

03-27323

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:

Case Number BKY 03-47730-RJK

Patrick Murphy,

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. Midfirst Bank moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 2:00 p.m., on August 26, 2004, in Courtroom No. 8, at the United States Courthouse, at 300 South Fourth St., in Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 23, 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 August 17, 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 October 31, 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 28, 1987, Patrick J. Murphy made, executed and delivered to Nationsbanc Mortgage Corporation, a Texan Corporation his Installment Contract (hereinafter referred to as the "Contract"), in the original principal amount of \$11,050.00 bearing interest from the date thereof at the rate of 9.5% per annum until paid, payable in monthly installments of \$836.26 commencing on July 1, 1987 and on the first day of each and every calendar month thereafter until the principal and interest were fully paid. This

Contract conveys certain real estate in Hennepin County, Minnesota, legally described as follows:

Lot Fifteen (15), Block Eight (8), in Bluffs West, according to the Recorded Plat thereof on File and of Record in the office of the Registrar of Titles, in and for Hennepin County, Minnesota

which property has an address of: 11590 Riverview Road, Eden Prairie, MN 55347. The Contract was subsequently assigned to Movant by assignment of Contract. A copy of the Contract and Assignments of Contract are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a modified plan dated March 4, 2004, 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 Contract, 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 March, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

4 payments @ \$1,118.73	\$4,474.92
4 late charges @ \$44.74	178.96
Accrued Late Charges	89.48
Suspense Balance	-\$1073.99
Attorneys Fees & Costs	<u>850.00</u>
TOTAL POST-PETITION	\$4,519.37

Through Debtors' failure to make current post-petition payments. No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal	\$76,423.62
Interest to 7/31/04	6,663.15
Accumulated late fees	268.44
Suspense Balance	-\$1073.99
Attorneys Fees & Costs	<u>850.00</u>
TOTAL	\$83,131.22

11. Debtors have claimed said property as exempt pursuant to MSA 510.01.

12. 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.

13. 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, Midfirst Bank 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:

8-5-01

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, Katherine Brown, the Bankruptcy Admin of Midfirst Bank, 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:

7-30-01

Signed:

Katherine Brown

Midfirst Bank
999 NW Grand Blvd.
STE 100
Oklahoma City, OK 73118-6077

7271
410804

VA FORM 26-1830
OCT 1982

NOT PART OF THIS INSTRUMENT. For use in Arizona, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, Oregon, South Carolina, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

INSTALLMENT CONTRACT FOR SALE OF REAL ESTATE

1. THIS AGREEMENT, made this 28th day of May 1987, by and between the Administrator of Veterans Affairs, an officer of the United States of America, whose address is Veterans Administration, in the City of Washington, District of Columbia 20420, hereinafter called "Seller," and his/her successors in such office, as such, and **PATRICK J. MURPHY, a single person,** whose mailing address is

**11590 Riverview Road
Eden Prairie, MN 55344**

2. WITNESSETH: For and in consideration of the sum of one dollar, each to the other in hand paid, and of the mutual covenants and agreements herein, the Seller hereby agrees to sell to the Buyer, and the Buyer hereby agrees to purchase from the Seller, the property and all appurtenances thereto, situated in county of **HENNEPIN** and State of **MINNESOTA** hereinafter called "Buyer."

herein referred to as "the property," and more fully described as follows, to wit:
Lot Fifteen (15), Block Eight (8), in Bluffs West, according to the recorded plat thereof on file and of record in the office of the Registrar of Titles, in and for Hennepin County, Minnesota.

This deed is exempt from payment of state deed stamps pursuant to Minnesota Statutes Section 287.22.

It is understood by all parties that title matured in the Seller on 3-24-87, following foreclosure of a mortgage on registered land; that a new Certificate of Title has not been issued and that if Seller is unable to perfect title, this contract is void, and all sums paid hereunder will be returned to the Buyer; EXCEPT that Buyer will pay all taxes, insurance, assessment installments, maintenance, fuel and utilities from date of closing until custody is returned to the Seller.

