

04-29166

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:
Case Number BKY 04-33894-GFK

Bunpich Chhum
Khna Chann,

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. Deutsche Bank Trust Company Americas as Trustee and Custodian moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 10:30 a.m., on October 19, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered not later than October 14, 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 7, 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 July 2, 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 September 9, 2003, Khna Chann and Bunpich Chhum, husband and wife made, executed and delivered to America's MoneyLine Inc. their Note (hereinafter referred to as the "Note"), in the original principal amount of \$134,100.00 bearing interest from the date thereof at the rate of 6.5% per annum until paid, payable in monthly installments on the first day of each and every calendar month thereafter until the principal and interest were fully paid..

7. On September 9, 2003, to secure the payment of the Note, Khna Chann and Bunpich Chhum, husband and wife, executed and delivered to America's MoneyLine Inc. their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Dakota County, Minnesota, legally described as follows:

Unit No. 1706, Condominium No. 115, Southcross Village Second Addition, Dakota County, Minnesota

which property has an address of: 1905 Southcross Dr., Apt 1706, Burnsville, MN 55306. The mortgage was filed for record in the office of the Recorder, County of Dakota, on May 5, 2004, as Document No. 2201362, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated July 2, 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 July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

3 payments @ \$921.11	\$2,763.33
2 late charges @ \$42.38	\$84.76
Property Inspections	\$23.85
Attorneys Fees & Costs	\$800.00
TOTAL POST - PETITION	<hr/> \$3,671.94

No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal Balance	\$133,359.75
Interest	\$3,748.80
Property inspections	\$23.85
Attorneys Fees & Costs	\$995.00
TOTAL	\$138,127.40

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

12. Debtors have represented the value of this property to be \$155,000.00 on the schedules which accompanied their petition. They therefore, have no equity in this property by their own admission.

13. 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.

14. **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, Deutsche Bank Trust Company Americas As Trustee And Custodian 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:

9-27-01

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:

9-24-01

Signed:

[Signature]

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

2201362

Prepared by Cynthia Adkins
America Moneyline
4680 Cox Rd
Glen Allen VA 23060

DAKOTA COUNTY TREASURER-AUDITOR
02/17/2004 12:49:55 661222
REGISTRATION TAX
COUNTY CONSERVATION FEE
RECEIPT NUMBER 647154
308.43
5.00

[Space Above This Line For Recording Data]

M.I.S. FILE NO. 871179 2299
NSMORTGAGE

Return to:

Saxon Mortgage Services, Inc
4708 Mercantile Drive
Ft. Worth, Texas 76137

RECEIVED

FEB 04 2004

DAKOTA COUNTY
TREASURER-AUDITOR

Return to: 871179
MORTGAGE INFORMATION SERVICES, INC.
2126 NORTH 117th AVE
OMAHA, NEBRASKA 68164

RECEIVED

JAN 02 2004

DAKOTA COUNTY
TREASURER-AUDITOR

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 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 9, 2003** together with all Riders to this document.

ASSIGNMENT of MORTGAGE

PREPARED BY: SMI

RECORDING REQUESTED BY

AFTER RECORDING RETURN TO:

Stewart Mortgage Information

Attn. Sherry Doza

P.O. Box 540817

Houston, Texas 77254-0817

Tel. (800) 795-5263

This instrument was drafted by:
Stewart Mortgage Information Co
Sherry Doza
3910 Kirby Drive, Suite 300
Houston, Texas 77098

Pool: 0 223

Loan Number: 11643941

168_9999

STATE OF MINNESOTA

COUNTY OF DAKOTA

KNOW ALL MEN BY THESE PRESENTS:

That AMERICA'S MONEYLINE ('Assignor'), acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note executed by KHNA CHANN AND BUNPICH CHHUM ('Borrower(s)') secured by a Mortgage therewith executed by Borrower(s) for the benefit of the holder of the said note, which Mortgage was recorded on the lot(s), or parcel(s) of land described therein situated and recorded in the County of Dakota, State of Minnesota:

