

04-29128

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Case No. 04-33859-DDO
Chapter 7

Marvin Bentley
Nancy Bentley,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

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

1. Ameriquest Mortgage Company 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, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than September 17, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than September 13, 2004 which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or 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 7 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 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. By mortgage dated April 22, 2003, in the original principal amount of \$144,000.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 299613, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lot Thirteen (13), Block Three (3) of Woodland Hills 2nd Addition, (now part of the City of St. Cloud), according to the Plat and Survey thereof on File and of Record in the office of the County Recorder and for Benton County, Minnesota

The Mortgage was filed in the offices of the recorder, for Benton County, Minnesota on May 19, 2003, as Document No. 299613. A copy of the Mortgage is attached hereto as Exhibit A.

7. The last payment received from Debtors was applied to the May, 2004 payment as that was the next payment due. Debtor(s) are delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

3 payments @ \$1,224.07	\$3,672.21
Accrued late charges	\$540.90
Attorneys Fees & Cost	\$700.00
TOTAL	<u>\$4,913.11</u>

The outstanding principal balance due to Movant under the terms of the note is \$142,855.41 as of August 9, 2004, and interest accrues at the rate of 8.25% per diem per day. The amount therefore due and owing on said note is as follows:

Principal	\$142,855.41
Accrued Late charges	\$540.90
Interest	\$2,124.80
Attorneys Fees & Costs	\$700.00
TOTAL	<u>\$146,221.11</u>

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **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, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: ~~8/16/04~~ 8/20/04
NN

Signed: NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zieike-152559
Attorney for movant
7320 Metro Boulevard #390
Edina, MN 55439-2306
Tel: 821-4760

VE ANN SOMSMA

I, Ann Somsma, the Bankruptcy Counselor of Ameriquest Mortgage Company, the movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8/16/04

Signed: Ann Somsma

Ameriquest Mortgage Company
505 City Plwy West #100
Orange, CA 92868

ADJUSTABLE RATE NOTE (LIBOR Index - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

April 22, 2003
Date

Orange
City

CA
State

322 16th Avenue Southeast, SAINT CLOUD, MN 56304
Property Address

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 144,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Ameriquest Mortgage Company.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.250 %. This interest rate I will pay may change in accordance with Section 4 of this Note. The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on **June 1, 2003**.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on, **May 1, 2033**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my payments at: **505 City Parkway West, Suite 100, Orange, CA 92868**

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 1,081.83 This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of, **May, 2005** and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the date 45 days before the Change Date is called the "Current Index."

If at any point in time the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding five percentage point(s) (5.000%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percent (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

MCB
Initials:

07-26-04 12:31pm From-AMERIQUEST MORTGAGE +714 245 0487 T-850 P.002/006 F-547
JUL-26-2004 14:28 NL TITLE 4053 82 400019 P.02/05

MARILYN J. NOVAK
COUNTY RECORDER
BY K.H.C. DEPUTY

OFFICE OF
BENTON COUNTY RECORDER
BENTON COUNTY, MN
CERTIFIED TO BE FILED
AND/OR RECORDED IN

299613

2003 MAY 19 12 44

Registration tax based on \$ 331²⁶ paid
And/Stream Receipt No. 49992

Joan Jensen
for [unclear]

Space Above This Line For Recording Data

MORTGAGE

Return To:

Ameriquest Mortgage Company
P.O. Box 11507,
Santo Ana, CA 92711

405585

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 9, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 15.

(A) "Security Instrument" means this document, which is dated April 7 22, 2003 together with all Riders to this document.

0046623914 - 7339

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 9024 1/01

2003-08/01/0001

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MEB
MLB

MINN MORTGAGE FORMS - (MAY 2003)

04/22/2003 4:39:21

Northwest Title
Underway Rights

2400 CR# 1932

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-33859-DDO
Chapter 7

Marvin Bentley
Nancy Bentley,

Debtor(s)

MEMORANDUM OF LAW

Ameriquist Mortgage Company ("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 \$4,913.11.

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 2 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 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. 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 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$146,221.11.

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

Dated: _____

8.20.21

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

Signed: /e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) **SS**
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on August 20, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

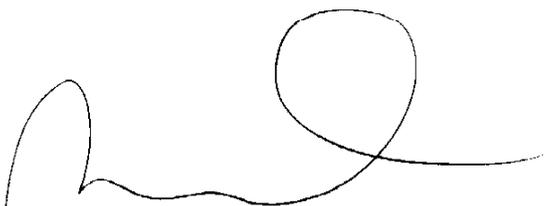
Marvin Bentley
322 16 Ave SE
St. Cloud, MN 56304

Nancy Bentley
322 16 Ave SE
St. Cloud, MN 56304

Stephen Heller, Esq.
606 25th Ave South STE 110
St. Cloud, MN 56301

Terri Georgen, Trustee
PO Box 16355
St. Paul, MN 55116

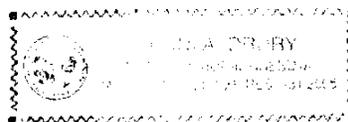
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me August 20, 2004.

Notary



04-29128
0046623914

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-33859-DDO

Marvin Bentley
Nancy Bentley

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 Ameriquest Mortgage Company, 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 Ameriquest Mortgage Company, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot Thirteen (13), Block Three (3) of Woodland Hills 2nd Addition, (now part of the City of St. Cloud), according tot he Plat and Survey thereof on File and of Record in the office of the County Recorder and for Benton County, Minnesota

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court