

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Christian

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-34079

TO: William Christian, 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 10:30 am on October 19, 2004, in Courtroom 228B, 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 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, 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 July 13, 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 1072 Kingsford Street, Saint Paul, MN 55106, legally described as follows, to-wit:

Lot 19, Block 4, Kingsford Place, Ramsey County, Minnesota

7. The indebtedness of William Christian is evidenced by a Promissory Note and Mortgage dated November 18, 2002, filed for registration in the Ramsey Registrar of Titles' office on December 11, 2002, and memorialized as Document No. 1719044 on Certificate of Title No. 531233. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. The Debtor was current on his mortgage obligation to Movant at the time of the bankruptcy filing. Movant has not filed a Proof of Claim nor receiving payments from the Trustee.

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 \$4,019.44 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:

William Christian

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-34079

STATE OF California)

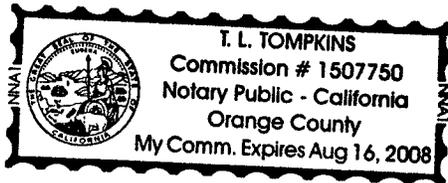
COUNTY OF Orange)

Judy Hamey, 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.

Judy Hamey

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

T. L. Tompkins
Notary Public



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ORIGINAL

Registrar of Titles, Ramsey, MN
Date Filed: 12/11/2002 11:00 AM
As Doc #: 1719044
On CT # ('s):
531233,

[Space Above This Line For Recording Data]

WHEN RECORDED MAIL TO:
OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57096
IRVINE, CA 92619-7096
ATTN: QUALITY CONTROL
Loan Number: 121024796
Servicing Number: 101588-5

Elite Closing
5901 Brooklyn Blvd #203
Brooklyn Center mn
55429
#5436

MORTGAGE

PURCHASE MONEY MORTGAGE
THIS MORTGAGE ("Security Instrument") is given on November 18, 2002 . The mortgagor is
WILLIAM R. CHRISTIAN , A Single Person

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 FORTY TWO THOUSAND FOUR HUNDRED FIVE
... AND NO/100THs Dollars (U.S. \$142,405.00).
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 December 01, 2032 and for interest
at the yearly rate of 7.100% 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
Ramsey County, Minnesota:

27.29.22.14.0034 7676 004 04 12/11/02 10:52
HTG TAX 327.54
LOT 19, BLOCK 4, KINGSFORD PLACE, RAMSEY COUNTY, MINNESOTA. 7676 004 04 12/11/02 10:52
C.STAMPS 5.00

which has the address of 1072 KINGSFORD STREET ST PAUL
[Street] [City]
Minnesota 55106- ("Property Address");
[Zip Code]

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

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Christian

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-34079

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 July 13, 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:

William Christian

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-34079

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

Craig Cook
Midwest Legal Counsel
1821 University Avenue, Suite S217
St. Paul, MN 55104

William Christian
1072 Kingsford Street
Saint Paul, MN 55106

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

William Christian

ORDER

Debtor.

Chapter 13, Case No. 04-34079

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 19, 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 19, Block 4, Kingsford Place, Ramsey 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