3. This Agreement is made subject to:

- (1) Existing leases and to rights, if any, of persons in possession, if any.
- (2) The general taxes and special assessments which the Buyer hereinafter covenants to pay.
- (3) Building line and building and liquor restrictions of record.
- (4) Zoning and building laws or ordinances.
- (5) Party wall rights or agreements.
- (6) Roads and highways.
- (7) Covenants, conditions, exceptions, reservations, restrictions, or easements of record.
- (8) Rights of all parties claiming by, through, or under the Buyer.
- (9) Any state of facts which an accurate survey would show.
- (10) All unpaid water and sewage-disposal charges for services rendered after the date of delivery of this Agreement.
- (11) All contracts or agreements, recorded or unrecorded, for furnishing gas, electricity, water, or sewage-disposal service.
- (12) The constitution, bylaws, rules, regulations, restrictions, charges, or assessments of any civic improvement or other association, corporation, or district which affect the property.

The Buyer shall indemnify and save harmless the Seller from all loss and liability that arise by reason of any and all obligations and liabilities existing or arising out of any of the foregoing matters.

110 4108046
P 237 858

ASSIGNMENT OF INSTALLMENT CONTRACT
FOR SALE OF REAL ESTATE

FOR VALUE RECEIVED, I/WE Patrick J. Murphy
purchaser(s) under an Installment Contract
for sale of Real Estate, dated May 28, 1987 from the
Administrator of Veterans Affairs,

covering property located at: 11590 Riverview Road, Eden Prairie, MN 55344
and legally described as follows, to-wit: Lot Fifteen (15), Block Eight (8), in Bluffs
West, according to the recorded Plat thereof.
do hereby assign, transfer and set over to: U.S.A. #1 Realty, Inc.

as assignee(s), all my/our right, title and interest in and to said
contract, together with any sum now on deposit in the Tax and
Insurance account required to be maintained under the terms of said
contract and any and all policies of Insurance covering said
property.

It is understood and agreed that I/we, as Assignees, assume
full responsibility for the performance of all the terms of said
contract of sale until the full amount of the purchase price
specified therein is paid.

The assignee(s) by the acceptance of this assignment agree to
all the terms and conditions of the above described contract of
sale and will faithfully perform all the obligations contained
therein.

Dated:

Patrick J. Murphy
Purchaser(s) Patrick J. Murphy

Property Address:
11590 Riverview Road
Eden Prairie, MN 55344
Tax Bills should go to:
National Mortgage Company
4041 Knight Arnold Road
Memphis, TN 38118

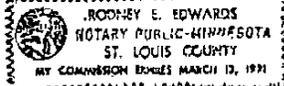
Purchaser(s)
U.S.A. #1 Realty, Inc.
Assignee(s)

by Patrick J. Murphy
Assignee(s)

State of Minnesota
County of St. Louis

On this 28 day of December, 19 93, before
me, a Notary Public in and for said State and County, duly
qualified, personally appeared Patrick J. Murphy to me
known to be the person described in and who executed the foregoing
instrument, and acknowledged that he executed the same as his
free act and deed.

Witness my hand and Notarial Seal at office and day and year
above written



RODNEY E. EDWARDS
Notary Public
RODNEY E. EDWARDS
Notary Public

Note: The above assignment must be signed by all parties named as
purchaser(s) in the Installment Contract of Sale and by the
assignee(s). All signatures must also be notarized. (Additional
notary acknowledgements, if necessary, can be typed on back.) The
original thereof should be affixed to the original contract after
execution.

16040804/p

ASSIGNMENT OF INSTALLMENT CONTRACT FOR SALE OF REAL ESTATE

Patrick J. Murphy (President)

USA #1 Realty

FOR VALUE RECEIVED, I/WE

purchaser(s) under an Installment Contract for Sale of Real Estate, dated... from the Administrator of Veterans Affairs, covering property located at: 11590 Riverview Rd. Eden Prairie, Mn.

do hereby assign, transfer and set over to: Patrick J. Murphy

as assignee(s), all my/our right, title and interest in and to said contract, together with any sum now on deposit in the Tax and Insurance account required to be maintained under the terms of said contract and any and all policies of Insurance covering said property.

