

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re: Steven Allen Gewecke and Tamara Lynn Gewecke,

Debtors: Chapter 7 Case  
Case No. BKY 09-41180-NCD.

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

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TO: The Debtors, Debtors' Attorney, Chapter 7 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 1204(a).

1. **U.S. Bank National Association, as Trustee (Movant)**, a secured creditor of the Debtors herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:30 o'clock p.m., on April 23, 2009, before the Honorable Nancy C. Dreher, in Courtroom Number 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, 55415, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than April 20, 2009, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than April 14, 2009, which is seven (7) 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 RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.**

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2, and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtors and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 7 Case was filed on March 2, 2009, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated September 5, 2006, in the original principal

amount of \$163,200.00 (**Mortgage**), Movant acquired a first mortgagee's interest in the following real property (**Property**):

Lot eight (8), Block one (1), in Northway Plat 5.

The Mortgage was filed for record in the office of the County Recorder, in and for Stearns County, Minnesota, on September 5, 2006, as document number 1206280.

8. The subject property has a market value of \$139,700.00. The total amount of debt secured by the subject property is \$184,995.28 including Movant's mortgage. Hence, Debtors have little or no actual equity in the property.

9. Debtors' fourteen (14) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

**WHEREFORE**, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and equitable.

Dated this 2<sup>nd</sup> day of April, 2009.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Steven H. Bruns  
Steven H. Bruns  
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**AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

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STATE OF TEXAS            )  
  ) ss.  
COUNTY OF DALLAS        )

I, Marsha Iokepa, your affiant, being first duly sworn on oath, state as follows:

1. I am an employee of Countrywide Home Loans Servicing, LP, servicer for **U.S. Bank National Association, as Trustee (Movant)**, and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the bankruptcy stay.

3. Debtors are the mortgagors on a mortgage dated September 5, 2006 which covers real property located in Stearns County and legally described as follows:

Lot eight (8), Block one (1), in Northway Plat 5,

and which is commonly known as: 3013 15th Street North, St. Cloud, MN 56303. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference. The mortgage was assigned to Movant on September 10, 2008. A copy of the assignment is attached hereto as Exhibit C and incorporated herein by this reference.

4. On or about March 2, 2009, Debtors filed a Petition under Chapter 7 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Debtors have failed to make fourteen (14) payments, resulting in an arrearage of \$18,796.68, excluding late charges. The total mortgage debt is \$184,995.28, which includes accrued interest through March 16, 2009. Thereafter, interest accrues on the unpaid principal balance at \$41.02 per day.

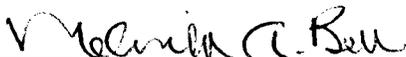
6. Based upon information and belief, the subject property has a market value of \$139,700.00. The total amount of debt secured by the subject property is \$184,995.28, including Movant's mortgage.

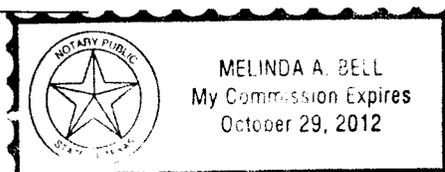
7. I have read the Motion in this matter, and it is true to the best of my knowledge, information and belief.

Further, I saith not.

  
Marsha Iokepa

Subscribed and sworn to before me  
this 25th day of March, 2009

  
Notary Public



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**MEMORANDUM OF LAW**

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U.S. Bank National Association, as 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 certain real property owned by Debtors. The Debtors are delinquent with respect to payments due under the mortgage for the months of February 2008 through March 2009 in a total amount of \$18,796.68, including late charges. The total mortgage debt is \$184,995.28 which includes accrued interest through March 16, 2009. Thereafter, interest accrues on the unpaid principal balance at \$41.02 per day.

The subject property has a market value of \$139,700.00. The total amount of debt secured by the subject property is \$184,995.28 including Movant's mortgage.

**ARGUMENT**

Under §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. §362(d)(1). Debtors have failed to make payments due under the terms of the mortgage for a period of over fourteen (14)

months. Debtors have little or no actual equity in the property; hence, Movant lacks adequate protection in the form of an equity cushion in the property. Furthermore, debtors have otherwise failed to provide 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 Tainan, 48 B.R. 250 (Bkrcty E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrcty. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 2<sup>nd</sup> day April, of 2009.

**PETERSON, FRAM AND BERGMAN**  
A Professional Association

BY: /e/ Steven H. Bruns  
Steven H. Bruns  
Atty. Reg. #14888X  
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**ORDER FOR RELIEF FROM AUTOMATIC STAY**

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The above-entitled matter came before the Court on the motion of U.S. Bank National Association, as Trustee (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the files and records herein, the Court now finds that cause exists entitling Movant to the requested relief.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated September 5, 2006, filed for record in the office of the County Recorder in and for Stearns County, Minnesota, on September 5, 2006, and recorded as Document No. 1206280 and covering real property located in Stearns County, Minnesota, which is legally described as follows:

Lot eight (8), Block one (1), in Northway Plat 5.

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

Dated: \_\_\_\_\_

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Nancy C. Dreher  
United States Bankruptcy Judge