

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Joshua Monson

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-45118

TO: Joshua Monson, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Wells Fargo Bank, N.A., (“Movant”), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 pm on November 4, 2004, in Courtroom 8 West, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on 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, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on September 14, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 12870 82nd Street Southeast, Becker, MN 55319, legally described as follows, to-wit:

The East One-half of the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (E1/2 SW1/4 SE 1/4 NW1/4) Section 12, Township 34 North, Range 29 West, Sherburne County, Minnesota

7. The indebtedness of Joshua Monson is evidenced by a Promissory Note and Mortgage dated July 31, 2002, filed of record in the Sherburne County Recorder's office on August 7, 2002, and recorded as Document No. 476767. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtor has failed to pay monthly mortgage payments since August 1, 2004, and is in default in the amount of \$6,566.42 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$204,493.63.

10. The Sherburne County Assessor's Office has estimated the value of the homestead as \$221,000.00, and accordingly, Debtor has limited equity in the premises and, presuming typical selling costs, has no equity in the property and therefore cause exists to find lack of adequate protection.

11. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Joshua Lee Monson

AFFIDAVIT OF PETITIONER

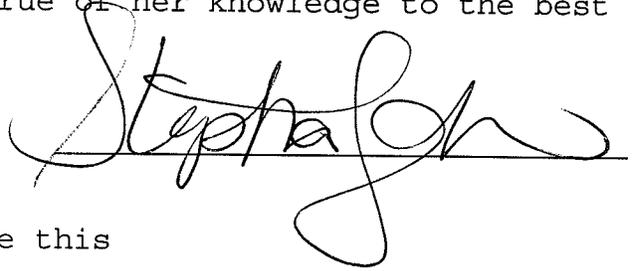
Debtor

Chapter 7, Case No. 04-45118

STATE OF GEORGIA

COUNTY OF FULTON

Stephanie Johnson, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.



Subscribed and sworn to before me this
5th day of October, 2004.


Notary Public

476767

COUNTY RECORDER
SHERBURNE CO. MINN.
MICHELLE ASHE

BY Stallwick DEPUTY

'02 AUG 7 PM 3 36

NO 101549 DATE 8/8/02
MTG REGISTRY TAX OF \$465.51 PAID

Thomas Wackler
County Auditor/Treasurer

Carrie Anson
Deputy Auditor/Treasurer

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

FHA Case No.

271-8775045

EDINA REALTY
c/o Metro Legal Services

THIS MORTGAGE ("Security Instrument") is given on **JULY 31, 2002**
The Mortgagor is **JOSHUA L. MONSON, A MARRIED PERSON**

("Borrower"). This Security Instrument is given to **WELLS FARGO HOME MORTGAGE, INC.**

which is organized and existing under the laws of **THE STATE OF CALIFORNIA**, and
whose address is **P.O. BOX 5137, DES MOINES, IA 503065137**

("Lender"). Borrower owes Lender the principal sum of
TWO HUNDRED TWO THOUSAND THREE HUNDRED NINETY SIX AND 00/100
Dollars (U.S. \$*******202,396.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on **AUGUST 01, 2032**
and for interest at the yearly rate of **6.500** percent. This Security
Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph
7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

0751411

FHA Minnesota Mortgage ^{4/96}
VMP-4R(MN) (9702)



under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in SHERBURNE

County, Minnesota:

SEE ATTACHED LEGAL DESCRIPTION

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 5137, DES MOINES, IA 503065137

which has the address of 13090 82ND STREET SE, BECKER

[Street, City],

Minnesota 55319

[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

EXHIBIT A

The East One-half of the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (E1/2 SW1/4 SE1/4 NW1/4) of Section Twelve (12), in Township Thirty-four (34) North, of Range Twenty-nine (29) West, Sherburne County, Minnesota.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Joshua Monson

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-45118

Wells Fargo Bank, N.A. ("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, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$6,566.42.

ARGUMENT

1. Under Section 362.(d)(2) 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." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 4 months. Debtor has not otherwise provided 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: 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 §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrtcy. D. N. H. 1983). In this case the balance due Movant is \$204,493.63. The value of the property is approximately \$221,000.00.

Clearly, the Debtor has no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Joshua Monson

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-45118

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on October 18, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Dorriane A. Larison
Chapter 7 Trustee
1010 W. St. Germaine Rm 600
St. Cloud, MN 56301

Stephen R. Conroy
Attorney at Law
PO Box 999
Monticello, MN 55362

Joshua Monson
12870 82nd Street Southeast
Becker, MN 55319

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Joshua Monson

ORDER

Debtor.

Chapter 7, Case No. 04-45118

The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., (“Movant”), pursuant to 11 U.S.C. Section 362 on November 4, 2004, at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

The East One-half of the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (E1/2 SW1/4 SE 1/4 NW1/4) Section 12, Township 34 North, Range 29 West, Sherburne County, Minnesota

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court