

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Kosloski
Jennifer Kosloski

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-60572

TO: William Kosloski and Jennifer Kosloski, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

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

2. The Court will hold a hearing on this motion at 1:00 pm on November 16, 2004, in Courtroom 2, 204 U.S. Courthouse, 118 South Mill Street, Fergus Falls, MN 56537 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 11, 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 November 5, 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, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core proceeding. The petition commencing this Chapter 13 case was filed on May 10, 2004. The case is now pending in this court.

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

6. Debtor above-named are the owner of certain real property located at 311 19th Avenue, Saint Cloud, MN 56303, legally described as follows, to-wit:

Lot 11 and the South 2 feet of Lot 10, in Block 2, in Collins Addition to St. Cloud, Minneosta, according to the plat and survey thereof on file an dof record in the Office of the County Recorder in and for Stearns County, Minnesota

7. The indebtedness of William Kosloski and Jennifer Kosloski is evidenced by a Promissory Note and Mortgage dated June 9, 1998, filed of record in the Stearns County Recorder's office on June 10, 1998, and recorded as Document No. 876111. 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 was current on his mortgage obligation to Movant at the time of the bankruptcy filing. Movant has not filed a Proof of Claim nor receiving payments from the Trustee.

9. Pursuant to said Plan, the Debtor was to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtor has failed to pay the monthly payments on the indebtedness, outside the Plan for the months of July 1, 2004 to the present date and as of the hearing date November 1, 2004 will be due for a total delinquency of \$2,247.63 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtor is in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage 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:

William S. Kosloski
Jennifer L. Kosloski

AFFIDAVIT OF PETITIONER

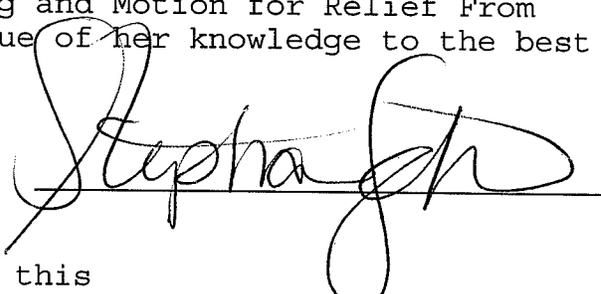
Debtors

Chapter 13, Case No. 04-60572

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
1st day of October, 2004.

Dunneah Welborn
Notary Public



876111

98 JUN 10 PM 1:30

MORTGAGE REGISTRATION TAX 97.06

H. J. Johnson
STEARNES COUNTY AUDITOR

Jean M. Johnson
DEPT. AUDITOR

COUNTY RECORDER
STEARNES CO. MN
PAUL J. WESTERMAN
H. Johnson COUNTY

[Space Above This Line For Recording Data]

State of Minnesota
LOAN NO. 3036282

MORTGAGE

FHA Case No.
271-7871524

THIS MORTGAGE ("Security Instrument") is given on June 9, 1998
The Mortgagor is WILLIAM S. KOSLOSKI and JENNIFER L. KOSLOSKI, HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to LIBERTY SAVINGS BANK FSB REG²⁸ 980021734 6/10/1998
MR STATE X 12:02:09
R 2 0
\$97.06

which is organized and existing under the laws of THE UNITED STATES OF AMERICA and
whose address is 111 7TH AVE S. ST CLOUD. MN 56301

("Lender"). Borrower owes Lender the principal sum of
Forty Two Thousand One Hundred Twenty Seven and no/100
Dollars (U.S. & 42,127.00).

This debt is evidenced by Borrower's Note, dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the first due, if not paid earlier, due and payable on July 1, 2028
and for interest at the yearly rate of 7.5000 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

FHA Minnesota Mortgage - 10:25
4240-4R(MN) 199811
MVP MORTGAGE FORMS - (800)521-7221
Page 1 of 2 MW 03/96

LIBERTY 10:
Title Professionals and
Abstract Company
PO Box 873
St. Cloud, MN 56302
FILE# 98313512



MICROFILMED
Page 1 of 2

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 STEARNS County, Minnesota:

LOT ELEVEN (11), AND THE SOUTH TWO (2) FEET OF LOT TEN (10), IN BLOCK TWO (2), IN COLLINS ADDITION TO ST. CLOUD, MINNESOTA, ACCORDING TO THE PLAT AND SURVEY THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR STEARNS COUNTY, MINNESOTA.

which has the address of 311 19TH AVENUE ST. CLOUD (Street, City),
Minnesota 56303 (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.

