

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Devon Scott

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-31663

TO: Devon Scott, 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 10:30 am on September 7, 2004, in Courtroom 228B, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 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 August 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, 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 March 19, 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 Debtors.

6. Debtors above-named are the owners of certain real property located at 1001 Euclid Street, Saint Paul, MN 55106, legally described as follows, to-wit:

Lot 16, Stinson's Subdivision of Block 79, Lyman Dayton's Addition to the City of St. Paul, Ramsey County, Minnesota.

7. The indebtedness of Devon Scott is evidenced by a Promissory Note and Mortgage dated April 10, 2002, filed of record in the Ramsey County Recorder's office on May 3, 2002, and recorded as Document No. 3496612. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. Movant has filed a Proof of Claim for delinquent payments. Upon information and belief, said Plan has now been confirmed.

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

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date September 1, 2004 will be due for a total delinquency of \$2,407.20 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are 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: August 19, 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:

Devon Scott

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-31663

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 debtors' filing of the petition on March 19, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date September 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: August 19, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
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(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Devon Scott

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-31663

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 August 19, 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

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

Craig Cook
Midwest Legal Counsel
1821 University Avenue, Suite S217
St. Paul, MN 55104

Devon Scott
1001 Euclid Street
Saint Paul, MN 55106

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Devon Scott

ORDER

Debtors.

Chapter 13, Case No. 04-31663

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 September 7, 2004 at the U.S. Bankruptcy Court, St. Paul, 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 16, Stinson's Subdivision of Block 79, Lyman Dayton's Addition to the City of St. Paul, Ramsey 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