It is understood and agreed that I/we, as Assignees, assume full responsibility for the performance of all the terms of said contract of sale until the full amount of the purchase price specified therein is paid.

The assignee(s) by the acceptance of this assignment agree to all the terms and conditions of the above described contract of sale and will faithfully perform all the obligations contained therein.

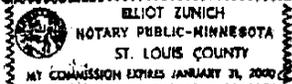
Dated: April 4, 1995
Property Address: 11590 Riverview Road Eden Prairie, Mn
Tax Bills should go to: National Mortgage Company 4041 Knight Arnold Road Memphis, TN 38118

Patrick J. Murphy (PRES)
Purchaser(s)
USA #1 Realty
Purchaser(s)
Patrick J. Murphy
Assignee(s)
Patrick J. Murphy
Assignee(s)

State of Minnesota
County of St. Louis

On this 4th day of April, 1995, before me, a Notary Public in and for said State and County, duly qualified, personally appeared Patrick J. Murphy, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and Notarial Seal at office and day and year above written



Notary Public

Note: The above assignment must be signed by all parties named as purchaser(s) in the Installment Contract of Sale and by the assignee(s). All signatures must also be notarized. (Additional notary acknowledgements, if necessary, can be typed on back.) The original thereof should be affixed to the original contract after execution.

1143.50

ASSIGNMENT INSTALLMENT CONTRACT FOR SALE REAL ESTATE

7271
410804

KNOW ALL MEN BY THESE PRESENTS, That on the 15th day of September, 1987, THOMAS K. TURNAGE, as Administrator of Veterans Affairs, an Officer of the United States of America, whose address is Veterans Administration, Washington, D.C. 20420, party of the first part, in consideration of Eighty-four Thousand, Six Hundred and Twenty-nine Dollars and 59/100 Dollars (\$84,629.59), which represents 84.86000% of the amount due on the Installment Contract hereafter described to him in hand paid by NATIONAL MORTGAGE COMPANY whose address is 4041 Knight Arnold Road, Memphis, Tennessee 38118, party of the second part, does hereby Sell, Assign and Transfer unto the said party of the second part, its successors and assigns, the first party's interest in that certain contract dated May 28, 1987, made by the Administrator of Veterans Affairs as vendor to PATRICK J. MURPHY, a single person as vendee, and not (recorded) (registered) in the office of the County Recorder in and for the County of HENNEPIN, State of MINNESOTA, for the sale and conveyance of a tract of land in said County and State described as follows, to wit: Lot Fifteen (15), Block Eight (8), in Bluffs West, according to the recorded plat thereof on file and of record in the office of the Registrar of Titles, in and for Hennepin County, Minnesota.

Subject to all the covenants of said assignor to said contract contained which said party of the second part hereby assumes and agrees to keep and perform.

Said party of the first part hereby covenants that there remains unpaid under said contract the sum of Ninety-nine Thousand, Three Hundred and Two Dollars and 01/100 Dollars (\$99,302.01), with interest thereon from the 1st day of September, 1987.

PAYMENT GUARANTEED UNDER
38 CFR 36.4600

THOMAS K. TURNAGE
Administrator of Veterans Affairs

by Richard E. Nelson
RICHARD E. NELSON
Assistant Loan Guaranty Officer

NO STATE DEED TAX PAYABLE

Veterans Administration
Bishop Henry Whipple Federal Building
Fort Snelling, St. Paul, Minnesota 55111
Telephone: (612) 725-3064

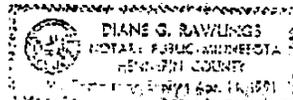
STATE OF MINNESOTA

(Pursuant to a delegation of authority contained in VA Regulations, 38 CFR 36:4342 or 36:4520)

