

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Timothy E. Olin
SSN XXX-XX-9091
Mary B. Olin
SSN XXX-XX-9047

CASE NO. 04-32895 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 1, 2004, at 9:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 228A of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 26, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than August 20, 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 Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 12, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$115,500.00, as evidenced by that certain mortgage deed dated September 17, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated September 17, 2002, executed by Timothy E. Olin and Mary B. Olin, husband and wife, recorded on October 1, 2002, as Document No. 1707158, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 3, Block 1, Loring Addition Ramsey County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of August 9, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of June, 2004 through August, 2004, inclusive, in the amount of \$1,024.94 each; accruing late charges of \$78.80 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests

the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 9th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Registrar of Titles, Ramsey, MN
Date Filed: 10/1/2002 8:00 AM
Doc #: 1707158
On CT # (s):
JN3610,

RAMSEY COUNTY
Receipt No. 5916 Date: 9/30/2002
Registration tax hereon of \$265.65 Paid
MN Conservation Fund M.S. 473M \$5.00 Paid
Dorothy A. McClung, Auditor by Rbmose

(Space Above This Line For Recording Data)

MORTGAGE

Return To:
NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 1, 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 September 17, 2002 together with all Riders to this document.

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MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

6(MN) (0001) 01

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DATE: *10/1/02*

*MP MORTGAGE FORMS - (409)27 7297



EXHIBIT A

(B) "Borrower" is
TIMOTHY E. OLIN AND MARY B. OLIN, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is NEW CENTURY MORTGAGE CORPORATION

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA
Lender's address is 18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated September 17, 2002
The Note states that Borrower owes Lender One Hundred Fifteen Thousand, Five
Hundred and No/100 _____ Dollars
(U.S. \$ 115,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than October 1, 2032

(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.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) (specify)
Prepayment Rider
Arm Rider Addendum

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,
draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,
computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an
account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine
transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow (items)" means those items that are described in Section 2.

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Form 3024 1.01

- (L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
- (O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY

of **RAKSEY** (Type of Recording Jurisdiction)
Name of Recording Jurisdiction:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: **03-28-22-21-0010**
1490 BURNS AVENUE
SAINT PAUL
("Property Address"):

which currently has the address of
(Street)
(City), Minnesota **55106** (Zip Code)

7/16/04
TBO

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Timothy E. Olin
SSN XXX-XX-9091
Mary B. Olin
SSN XXX-XX-9047

CASE NO. 04-32895 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of August 9, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of June, 2004 through August, 2004, in the amount of \$1,024.94 each; accruing late charges of \$78.80 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrctcy. S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 9th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

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CHAPTER 13 CASE

Timothy E. Olin
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SSN XXX-XX-9047

CASE NO. 04-32895 DDO

**AFFIDAVIT OF
TARSHA RUCKER**

Debtor.

Tarsha Rucker, being first duly sworn on oath, deposes and states:

1. That she is the U.S. Facilitator of Ocwen Federal Ban FSB.

2. Deutsche Bank National Trust company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated September 17, 2002, executed by Timothy E. Olin and Mary B. Olin, husband and wife, recorded October 1, 2002, as Document No. 1707158. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot 3, Block 1, Loring Addition Ramsey County, Minnesota.

3. That she has reviewed the account records relating to the Olin mortgage loan, account no. 101455533.

4. That as of July 30, 2004, the following amounts were owing on this account:

| | |
|---------------------------------------|---------------------|
| Unpaid Principal: | \$114,382.05 |
| Interest through July 21, 2004 | 6,678.12 |
| Attorney's Fees: | 700.00 |
| Late Charges: | 236.40 |
| Pre-Petition Credit (-): | (78.80) |
| Property Inspection & Valuation Fees: | 259.00 |
| Foreclosure Fees & Costs: | 1,290.32 |
| Bankruptcy Cost: | 150.00 |
| Other Fees: | 4.97 |
| Escrow Advance: | 1,527.54 |
| TOTAL: | \$125,149.60 |

5. That the mortgage loan is delinquent for post-petition monthly mortgage payments for the months of June, 2004 through July, 2004 in the amount of \$1,024.94 each.

6. This affidavit is given in support of the motion of Deutsche Bank National Trust company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 for relief from the automatic stay.

OCWEN FEDERAL BANK, FSB

By

Tarsha Rucker
Tarsha Rucker
U.S. Facilitator

Subscribed and sworn to before me
This ___ day of July, 2004.

Heather A. Snider
Notary Public
9733_1



Heather A. Snider
My Commission DD229481
Expires July 06, 2007

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DISTRICT OF MINNESOTA**

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CASE NO. 04-32895 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on August 9, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Tarsha Rucker, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Timothy E. Olin
mary B. Olin
1490 Burns Avenue
St. Paul, MN 55106

Jasmine Z. Keller
12 S 6th St Ste 310
Minneapolis, MN 55402

Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

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

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 9th day of August, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

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DISTRICT OF MINNESOTA**

In Re:

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ORDER

The above entitled matter came on for hearing upon motion of Deutsche Bank National Trust Company, Trustee for the registered holders of Morgan Stanley Dean Witter Capital 1 Inc. Trust 2003-NC1, Mortgage Pass-Through Certificates, Series 2003-NC1 (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 1, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. 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 Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated September 17, 2002, executed by Timothy E. Olin and Mary B. Olin, husband and wife, recorded on October 1, 2002, as Document No. 1707158 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot 3, Block 1, Loring Addition Ramsey County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court