

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kent Wilson
Jill Ann Wilson

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor(s)

Chapter 7, Case No. 04-34747

TO: Kent Wilson and Jill Ann Wilson, INCLUDING TRUSTEE AND OTHER
INTERESTED PARTIES

1. Option One Mortgage Corporation, (“Movant”), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 am on October 6, 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 1, 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 September 27, 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, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on August 13, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtors above-named is the owner of certain real property located at 506 Beverly Lane, Henderson, MN 56044, legally described as follows, to-wit:

Lot 4, Block 1, of West View Addition to the City of Henderson

7. The indebtedness of Debtors is evidenced by a Promissory Note and Mortgage dated February 28, 2001, filed for registration in the Sibley Registrar of Titles' office on March 5, 2001, and memorialized as Document No. T-15197 on Certificate of Title No. 0005544. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. The Debtors have failed to pay monthly mortgage payments since March 1, 2004, and is in default in the amount of \$10,822.27 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is approximately \$131,500.00.

10. The Debtors have executed a second mortgage in favor of Terrance Eid, which mortgage was filed of record on June 8, 2001, as Document No. 15380 in the original amount of \$36,115.00. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Debtors have estimated the value of the homestead as \$155,000.00, and accordingly, Debtors have no equity in the premises and the property is not necessary to an effective reorganization.

12. Upon information and belief, Debtors intend to permit the foreclosure sale of the real property and has no intention of reaffirmation of the debt.

13. The undersigned attorneys have commenced foreclosure proceedings, which proceeding was terminated as a result of the filing of the bankruptcy petition on August 13, 2004.

14. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action 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 13, 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:

Kent Wilson

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-34747

STATE OF California)

COUNTY OF Orange)

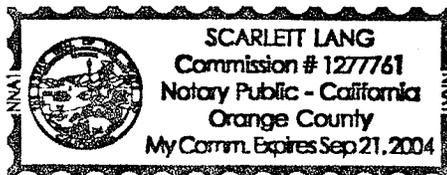
Andy Hansen, being first duly sworn, deposes and states on oath that she/he is employed by Option One Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of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

Andy Hansen

Subscribed and sworn to before me this
01 day of 08, 2004.

Scarlett Lang

Notary Public



No. 30493
 Registration Tax Heron of \$ 285.44
 Paid this 5 day March of 20 01
 Mary Fisher, Sibley County Treasurer
 By Angela Paul Nelson Deputy



OFFICE OF REGISTRAR OF TITLES
 Sibley County, Minnesota

Document Number T-15197
 I hereby certify that this document was filed in this Office for record on the 5th day of March 2001 at 10:00:00 AM and entered as Memorial on Cert. No. 0005644 in Volume 20 Page 62 of Registrar of Titles. Well Cert. Yes Page 9
 New Cert. No. _____ Volume _____ Page _____
 ELDRENE EBERT - Registrar of Titles, by _____ Deputy.
 Fees: ASSURANCE FUND 5.75
 SURCHARGE 4.50
 EQUIPMENT FUND 1.00
 GENERAL TORRENS 13.25
 Total \$19.50

Received from/return to:
 TITLE MARK - CHASKA
 112 WEST SECOND STR
 PO 67
 CHASKA, MN 55318-0067

[Space Above This Line For Recording Data]

T-15197

WHEN RECORDED MAIL TO:
 OPTION ONE MORTGAGE CORPORATION
 P.O. BOX 57076
 IRVINE, CA 92619-7076
 ATTN: QUALITY CONTROL
 Loan Number: 121016740
 Servicing Number: 417197-1

MORTGAGE

PURCHASE MONEY MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on February 28, 2001 . The mortgagor is KENT WILSON, a single person

("Borrower").

This Security Instrument is given to

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 TWENTY TWO THOUSAND EIGHT HUNDRED ... AND NO/100THS Dollars (U.S. \$122,800.00).

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 March 01, 2031 and for interest at the yearly rate of 9.950% 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 Sibley County, Minnesota:

35-04-24-000

LOT 4, BLOCK 1 OF WEST VIEW ADDITION TO THE CITY OF HENDERSON, ACCORDING TO THE PLAT THEREOF ON FILE OR OF RECORD IN THE OFFICE OF THE REGISTRAR OF TITLES, SIBLEY COUNTY, MINNESOTA.

which has the address of 506 BEVERLY LANE HENDERSON
 (Street) (City)
 Minnesota 56044 ("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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kent Wilson
Jill Ann Wilson

MEMORANDUM OF LAW

Debtor(s)

Chapter 7, Case No. 04-34747

Option One Mortgage Corporation ("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, perfected mortgage on real property owned by the Debtors. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$10,822.27.

ARGUMENT

1. Under Section 362.(d)(2) 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." The Debtors in this case has failed to make payments required by the note and mortgage for a period of more than * months. Debtors have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §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 §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the

balance due Movant is approximately \$131,500.00 and including the amount due the second mortgage holder, the approximate total amount encumbering the property is \$167,615.00. The value of the property is approximately \$155,000.00. Clearly, the Debtors have no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

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

Dated: September 13, 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:

Kent Wilson
Jill Ann Wilson

Debtor(s)

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34747

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 13, 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

Paul Bucher
Chapter 7 Trustee
PO Box 549
Rochester, MN 559030549

Mark C. Halverson
Halverson & Associates
PO Box 3544
Mankato, MN 56002

Kent Wilson
Jill Ann Wilson
506 Beverly Lane
Henderson, MN 56044

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Kent Wilson
Jill Ann Wilson

ORDER

Debtor(s)(s).

Chapter 7, Case No. 04-34747

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 6, 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 and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot 4, Block 1, of West View Addition to the City of Henderson

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