

Wade F. Waldrip ABN 11757
PATRICK S. SAMPAIR, P.C.
2301 W. Dunlap Ave., Ste. 103
Phoenix AZ 85021
(602) 997-7717 (phone)
(602) 943-3527 (fax)
bankrupt@outdrs.net
Attorney for the Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:	)	Case Number 2:05-14971-RJH
)	
MICHAEL T. HERZOG,	)	Chapter 13 Proceedings
)	
Debtor.	)	MOTION TO SELL REAL
	)	PROPERTY, REQUIREMENT TO
	)	FILE RESPONSE, AND
	)	CERTIFICATE OF SERVICE

Debtor, through his undersigned counsel, hereby moves for an order authorizing him to sell his personal residence. Reasons supporting the present motion are delineated in the following Memorandum.

Respectfully submitted this 18th day of January, 2006.

/s/ Wade F. Waldrip
Wade F. Waldrip
Attorney for Debtor

Memorandum

Debtor's Schedules "A" and "D" reveal that his home possesses a fair market value of \$550,000, and that it is encumbered by two deeds of trust, totaling \$429,000. Saxon Mortgage Services ("Saxon") holds both deeds of trust on the subject property and, Saxon's two separate proofs of claim, dated November 8, 2005 and November 17, 2005, respectively, confirm that, in fact, the combined encumbrances against Debtor's residence total \$428,967.10. Debtor's equity in his home is, accordingly, some \$121,032.90.

Debtor's equity represents an exempt asset of his estate, pursuant to A.R.S. 33-1101. No pre-petition mortgage arrearages are owed Saxon on either deed of trust.

Debtor has three children residing with him, a teen and two younger siblings. Recently, Debtor's spouse, Lindsey, informed him of her desire to terminate their marriage. Should, as Debtor anticipates, Lindsey actually file for divorce, it is unknown whether she will seek custody of the children. If so, and if Lindsey's overtures to that end prove successful, Debtor will no longer require his current, capacious residence. Moreover, because Debtor's income has decreased markedly since he originally filed his Chapter 13 case in August 2005, it is rapidly becoming evident that he can no longer afford to service the monthly mortgage payments due Saxon.

In view of the foregoing, Debtor respectfully requests that an order be entered, authorizing him to sell his personal residence. Debtor submits that allowing him to sell his home will enable him to (1) satisfy all encumbrances against his residence, and (2) recover his accrued equity. In short, Debtor's ability to sell his residence will immediately benefit the lien holder, and will contribute substantially to the Debtor's ultimate financial rehabilitation. Accordingly, Debtor respectfully request that an order be entered, authorizing the sale of his residence.

Requirement to File a Response

Notice is hereby given that any response to the Debtor's foregoing Motion to Sell Real Property must be filed with the clerk of the bankruptcy court on or before February 8, 2006. A copy of any such response must also be mailed to Debtor's attorney, as well as to the Chapter 13 Trustee. Their respective addresses appear below:

Clerk: U.S. Bankruptcy Court
230 North First Ave., Ste. 101
Phoenix AZ 85003-1727

Trustee: Russell A. Brown
P.O. Box 33970
Phoenix AZ 85067-3970

Debtors' Attorney: Wade F. Waldrip
2301 W. Dunlap, Ste. 103
Glendale AZ 85021

Notice is given that, should no response to Debtor's Motion be filed on or before February 8, 2006, the court may summarily grant Debtor's Motion without further hearing.

Dated: January 18, 2006.

/s/ Wade F. Waldrip
Wade F. Waldrip
Attorney for Debtor

Copy of the foregoing mailed this
18th day of January, 2006, to:

Russell A. Brown, Trustee
P.O. Box 33970
Phoenix AZ 85067-3970

Saxon Mortgage Services, Inc.
4708 Mercantile Drive North
Ft. Worth TX 76137

Michael Herzog
7206 W. Abraham Drive
Glendale AZ 85308

/s/ Chris J. Smith

Wade F. Waldrip ABN 11757
PATRICK S. SAMPAIR, P.C.
2301 W. Dunlap Ave., Ste. 103
Phoenix AZ 85021
(602) 997-7717 (phone)
(602) 943-3527 (fax)
bankrupt@outdrs.net
Attorney for the Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:	)	Case Number 2:05-14971-RJH
)	
MICHAEL T. HERZOG,	)	Chapter 13 Proceedings
)	
Debtor.	)	ORDER AUTHORIZING SALE OF
	)	REAL PROPERTY
)	
)	

The Debtor having filed a Motion to Sell Real Property, no objections to the subject motion having been timely filed, and good cause appearing,
IT IS HEREBY ORDERED GRANTING Debtor's Motion to Sell Real Property, under the terms and conditions delineated therein.
SO ORDERED.

Dated:

Hon. Randolph J. Haines
U.S. Bankruptcy Court Judge