COUNTY OF HENNEPIN

On this 18th day of September, 1987, before me a Notary Public appeared RICHARD E. NELSON, an Assistant Loan Guaranty Officer, of the Veterans Administration, an agency of the United States of America, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that he is delegated the authority to execute the same as said officer in behalf of the Administrator of Veterans Affairs for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Diane G. Rawlings

Tax statements for the above described real property should be sent to:

This document was prepared by
District Counsel, VA, Bishop
Henry Whipple Federal Building,
Fort Snelling, St. Paul, MN 55111

ASSIGNMENT OF INSTALLMENT CONTRACT

Recording Requested By / Return To:

For Good and Valuable Consideration, the sufficiency of which is hereby acknowledged, the undersigned,

NATIONSBANC MORTGAGE CORPORATION, a Texas corporation
 whose address is 205 Park Club Lane, Buffalo, NY 14231-9000 (Assignor)
 by these presents does convey, grant, bargain, sell, assign, transfer and set over the described
 installment Contract, together with the certain note(s) described therein with all interest, all liens, and
 any rights due or to become due thereon to:
 MDFIRST BANK,
 a federally chartered savings association
 2730 North Portland, Oklahoma City, OK 73107 (Assignee)

Original Mortgagor--: PATRIC J. MURPHY
Date of Installment Contract: 05/28/87

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed as a sealed instrument by its proper officer who was duly authorized by a resolution of its board of directors.
Dated: November 3, 1998
NATIONSBANC MORTGAGE CORPORATION

By: [Signature]
N. An
Vice President

State of California
County of Santa Clara

On November 3, 1998, before me, the undersigned, a Notary Public for said County and State, personally appeared N. An, personally known to me to be the person that executed the foregoing instrument, and acknowledged that she is Vice President of NATIONSBANC MORTGAGE CORPORATION, and that she executed the foregoing instrument pursuant to a resolution of its board of directors and that such execution was done as the free act and deed of NATIONSBANC MORTGAGE CORPORATION.

[Signature]
Notary: Marcos Maciel
My Commission Expires August 31, 2002



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Patrick Murphy,
Debtor(s)

Case No. 03-47730-RJK
Chapter 13

MEMORANDUM OF LAW

Midfirst Bank ("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 Contract 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 Contract. Since this case was filed, Debtor(s) are in arrears in the total amount of \$4,519.37.

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 Contract for a period of more than three 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 Contract is \$83,131.22.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its contract on the property.

Dated: _____

8-5-01

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 August 5, 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.

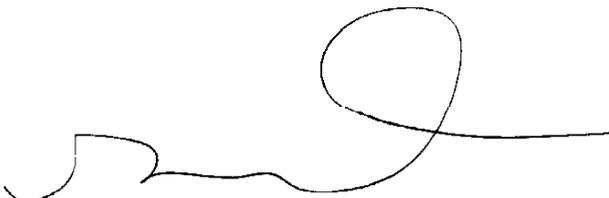
Patrick Murphy
11590 Riverview Road
Eden Prairie, MN 55347

Theresa Freeman, Esq.
7760 France Ave South STE 720
Bloomington, MN 55435

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

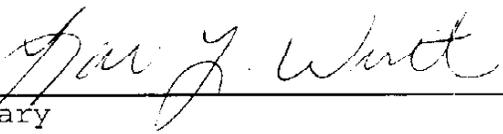
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Roylene Champeaux, Esq.
600 US Courthouse
300 S. 4th Street
Minneapolis, MN 55415

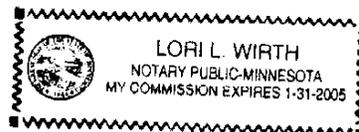


Stephanie Pilegaard

Subscribed and sworn to before me August 5, 2004.



Notary



03-27323
42025465

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-47730-RJK

Patrick Murphy,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on August 26, 2004.

THIS CAUSE coming to be heard on the Motion of Midfirst Bank, 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 Midfirst Bank, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot Fifteen (15), Block Eight (8), in Bluffs West,
according to the Recorded Plat thereof on File and of
Record in the office of the Registrar of Titles, in and
f o r H e n n e p i n C o u n t y , M i n n e s o t a

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court