

04-28988

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:  
Case Number BKY 04-32320-GFK

Christopher Ohman  
Tammy Ohman,

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. US Bank, National Association 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 April 16, 2004. 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 October 24, 2003, Christopher Ohman and Tammy Ohman made, executed and delivered to Ameripath Mortgage Corporation their Note (hereinafter referred to as the "Note"), in the original principal amount of \$228,000.00 bearing interest from the date thereof at the rate of 8.375% 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 October 24, 2003, to secure the payment of the Note, Christopher Ohman and Tammy Ohman executed and delivered to Ameripath Mortgage Corporation their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Dakota County, Minnesota, legally described as follows:

Lot 13, Block 1, Charleswood 2nd Addition

which property has an address of: 19781 Everhill Ave., Farmington, MN 55024. The mortgage was filed for record in the office of the Recorder, County of Dakota, on December 11, 2003, as Document No.2151456, 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 plan dated April 16, 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 April, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

4 payments @ \$1,732.96	\$6,931.84
4 late charges @ \$86.65	346.60
Attorneys Fees & Costs	<u>625.00</u>
TOTAL POST-PETITION	\$7,903.44

Through Debtors' failure to make current post-petition payments. No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal	\$227,858.28
Interest	12,322.88
Accumulated late fees	346.60
Property inspections	20.00
NSF fees	30.00
Attorneys Fees & Costs	<u>625.00</u>
TOTAL	\$241,202.76

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 550.01, 510.02, 550.37.

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, US Bank, National Association 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:

8-25-01

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:

4.23.04

Signed:

[Signature]

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





UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

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In Re:

Case No. 04-32320-GFK  
Chapter 13

Christopher Ohman  
Tammy Ohman,

Debtor(s)

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**MEMORANDUM OF LAW**

US Bank, National Association ("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 \$7,903.44.

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 \$241,202.76.

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

Dated: 8.25.01.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By: /e/ Nancy A. Nordmeyer  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-32320-GFK

Christopher Ohman  
Tammy Ohman,

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 US Bank, National Association, by Fidelity National Foreclosure Solutions, the authorized servicer, 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 US Bank, National Association, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 13, Block 1, Charleswood 2nd Addition, Dakota County,  
Minnesota

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

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court