876112

98 JUN 10 PM 1:30

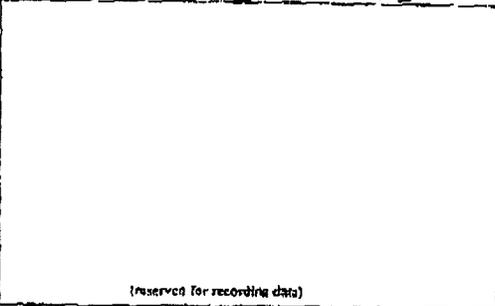
COUNTY RECORDER
STEARNS CO. MN
PATRICIA M. OVERMAN
Patricia M. Overman

FORM NO. 47 - M

3

ASSIGNMENT OF MORTGAGE

Date: June 9, 1998



(reserved for recording data)

FOR VALUABLE CONSIDERATION, LIBERTY SAVINGS BANK fsb

a corporation under the laws of the UNITED STATES OF AMERICA

Assignor (whether one or more), hereby sells assigns and transfers to

NORWEST MORTGAGE INC., A CALIFORNIA CORPORATION
800 MARQUETTE AVENUE SOUTH, MINNEAPOLIS, MN 55402

Assignee (whether one or more), the Assignor's interest in the Mortgage dated June 9, 1998
executed by WILLIAM S. KOSLOSKI and JENNIFER L. KOSLOSKI, HUSBAND AND WIFE

as Mortgagee, to LIBERTY SAVINGS BANK fsb
as Mortgagee, and filed for record June 10

, 19 98, as Document Number 876111

(or in Book of STEARNS Page), in the Office of the (County Recorder)

County, Minnesota, together with all right and interest in the note
and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and
assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of

Forty Two Thousand One Hundred Twenty Seven Dollars and no/100
DOLLARS, with interest thereon from

June 15, 1998, and that Assignor has good right to sell, assign and transfer the same.

ASSIGNOR

LIBERTY SAVINGS BANK fsb

By *Kevin D. Dunlap*
Its Vice President

By _____

Its _____

STATE OF MINNESOTA
COUNTY OF STEARNS

The foregoing instrument was acknowledged before me this 9th day of June 1998
by Kevin D. Dunlap and
the Vice President and
of LIBERTY SAVINGS BANK fsb a Corporation
under the laws of the United States of America, on behalf of the Corporation

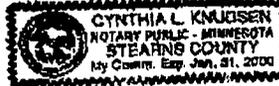
THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

LIBERTY SAVINGS BANK fsb
111 7th AVENUE SOUTH
PO BOX 40
ST CLOUD, MN 56301

ATTORNEY TO:
Title Professionals and
Abstract Company
PO Box 873
St. Cloud, MN 56302
FILE # 98313252

Cynthia L. Knudsen
SIGNATURE (PERSON TAKING ACKNOWLEDGMENT)

NOTARIAL STAMP OF REAL ESTATE TITLE & GR BANKS



MICROFILMED

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Kosloski
Jennifer Kosloski

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-60572

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtor's filing of the petition on May 10, 2004 no payment has been made to movant for the month(s) of July 1, 2004 to the present and as of the hearing date November 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Wells Fargo Bank, N.A. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

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:

William Kosloski
Jennifer Kosloski

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-60572

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

Michael J. Farrell
Chapter 13 Trustee
P.O. Box 519
Barnesville, MN 56514

Samuel V. Calvert
Attorney at Law
PO Box 1044
St. Cloud, MN 56302-1044

William Kosloski
Jennifer Kosloski
311 19th Avenue
Saint Cloud, MN 56303

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Kosloski
Jennifer Kosloski

ORDER

Debtor.

Chapter 13, Case No. 04-60572

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 16, 2004 at the U.S. Bankruptcy Court, Fergus Falls, 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 or assigns, has an interest, said property legally described as:

Lot 11 and the South 2 feet of Lot 10, in Block 2, in Collins Addition to St. Cloud, Minneosta, according to the plat and survey thereof on file an dof record in the Office of the County Recorder in and for Stearns 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