

04-29637

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re: Case No. 04-45127-RJK
Chapter 7

Jeannine Trafton,

Debtor(s)

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

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Mortgage Electronic Registration Systems, Inc. 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, Minneapolis, Minnesota.
3. Any response to this motion must be filed and delivered no later than November 1, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than October 26, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or 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 7 case was filed on September 14, 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. By mortgage dated November 14, 2003, in the original principal amount of \$220,500.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 534583, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

That part of the Northwest Quarter of the Southwest Quarter and that part of the Southwest Quarter of the Southwest Quarter of Section 6, Township 33, Range, 26, Sherburne County, Minnesota, described as follows: Commencing at the Southwest corner of said Northwest Quarter of the Southwest Quarter thence South 00 degrees 00 minutes 10 seconds along the West line of said Southwest Quarter of the Southwest Quarter, a distance of 16.10 feet; thence South 53 degrees 00 minutes 00 seconds East, a distance of 167.35 feet to the point of beginning Thence North 66 degrees 31 minutes 16 seconds East a distance of 564.18 feet; thence North 23 degrees 44 minutes 55 seconds West; a distance of 454.00 feet thence North 78 degrees 15 minutes 05 seconds East, a distance of 375.00 feet to intersect a line 50.00 feet Southwesterly of and parallel with the centerline of Meadowvale Road thence South 31 degrees 23 minutes 47 seconds East parallel with said centerline, a distance of 688.51 feet to the South line of said Northwest Quarter of the Southwest Quarter thence South 89 degrees 24 minutes 57 seconds West along said South line, a distance of 80 feet; thence South 63 degrees 30 minutes 00 seconds West, a distance of 680.00 feet; thence South 4 degrees 00 minutes 00 seconds West, a distance of 100.00 feet, Thence North 53 degrees 00 minutes 00 seconds West, a distance of 456.95 feet to the point of beginning, Sherburne County, Minnesota

The Mortgage was filed in the offices of the Recorder, for Sherburne County, Minnesota on December 4, 2003, as Document No. 534583. A copy of the Mortgage is are attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the July, 2004 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

3 payments @ \$1,896.45	\$5,689.35
Accrued late charges @ \$257.25	\$257.25
Suspense balance	-\$121.35
Attorneys Fees & Cost	\$800.00
TOTAL	\$6,625.25

The outstanding principal balance due to Movant under the terms of the note is \$219,565.15 as of October 4, 2004, and interest accrues at the rate of 8.625% per diem per day. The amount therefore due and owing on said note is as follows:

Principal balance	\$219,565.15
Accrued Late charges	\$257.25
Suspense Balance	-\$121.35
Interest	\$4,628.80
Attorneys Fees & Costs	\$800.00
TOTAL	\$225,129.85

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to

Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **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, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 10.8.07

Signed: /s/ 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 Aintzer, 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:

10-6-04

Signed:

[Signature]

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

8915400

NO. 2216 DATE 12/4/03
MTG REGISTRY FEE OF \$ 502.15 PAID
[Signature]
County Recorder
Connie Ousman
Deputy Auditor/Treasurer

Office of the County Recorder
Sherburne County, MN
Doc. No. 534583
Certified filed and/or recorded on
12-04-2003 at 01 05
Michelle Ashe, County Recorder
By AS Deputy Fee \$ 30.00

8915400
Traflet

[Space Above This Line For Recording Data]

Loan Number 389386
MERS Number 100265600003893866

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **NOVEMBER 14, 2003**, together with all Riders to this document.
- (B) "Borrower" is **JEANNINE A. TRAFLET, A SINGLE PERSON and JEREMY BLONIGEN, A SINGLE PERSON**. Borrower is the mortgagor under this Security Instrument.
- (C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679 MERS.
- (D) "Lender" is **SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP**. Lender is a **PARTNERSHIP** organized and existing under the laws of **THE STATE OF DELAWARE**. Lender's address is **4000 INTERNATIONAL PKWY, #3000, CARROLLTON, TEXAS 75007**.
- (E) "Note" means the promissory note signed by Borrower and dated **NOVEMBER 14, 2003**. The Note states that Borrower owes Lender **TWO HUNDRED TWENTY THOUSAND FIVE HUNDRED AND 00/100ths Dollars (U.S. \$220,500.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **DECEMBER 1, 2033**.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Bi-weekly Payment Rider
- Second Home Rider
- Floor Rate Rider



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04 45127 RJK
Chapter 7

Jeannine Trafton

Debtor(s)

MEMORANDUM OF LAW

Mortgage Electronic Registration Systems, Inc. ("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 \$6,625.25.

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 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. 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 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$225,129.85.

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

Dated: _____

10.11.01

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

Signed: /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 8, 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.

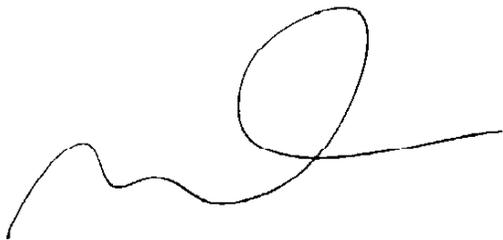
Jeannine Trafton
22342 Meadowvale Road
Elk River, MN 55330

Jeremy Blonigan
22342 Meadowvale Road
Elk River, MN 55330

Sheldon Vie, Esq.
503 Jackson Ave NW
Elk River, MN 55330

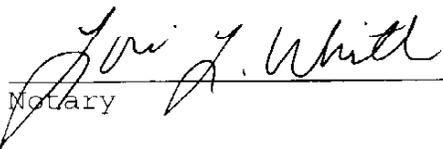
Dorraine A. Larison, Trustee
1010 W. St. Germain RM 600
St. Cloud, MN 56301

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

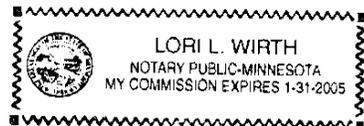


Stephanie Pilegaard

Subscribed and sworn to before me October 8, 2004.



Notary



04-29637
0437057789

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-45127-RJK

Jeannine Trafton
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 Mortgage Electronic Registration Systems, Inc., 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 Mortgage Electronic Registration Systems, Inc., its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

That part of the Northwest Quarter of the Southwest Quarter and that part of the Southwest Quarter of the Southwest Quarter of Section 6, Township 33, Range, 26, Sherburne County, Minnesota, described as follows: Commencing at the Southwest corner of said Northwest Quarter of the Southwest Quarter thence South 00 degrees 00 minutes 10 seconds along the West line of said Southwest Quarter of the Southwest Quarter, a distance of 16.10 feet; thence South 53 degrees 00 minutes 00 seconds East, a distance of 167.35 feet to the point of beginning Thence North 66 degrees 31 minutes 16 seconds East a distance of 564.18 feet; thence North 23 degrees 44 minutes 55 seconds West; a distance of 454.00 feet thence North 78 degrees 15 minutes 05 seconds East, a distance of 375.00 feet to intersect a line 50.00 feet Southwesterly of and parallel with the centerline of Meadowvale Road thence South 31 degrees 23 minutes 47 seconds East parallel with said centerline, a distance of 688.51 feet to the South line of said Northwest Quarter of the Southwest Quarter thence South 89 degrees 24 minutes 57 seconds

West along said South line, a distance of 80 feet; thence South 63 degrees 30 minutes 00 seconds West, a distance of 680.00 feet; thence South 4 degrees 00 minutes 00 seconds West, a distance of 100.00 feet, Thence North 53 degrees 00 minutes 00 seconds West, a distance of 456.95 feet to the point of beginning, Sherburne County, Minnesota

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court