County Treasurer
By *Marlene J. Jermann* Deputy
County Auditor
By *Laura M. Mueke*
County Auditor
By *Grace H. Harte* Deputy

which has the address of 503 W. CENTRAL AVE. MADRORD
(Street) (City)
Minnesota 55049 (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."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant
and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower
covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands,
subject to encumbrances of record.

MINNESOTA

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19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following sale of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. **Limited Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the Property with respect to only this Mortgage and the amount advanced under the Note of even date hereof.

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

David Englund
.....
-Borrower

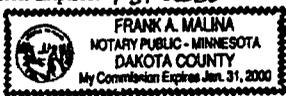
Kathleen Englund
.....
-Borrower

STATE OF MINNESOTA, Dakota County ss: _____

The foregoing instrument was acknowledged before me this 7-15-95

by David S. Englund, Kathleen Englund (person acknowledging)

My Commission Expires: 1-31-2000



Frank A. Malina
.....
Notary Public

This instrument was prepared by _____
[Name]
of _____, Minnesota.
(Address)

(Space Below This Line Reserved For Lender and Recorder)

Prepared by & Return to:
Green Tree Financial Corp.
332 Minnesota St.
Suite 610
St. Paul, MN 55101-1311

249917

Prepared by and Return to:
Green Tree Financial Corp.
Home Improvement Division
332 Minnesota St.
St. Paul, MN 55101

1 ✓
2 ✓ OFFICE OF COUNTY RECORDER
3 ✓ STEELE COUNTY, MINNESOTA
4 ✓
5 ✓ I hereby certify that the within Instru-
ment was filed in this office for record, on the
9th day of November A.D. 1995
at 10:45 o'clock A. M. and was duly recorded
as Document No. 249918
David Brandevort
COUNTY RECORDER

By _____ Deputy
MINNESOTA MORTGAGE ASSIGNMENT

15713392

For value received, Cross Replacement Window, a Corporation ("Assignor") organized and existing under the laws of the state of Illinois assigns to Green Tree Financial Corp. and assigns, whose address is listed above, a certain mortgage dated 8-15, 1995, wherein David Engstrom (Mortgagor(s)) granted a mortgage to Assignor as mortgagee, recorded concurrently with this in the office of the Recorder, Steele County, Minnesota, together with the retail installment contract or note secured by such mortgage on the following described real property situated in Steele County, Minnesota:

Lot 3 Block 1 Peterson's First Addition, Medford
Minnesota

as Document No. 249917

The above referenced mortgage was recorded 8-22-95

Date: 10-17-95

Cross Replacement Windows
By: [Signature]
Its: president

EXHIBIT C

STATE OF MINNESOTA)

) ss

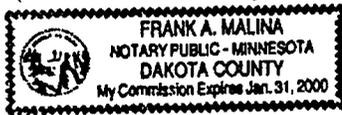
COUNTY OF DAKOTA)

(Corporate Acknowledgment)

This instrument was acknowledged before me on 10-10, 1995, by
STEVE GARRISON as president
of Cross Replacement Window.

Frank A. Malina
Signature of Notarial Officer

(Seal, if any)



SECRETARY-TREASURER

Title and Rank

My Commission Expires: 1-31-2000

Type or print the name of the parties executing, notarizing or witnessing this instrument below their respective signatures and/or titles.

249918

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Chapter 13

Bky. Case No. 02-90849 DDO

David C. Engbard,

MEMORANDUM OF FACTS AND LAW

Debtor.

Green Tree Servicing, LLC, formerly known as Conseco Finance Corp., formerly known as Green Tree Financial Corp. ("Green Tree"), by its undersigned attorney, submits this Memorandum of Facts and Law in support of its motion for relief from the automatic stay under 11 U.S.C. §362(d).

FACTS

Debtor commenced this Chapter 13 case on April 11, 2002. Green Tree holds a valid, duly recorded mortgage on real property owned by Debtor. Debtor has materially defaulted under his Chapter 13 plan by failing to make the post-petition payments for the months of June, 2004, and thereafter. The total amount of the post-petition payments in default, as of October 13, 2004, is \$719.70. The total amount due and owing under the installment contract and mortgage, as of October 13, 2004, is \$15,322.05. There is also a first mortgage against the property which has an approximate balance due of \$31,915.19. The fair market value of the subject property is \$109,000.00.

