

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Mary Chapman

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-31808

TO: Mary Chapman, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Chase Manhattan Mortgage Corporation, (*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 9:30 am on September 27, 2004, in Courtroom 228A, 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 22, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and 16, 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 25, 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 16821 Glencoe Avenue, Lakeville, MN 55044, legally described as follows, to-wit:

Lot 8, Block 7, Fosborough, according the recorded plat thereof and situate in Dakota County, Minnesota.

7. The indebtedness of Mary Chapman is evidenced by a Promissory Note and Mortgage dated May 8, 1998, filed of record in the Dakota County Recorder's office on June 1, 1998, and recorded as Document No. 1504040. 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 for the months of March 1, 2004 through March 1, 2004. Upon information and belief, said Plan has now been confirmed.

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 September 1, 2004 will be due for a total delinquency of \$2,654.13 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: September 3, 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:

Mary Chapman

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-31808

STATE OF ~~OHIO~~) CALIFORNIA

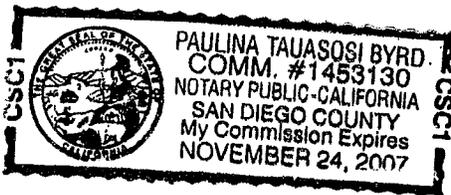
COUNTY OF ~~FRANKLIN~~) SAN DIEGO

CAUDICE HOBBS, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Candice L. Hobbs

Subscribed and sworn to before me this
20 day of Aug, 2004.

[Signature]
Notary Public



COPY DEL'D

1504040

OFFICE OF THE COUNTY RECORDER
DAKOTA COUNTY, MINNESOTA
CERTIFIED THAT THE WITHIN INSTRUMENT
WAS RECORDED IN THIS OFFICE ON AND AT

1998 JUN -1 P 3:49

DOC. NO: 1504040
JOEL I. BECKMAN, COUNTY RECORDER
BY: *[Signature]* Deputy
FEE \$5.00 SURCHARGE \$4.50
CASH CHECK ESCROW

WELL CHARGE
CHARGE TO: _____
C/R _____
DO NOT REMOVE

VALUATION *****
05/29/1998 12:18:28 376762 MORT
THOMAS V. MAPAK, DAKOTA COUNTY TREAS.
REGISTRATION TAX 231.84
JUNIOR TRANSCRIPTION FEE 5.00
RECEIPT NUMBER 351153

DAKOTA COUNTY
ABSTRACT

State of Minnesota

MORTGAGE

1504040

PHA Case No.
2717851201703

66005993
1660059934

THIS MORTGAGE ("Security Instrument") is given on May 8, 1998
The mortgagor is
MARY E CHAPMAN, SINGLE

whose address is

16821 GLENCOE AVE, LAKEVILLE, MN 55044

("Borrower").

This Security Instrument is given to

CHASE MANHATTAN MORTGAGE CORPORATION

which is organized and existing under the laws of the State of New Jersey

343 THORNALL ST
EDISON, NJ 08837

, and whose address is

("Lender").

Borrower owes Lender the principal sum of

One Hundred Thousand, Seven Hundred Sixteen and 00/100

Dollars (U.S. \$ 100,716.00

). This debt is evidenced by Borrower's Note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on

June 1, 2028

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 under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in

DAKOTA

County, Minnesota:

Lot 8, Block 7, Foxborough, according to the recorded plat thereof,
and situate in Dakota County, Minnesota.

DC98040350 DCAN 5-15

which has the address of

16821 GLENCOE AVE, LAKEVILLE, MN 55044

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and

MINNESOTA FHA MORTGAGE
C-2201 PAGE 1 OF 5 (2/97) (replaces 7/96)

RECEIVED

MAY 15 1998

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Mary Chapman

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-31808

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 March 25, 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 September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Chase Manhattan Mortgage Corporation respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: September 3, 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:

Mary Chapman

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-31808

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 September 3, 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

David D. Kingsbury
Kingsbury & Associates, LTD
14827 Energy Way
Apple Valley, MN 55124

Mary Chapman
16821 Glencoe Avenue
Lakeville, MN 55044

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Mary Chapman

ORDER

Debtor.

Chapter 13, Case No. 04-31808

The above entitled matter came on for hearing upon motion of Chase Manhattan Mortgage Corporation, (*Movant*) pursuant to 11 U.S.C. Section 362 on September 27, 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 8, Block 7, Fosborough, according the recorded plat thereof and situate in Dakota 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