

04-29156

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:

Case Number BKY 02-30727-DDO

Charles Davis, Sr.
Pamela Davis,

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. Deutsche Bank Trust Company Americas, as Trustee, fka Bankers Trust Company as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on September 22, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 17, 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 13, 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 February 20, 2002. 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 June 22, 2001, Charles Davis and Pamela Davis made, executed and delivered to Maribella Mortgage, LLC their Note (hereinafter referred to as the "Note"), in the original principal amount of \$400,000.00 bearing interest from the date thereof at the rate of 9.625% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar

month thereafter until the principal and interest were fully paid.

7. On June 22, 2001, to secure the payment of the Note, Charles Davis and Pamela Davis executed and delivered to Maribella Mortgage, LLC their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Scott County, Minnesota, legally described as follows:

Lot 20, Block 1, Wilds 2nd Addition, Scott County, Minnesota

which property has an address of: 15200 Wood Duck Trail NW Prior Lake, MN 55372-3205. The mortgage was filed for record in the office of the Recorder, County of Scott, on July 6, 2001, as Document No. A510963, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a modified plan dated February 11, 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 August, 2003 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

12 payments @ \$3,999.96	\$40,799.52
Suspense Balance	-2,082.53
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$39,516.99

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

Principal	\$397,172.77
Interest	41,477.04
Suspense Balance	-2,082.53
Attorneys Fees & Costs	<u>1,025.00</u>
TOTAL	\$437,592.28

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01, 510.02.

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, Deutsche Bank Trust Company Americas, as Trustee, fka Bankers Trust Company as Trustee 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: _____



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:

8/17/01

Signed:

[Signature]

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

432 982684 *omit*

CERTIFIED
TRUE & CORRECT COPY

*recorded
7-6-01
A510963*

DAVIDSON	4515/96	DATE
4106284	Date	1042/982



LOAN NO.: 0010145

(Space Above This Line For Recording Data)

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 **JUNE 22, 2001** together with all Riders to this document.
- (B) "Borrower" is **CHARLES DAVIS AND PAMELA DAVIS, HUSBAND AND WIFE**

Borrower is the mortgagor under this Security Instrument.

- (C) "Lender" is **MARIBELLA MORTGAGE, LLC.**

Lender is a
organized and existing under the laws of **THE STATE OF MINNESOTA**
Lender's address is **7625 METRO BLVD, STE. 100**
EDINA, MN 55439

Lender is the mortgagee under this Security Instrument **JUNE 22, 2001**

(D) "Note" means the promissory note signed by Borrower and dated **JUNE 22, 2001**

The Note states that Borrower owes Lender
FOUR HUNDRED THOUSAND AND 00/100
Dollars (U.S. \$ **400,000.00**) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than **JULY 1, 2031**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "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.

Doc. No. A 549964
OFFICE OF THE COUNTY RECORDER
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

05-21-2002 at 11:00 Receipt: 183425

Pat Boeckman, County Recorder 01

Fee: \$20.00

Assignment of Real Estate Mortgage/Deed of Trust

4975799
4541

Loan #: 0010145

22 - 139

FOR VALUE RECEIVED the undersigned hereby grants, assigns and transfers to:

BANKERS TRUST COMPANY AS TRUSTEE

3 Park Plaza, Sixteenth Floor, Irvine, California 92714

All the rights, title and interest of undersigned in and to that certain Real Estate Mortgage/Deed of Trust dated JUNE 22, 2001 executed by CHARLES DAVIS AND PAMELA DAVIS, HUSBAND AND WIFE

To MARIBELLA MORTGAGE, LLC.

A Limited Liability Company organized under the laws of Minnesota

And whose principal place of business is 7625 Metro Blvd. Suite 100 Edina, MN 55439

And recorded in Scott County Records as Document # 510963

State of MINNESOTA described hereinafter as follows: Recorded 7-06-2001

LOT 20, BLOCK 1, WILDS 2ND ADDITION, SCOTT COUNTY, MINNESOTA.

Commonly known as: 15200 WOOD DUCK TRL NW, PRIOR LAKE, MN 55372-3205

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued under said Real Estate Mortgage/Deed of Trust.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

MARIBELLA MORTGAGE, LLC

BY: ANN C. SHICKELL
ITS: ASSISTANT VICE PRESIDENT

On JUNE 22, 2001 before me, the undersigned, a Notary Public in and for said County and State, personally appeared ANN C. SHICKELL known to me to be the ASSISTANT VICE PRESIDENT and known to me to be of the Limited Liability Company herein which executed the within instrument, that said instrument was signed on behalf of said Limited Liability Company pursuant to its by-laws or a resolution of its Board of Directors and that he/she acknowledges said instrument to be the free act and deed of said Limited Liability Company.

Notary Public

Drafted By:
Maribella Mortgage, LLC
7625 Metro Blvd. Suite 100
Edina, MN 55439



X When Recorded, Return to:
PEELLE ASSIGNMENT DIVISION
P.O. BOX 1710
CAMPBELL, CA 95009-1710
(408) 866-6868
JOB #90788

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 02-30727-DDO

Chapter 13

Charles Davis, Sr.
Pamela Davis,

Debtor(s)

MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas, as Trustee, fka Bankers Trust Company as Trustee ("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 \$39,516.99.

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 11 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 \$437,592.28. [The property is encumbered by a second mortgage in favor of Powerline, Inc. in the approximate amount of \$28,625.00.]

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

Dated: 8.20.01.

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

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on August 20, 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.

Charles Davis, Sr.
15200 Woodduck Trail NW
Prior Lake, MN 55372

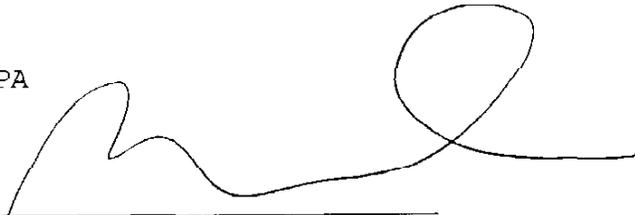
Pamela Davis
15200 Woodduck Trail NW
Prior Lake, MN 55372

Kenneth Keate, Esq.
Keate Law Office
1102 Grand Ave.
St. Paul, MN 55105

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

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

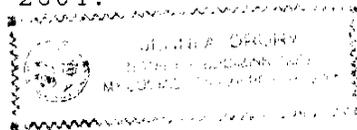
Poweline Inc
C/O Ward, Goins, Ward, Wood, PA
1919 University Ave #116
St. Paul, MN 55104



Stephanie Pilegaard

Subscribed and sworn to before me August 20, 2004.

Notary



04-29156
0432982684

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 02-30727-DDO

Charles Davis, Sr.
Pamela Davis,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 22, 2004.

THIS CAUSE coming to be heard on the Motion of Deutsche Bank Trust Company Americas, as Trustee, fka Bankers Trust Company as Trustee, 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 Deutsche Bank Trust Company Americas, as Trustee, fka Bankers Trust Company as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 20, Block 1, Wilds 2nd Addition, Scott County,
Minnesota

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court