Green Tree seeks relief from the automatic stay under 11 U.S.C. §362(d) which provides in pertinent part as follows:

On request of a party in interest and after notice and a 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 -

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. §362(d) (West 1991). A party requesting relief from the automatic stay in a Chapter 13 case must demonstrate that the following elements are present:

- (1) the existence of the underlying debt and the lien (including proper perfection or recordation); **and**
- (2) the existence of "cause" under Section 362(d)(1) for stay relief, including lack of adequate protection.

11 U.S.C. §362(d). See First Federal Savings and Loan Association of Minneapolis v. Whitebread (In re Whitebread), 18 B.R. 192 (Bkrtcy. D. Minn. 1982). See generally In re Ocasio, 97 B.R. 825 (Bkrtcy. E.D. Pa. 1989); In re Greiman, 45 B.R. 574 (Bkrtcy. Iowa 1984). The party moving for stay relief has the burden of proof on the issues of the amount of debt and the validity of the underlying lien, as well as the fact that there has been a material default under the Chapter 13 plan. 11 U.S.C. §362(g)(1). The debtor or other party responding to the motion for stay relief has the burden of proof on the issues of lack of cause and the existence of adequate protection. 11 U.S.C. §362(g)(2).

The Debtor in this case has materially defaulted under his Chapter 13 plan by failing to make the post-petition payments required under the plan for four months. Such material default under the plan constitutes "cause" within the meaning of §362(d)(1). Whitebread, 18 B.R. at 193 (debtors failed to maintain their mortgage payments due after filing).

Green Tree respectfully requests this Court to enter an order pursuant to 11 U.S.C. §362(d) granting Green Tree relief from the automatic stay so that Green Tree may foreclose the subject mortgage held by it.

Dated: September 24, 2004.

Respectfully submitted,

MURNANE, CONLIN, WHITE & BRANDT
PROFESSIONAL ASSOCIATION
Attorneys for Movant

By /e/ Ricardo Figueroa
RICARDO FIGUEROA (#0282224)
444 Cedar Street, Suite 1800
St. Paul, Minnesota 55101
Telephone (651) 227-9411

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Chapter 13

Bky. Case No. 02-90849 DDO

David C. Engbard,

Debtor.

**UNSWORN DECLARATION FOR
PROOF OF SERVICE**

Renee A. Andreotti, employed by Murnane, Conlin, White & Brandt Professional Association, attorneys licensed to practice law in this Court, with the office address of 444 Cedar Street, Suite 1800, St. Paul, Minnesota, 55101, declare that on September 24, 2004, I served the annexed Notice of Hearing and Motion for Relief from the Automatic Stay, Memorandum of Facts and Law, and proposed Order on each of the parties named below by mailing to each of them copies thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

DAVID C ENGBARD
503 WEST CENTRAL AVENUE
MEDFORD MN 55049

IAN TRAQUAIR BALL
12 SOUTH SIXTH STREET
SUITE 326
MINNEAPOLIS MN 55402

JASMINE Z KELLER TRUSTEE
12 SOUTH SIXTH STREET
SUITE 310
MINNEAPOLIS MN 55402

UNITED STATES TRUSTEE
1015 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

COUNTRYWIDE HOME LOANS
7105 CORPORATE DRIVE
PTX B-209
PLANO TX 75024-1319

KARY R KUMP
FARLEY & KUMP LLP
PO BOX 2480
VENTURA CA 93002-2480

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

Dated: September 24, 2004

Signed /e/ Renee A. Andreotti
Renee A. Andreotti

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: Chapter 13
Bky. Case No. 02-90849 DDO

David C. Engbard,
Debtor.

ORDER

The motion of Green Tree Servicing, LLC, formerly known as Conseco Finance Corp., formerly known as Green Tree Financial Corp., for an Order for relief from the automatic stay came on for hearing before the undersigned, one of the Judges of the above named Court, on October 13, 2004. Ricardo Figueroa, Esq., appeared for and on behalf of the moving party herein. Other appearances were duly noted.

Based on the arguments of counsel, all the files, records, and proceedings herein, the Court's being advised in the premises, and the Court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

The automatic stay in the above-referenced matter is hereby modified to permit Green Tree Servicing, LLC, formerly known as Conseco Finance Corp., formerly known as Green Tree Financial Corp., its successors or assigns in interest, to foreclose any and all interests it has in the Debtors' real property located in Steele County, Minnesota, and legally described as follows:

Lot 3, Block 1, Peterson's First Addition.

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

DATED: October _____, 2004.

BY THE COURT:

THE HONORABLE DENNIS D. O'BRIEN
JUDGE OF UNITED STATES BANKRUPTCY COURT