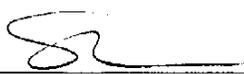
Recording Ref: Instrument/Document No. _____ Book _____, Page No. _____

For and in consideration of the sum of Ten and No/100 dollars (\$10.00), and other good valuable and sufficient consideration paid, the receipt of which is hereby acknowledged, does hereby transfer and assign, set over and deliver unto Deutsche Bank Trust Company Americas formerly known as Banker's Trust Company, as Trustee and Custodian by: Saxon Mortgage Services, Inc. f/k/a Meritech Mortgage Services, Inc. as its attorney-in-fact (Assignee), all beneficial interest in and to title to said Mortgage, together with the note and all other liens against said property securing the payment thereof, and all title held by the undersigned in and to said land.

TO HAVE AND TO HOLD unto said Assignee said above described Mortgage and note, together with all and singular the liens, rights, equities, title and estate in said real estate there n described securing the payment thereof, or otherwise:

Executed this the
20th day of
September A.D. 2004.

AMERICA'S MONEYLINE

By: 

SHERRY DOZA
ASSISTANT VICE PRESIDENT

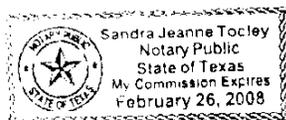
THE STATE OF TEXAS

COUNTY OF HARRIS

On this the 20th day of September A.D. 2004, before me, a Notary Public, appeared SHERRY DOZA to me personally known, who being by me duly sworn, did say that (s)he is the ASSISTANT VICE PRESIDENT of AMERICA'S MONEYLINE, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said SHERRY DOZA acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Assignor's Address:
1761 E. St. Andrew Place
Santa Ana, CA 92705



Assignor's Address:
4708 MERCANTILE DRIVE NORTH
FT WORTH, TX 76137-3605



UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-33894-GFK
Chapter 13

Bunpich Chhum
Khna Chann

Debtor(s)

MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas as Trustee and Custodian ("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 \$3,671.94.

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 \$138,127.40. [The property is encumbered by a second mortgage in favor of

Household Finance in the approximate amount of \$23,043.00.] The fair market value of the property is approximately \$155,000.00. Clearly, the Debtor(s) have no equity in the property.

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

Dated: _____

9-27-01

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 September 28, 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.

Khna Chann
1905 Southcross Drive West Apt. 1706
Burnsville, MN 55306

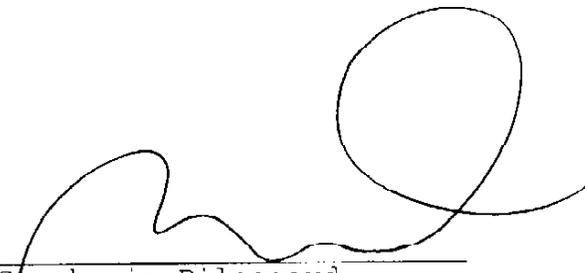
Bunpich Chhum
1905 Southcross Drive West Apt. 1706
Burnsville, MN 55306

Curtis Walker, Esq.
4356 Nicollet Avenue South
Minneapolis, MN 55409

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

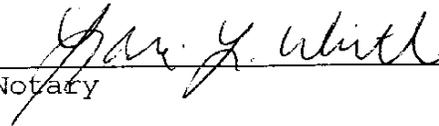
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

Household Finance
1737 C. Beam Ave
Maplewood, MN 55109

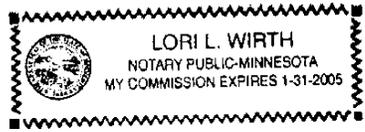


Stephanie Pilegaard

Subscribed and sworn to before me September 28, 2004.



Notary



04-29166
11643941

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-33894-GFK

Bunpich Chhum
Khna Chann
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 19, 2004.

THIS CAUSE coming to be heard on the Motion of Deutsche Bank Trust Company Americas as Trustee and Custodian, by Fidelity National Foreclosure Solutions, the authorized servicer for movant, 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 Deutsche Bank Trust Company Americas as Trustee and Custodian, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Unit No. 1706, Condominium No. 115, Southcross Village Second 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