

04-27770

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:

Case Number BKY 04-41542-RJK

Wayne Pedersen
Jane Pedersen,

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. Key Bank, USA, NA 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 November 4, 2004, in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis Minnesota.

3. Any response to this motion must be filed and delivered not later than November 1, 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 26, 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 23, 2004. 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 , Jane K. Pedersen and Wayne C. Pedersen made, executed and delivered to Key Bank USA, NA their Note (hereinafter referred to as the "Note"), in the original principal amount of \$15,541.50 bearing interest from the date thereof at the rate of 10.75% per annum until paid, payable in monthly installments of \$211.90 commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid. A

copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On , to secure the payment of the Note, Jane K. Pedersen and Wayne C. Pedersen executed and delivered to Key Bank USA, NA their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Sherburne County, Minnesota, legally described as follows:

Lot 4, Block 1, Schmidt's River Place Plat Two

which property has an address of: 15765 127th Street, Becker, MN 55308. The mortgage was filed for record in the office of the Recorder, County of Sherburne, on June 4, 2002, as Document No.470821, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage is attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a plan dated March 23, 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 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 July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$211.90	\$635.70
Accrued late charges	48.00
Attorneys Fees & Costs	<u>625.00</u>
TOTAL POST-PETITION	\$1,308.70

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

Principal	\$14,640.64
Interest	685.28
Accumulated late fees	48.00
Attorneys Fees & Costs	<u>625.00</u>
TOTAL	\$15,998.92

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 \$210,000.00 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, Key Bank USA, NA 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:

10/2/01

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, 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:

W. K. A.

Signed:

[Signature]

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

NOTE

4-27-02 Date
BECKER City Minnesota State
15765 127TH ST BECKER, MN 55308 Property Address City State ZIP Code

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 15,541.50 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is Key Bank USA, N.A.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST

I will pay interest at a yearly rate of 10.75 %.
Interest will be charged on unpaid principal until the full amount of principal has been paid.

3. PAYMENTS

I will pay principal and interest by making payments each month of U.S. \$ 211.90
I will make my payments on the _____ day of each month beginning on _____
I will make these payments every month until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. If, on _____
I still owe amounts under this Note, I will pay all those amounts, in full, on that date.
I will make my monthly payments at 8757 Red Oak Blvd, Suite 250
Charlotte, NC 28217 or at a different place if required by the Note Holder.

4. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments by the end of ten calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.00 % of my overdue payment, but not less than U.S. \$ 3.00 and not more than U.S. \$ 3.00. I will pay this late charge only once on any late payment.

(B) Notice from Note Holder

If I do not pay the full amount of each monthly payment on time, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me.

(C) Default

If I do not pay the overdue amount by the date stated in the notice described in (B) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(D) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back for all of its costs and expenses to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

5. THIS NOTE SECURED BY A MORTGAGE

In addition to the protections given to the Note Holder under this Note, a Mortgage, dated 4-27-02, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Mortgage describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note.

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

Handwritten initials and signature.

470821

5/22/02

470821

COUNTY RECORDER
SHERBURNE CO. MINN.
MICHELLE ASHE
DEPUTY

'02 JUN 4 AM 10 52

NO. 99402 DATE 5/29/02
MTG REGISTRY TAX OF \$ 35.88 PAID

Barbara Doedler
County Auditor/Treasurer
Connie Olson
Deputy Auditor/Treasurer

Return To: KeyBank USA, NA.
P.O. Box 16430
Boise, ID. 83715

MORTGAGE 3211016847896

THIS MORTGAGE is made this 27 day of APRIL, 2002,
between the Mortgagor,
JANE K. PEDERSEN & WAYNE C. PEDERSEN, MARRIED, WIFE + HUSBAND

(herein "Borrower"), and the Mortgagee,

Key Bank USA, N.A.,
existing under the laws of North Carolina
8757 Red Oak Blvd, Suite 250
Charlotte, NC 28217

, a corporation organized and
, whose address is

(herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$15,541.50, which indebtedness is evidenced by Borrower's note dated [blank] 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 [blank];

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

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

VMP -76(MN) (9803)

Form 3824

Page 1 of 6

Initials:

VMP MORTGAGE FORMS - (800)521-7296

J.K.P.
W.C.P.



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-41542-RJK
Chapter 13

Wayne Pedersen
Jane Pedersen,

Debtor(s)

MEMORANDUM OF LAW

Key Bank, USA, NA ("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 \$1,308.70

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 2 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 \$15,998.92 [The property is encumbered by a second mortgage in favor of Wells Fargo Bank in the approximate amount of \$60,013.00 and a first Mortgage in favor of Principal Residential Mortgage in the approximate amount of \$164,663.00.] The fair market value of the property is approximately \$210,000.00. 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: 10.12.21.

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

By: /s/ 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 October 12, 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.

Wayne Pedersen
15765 127th Street SE
Becker, MN 55305

Wells Fargo Mortgage
PO Box 9194
Des Moines, IA 50306

Jane Pedersen
15765 127th Street SE
Becker, MN 55305

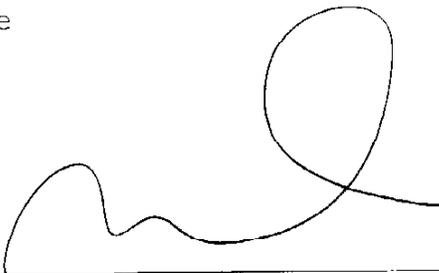
Mr. Robert J. Hoglund
Attorney at Law
1611 County Road B #106
Roseville, MN 55113

Michael Farrell, Trustee
PO Box 519
Barnesville, MN 56514

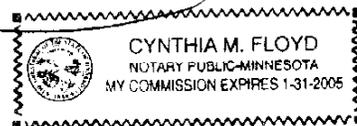
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Principal Residential Mortgage
PO Box 711
Des Moines, IA 50303

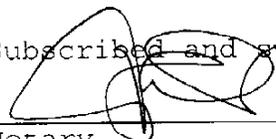
Mackall Crouse & Moore, PLC
901 Marquette Ave #1400
Minneapolis, MN 55402-2859



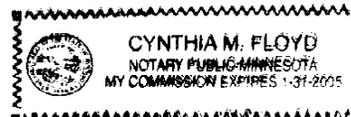
Stephanie Pilegaard



Subscribed and sworn to before me October 12, 2004.



Notary



04-27770
3211016897896

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-41542-RJK

Wayne Pedersen
Jane Pedersen,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 4, 2004.

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

Lot 4, Block 1, Schmidt's River Place Plat Two

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court