

03-25885

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 03 61047-EDC

Douglas Jenniges
Mary Jenniges,

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. 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 1:00 p.m., on September 28, 2004, in Courtroom No. 2, at the United States Courthouse, at 118 South Mill Street, in Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 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 September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE TO THIS 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 1073-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on August 22, 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 December 11, 2001, Douglas J. Jenniges and Mary E. Hanson-Jenniges made, executed and delivered to Mortgage Electronic Registration Systems, Inc. their Note (hereinafter referred to as the "Note"), in the original principal amount of \$133,000.00 bearing interest from the date thereof at the rate of 7.5% per annum until paid, payable in monthly installments of \$2,000.00 commencing on February 1, 2002 and on the first day of each month

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 December 11, 2001, to secure the payment of the Note, Douglas J. Jenniges and Mary E. Hanson-Jenniges executed and delivered to Mortgage Electronic Registration Systems, Inc. their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Pope County, Minnesota, legally described as follows:

All that part of the SW 1/4 of the NE 1/4, Section 18, Township 125 N, Range 37 W, which is described and enclosed within the following boundary lines, to-wit: Beginning at a point on the S line of the said SW 1/4 NE 1/4 of Section 18, 653.0 feet, E of the center of said Section 18; Thence N perpendicular to the S line of the said SW 1/4 NE 1/4 of Section 18, 450.0 feet; Thence W parallel with the S line of the said SW 1/4 NE 1/4 of Section 18, 290.4 feet; Thence S perpendicular to the S line of the said SW 1/4 NE 1/4 of Section 18, 450.0 feet; Thence E along the S line of the said SW 1/4 NE 1/4 of Section 18, 290.4 feet to the point of beginning.

which property has an address of: 21536 Memorial Drive, Glenwood, MN 56334. The mortgage was filed for record in the office of the Recorder, County of Pope, on December 18, 2001, as Document No.216057. A copy of the mortgage is attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a modified plan dated November 17, 2003, 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 May, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

4 payments @ \$929.96	\$3,719.84
Accrued late charges	139.50
Property Inspections	10.75
Suspense Balance	-46.50
Attorneys Fees & Costs	<u>700.00</u>
TOTAL POST-PETITION	\$4,523.59

Through Debtors' failure to make current post-petition payments,

amounts currently due and owing include the following:

Principal	\$130,679.75
Interest	3,705.30
Accumulated late fees	139.50
Property inspections	10.75
Suspense Balance	-46.50
Attorneys Fees & Costs	<u>2,164.10</u>
TOTAL	\$136,652.90

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

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, Mortgage Electronic Registration Systems, Inc. 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: _____

a.3.a.

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, Cindy Hystad, the Asst Secretary for Washington Mutual Bank, FA, 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: 9.1.01

Signed: 

Washington Mutual Bank, F.A.
8120 Nations Way, Bldg 100
Jacksonville, FL 32256

5NUS
H04

4919224-859
N: 1000541-3000196707-2

NOTE

DECEMBER 11, 2001
(Date)

SAUK CENTER
(City)

MINNESOTA
(State)

21536 MEMORIAL DRIVE, GLENWOOD, MN 56334
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 133,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NORTH AMERICAN MORTGAGE COMPANY®

I will make all payments under this Note in the form of cash, check or money order.

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 is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on FEBRUARY, 2002.

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. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on JANUARY 01, 2032

I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 3883 AIRWAY DRIVE, SANTA ROSA, CA 95403
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 929.96

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment there will be no changes in the due date or in

104 pages

OFFICE OF COUNTY RECORDER
POPE COUNTY, MINNESOTA

FILED FOR RECORD THIS 18th
DAY OF December, 20 01
AT 10:30 O'CLOCK AM
AS DOCUMENT NO. 216057

DARBY BOWEN, COUNTY RECORDER
BY *[Signature]* DEPUTY

Registration fee: amount of \$ 300.00 paid
Treasurer's Receipt No. 4320
[Signature]
County Treasurer
Countersigned
[Signature]
County Auditor

Space Above This Line For Recording Data Helm Town 12/18 10:30 No

YMN1
H04

MORTGAGE

4919224-859

MIN 1000841-3000198707-2

Return To:
NORTH AMERICAN MORTGAGE COMPANY®
P. O. BOX 808031
PETALUMA, CA 94975-8031
FINAL REVIEW AU 052

[Handwritten signature]

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 DECEMBER 11, 2001 , together with all Riders to this document.

MINNESOTA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Form 9024 1/01
Page 1 of 18
VMP MORTGAGE FORMS - (800)821-7282
[Signature]



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Case No. 03-61047-DDO
Chapter 13
Douglas Jenniges
Mary Jenniges,
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 \$4,523.59.

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 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 note and mortgage is \$136,652.90. [The property is encumbered by a secured lien in favor of Pope County Treasurer in the approximate amount of \$386.00.]

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

Dated: _____

9.3.01

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

03-25885
13188537

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-61047-DDO

Douglas Jenniges
Mary Jenniges,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 28, 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, in accordance with State Law, the mortgage on the real property commonly known as:

All that part of the SW 1/4 of the NE 1/4, Section 18, Township 125 N, Range 37 W, which is described and enclosed within the following boundary lines, to-wit: Beginning at a point on the S line of the said SW 1/4 NE 1/4 of Section 18, 653.0 feet, E of the center of said Section 18; Thence N perpendicular to the S line of the said SW 1/4 NE 1/4 of Section 18, 450.0 feet; Thence E parallel with the S line of the said SW 1/4 NE 1/4 of Section 18, 290.4 feet; Thence S perpendicular to the S line of the said SW 1/4 NE 1/4 of Section 18, 450.0 feet; Thence E along the S line of the said SW 1/4 NE 1/4 of Section 18, 290.4 feet to the point of beginning.

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court