

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kimberly Mullins
James Mullins

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-33817

TO: Kimberly Mullins and James Mullins, INCLUDING TRUSTEE AND OTHER
INTERESTED PARTIES

1. Option One 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 October 20, 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 October 15, 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 October 8, 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 June 30, 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 15854 Griffon Path, Apple Valley, MN 55124, legally described as follows, to-wit:

Lot 3, Block 7, Morningview 4th Addition, according to the recorded plat thereof, Dakota County, Minnesota

7. The indebtedness of Kimberly Mullins and James Mullins is evidenced by a Promissory Note and Mortgage dated September 19, 2003, filed of record in the Dakota County Recorder's office on February 3, 2004, and recorded as Document No. 2171471. 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 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 October 1, 2004 will be due for a total delinquency of \$3,848.32 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 30, 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:

Kimberly Mullins

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-33817

STATE OF California)

COUNTY OF Orange)

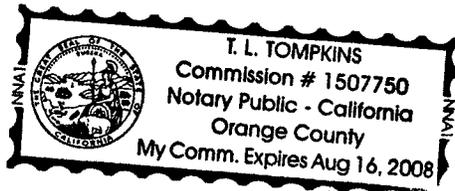
Andy Han, being first duly sworn, deposes and states on oath that she/he is employed by Option One Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his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

Andy Han

Subscribed and sworn to before me this
15 day of 09, 2004.

T. L. Tompkins

Notary Public



DOC. NO. 2171471

2171471

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

2004 FEB -3 PM 4:00

JOEL T. BECKMAK, COUNTY RECORDER
BY: [Signature] Deputy

FEE \$5.00 SURCHARGE \$0.00
CASH CHECK ESCROW

WELL CHARGE
CHARGE TO: _____
O/R _____

TITLE RECORDING SERVICES

44

ORIGINAL



DAKOTA COUNTY TREASURER-AUDITOR
11/14/2003 10:42:03 655511 254.15
REGISTRATION TAX 5.00
COUNTY CONSERVATION FEE
RECEIPT NUMBER 630745

(space Above This Line For Recording Data)

WHEN RECORDED MAIL TO: **DRAFTED BY:**
OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57096
IRVINE, CA 92619-7096
ATTN: QUALITY CONTROL
Loan Number: 521012769
Servicing Number: 001176895-9

Title Recording Services, Inc. 395386
1043 Grand Avenue #259
St. Paul, MN 55105 2666701
DAKOTA A CHIC AV BASIC
MTG



MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on September 15, 2003. The mortgagor is James P. Mullins and Kimberly S. Mullins, husband and wife

This Security Instrument is given to ("Borrower").
Option One Mortgage Corporation, a California Corporation
which is organized and existing under the laws of CALIFORNIA, and whose address is
3 Ada, Irvine, CA 92618 ("Lender").
Borrower owes Lender the principal sum of ONE HUNDRED TEN THOUSAND FIVE HUNDRED
... AND NO/100THs Dollars (U.S. \$110,500.00).
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 October 01, 2033 and for interest
at the yearly rate of 9.340% percent. 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:
014910303007

LOT 3, BLOCK 7, MORNINGVIEW 4TH ADDITION, ACCORDING TO THE RECORDED PLAT THEREOF,
DAKOTA COUNTY, MINNESOTA.

RECEIVED
OCT 14 2003

which has the address of 15854 GRIFFON PATH
Minnesota 55124-6659 [Zip Code] ("Property Address");
APPLE VALLEY [City]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security
Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to
mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower
warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
COVENANTS. Borrower and Lender covenant and agree as follows:

- 1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kimberly Mullins
James Mullins

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-33817

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 June 30, 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 October 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

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

Dated: September 30, 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:

Kimberly Mullins
James Mullins

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-33817

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 30, 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 F. Schmitz
Attorney at Law
9301 Bryant Avenue S. Suite 102
Bloomington, MN 55420

Kimberly Mullins
James Mullins
15854 Griffon Path
Apple Valley, MN 55124

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kimberly Mullins
James Mullins

ORDER

Debtor.

Chapter 13, Case No. 04-33817

The above entitled matter came on for hearing upon motion of Option One Mortgage Corporation, (*Movant*) pursuant to 11 U.S.C. Section 362 on October 20, 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 3, Block 7, Morningview 4th Addition, according to the recorded plat thereof,
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