

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Brian Meurer

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-34882

TO: Brian Meurer, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Mortgage Electronic Registration Systems, Inc., (“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 10:30 am on September 27, 2004, in Courtroom 228B, 200 Federal Building, 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 September 22, 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 16, 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 19, 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. Debtor above-named is the owner of certain real property located at 1342 1st Street Southeast, Rochester, MN 55904, legally described as follows, to-wit:

Lot 16, Block 2, Harvey Sanderson Addition to the City of Rochester, Olmsted County, Minnesota.

7. The indebtedness of Brian Meurer is evidenced by a Promissory Note and Mortgage dated January 30, 2003, filed of record in the Olmsted County Recorder's office on February 13, 2003, and recorded as Document No. A-955102. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. The Debtor has failed to pay monthly mortgage payments since April 1, 2004, and is in default in the amount of \$6,157.26 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 \$131,000.00.

11. The Debtor has estimated the value of the homestead as \$112,500.00, and accordingly, Debtor has no equity in the premises and the property is not necessary to an effective reorganization.

12. The undersigned attorneys have commenced foreclosure proceedings, which proceeding was terminated as a result of the filing of the bankruptcy petition on August 19, 2004.

13. 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:

Brian Meurer

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 04-34882

STATE OF NEW JERSEY)

COUNTY OF BURLINGTON)

LARRY JACOBS, being first duly sworn, deposes and states on oath that she/he is employed by Cendant Mortgage Corp. as servicer for Mortgage Electronic Registration Systems, Inc., 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.



Subscribed and sworn to before me this
5th day of AUGUST, 2004.

Stacy L. Miller
Notary Public

STACY L. MILLER
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD179015
EXPIRES 01/21/2007
BONDED THRU 1-888-NOTARY1



OFFICE OF COUNTY RECORDER
Christened County, Minnesota

I hereby certify that this document was filed in this office
on 2/13/2003 at 2:00:00 PM and was duly
recorded as document number A-955102
DANIEL J. HALL - County Recorder, by _____ Deputy.

Well Certificate: Received Not Required
Abstr. - Yes No
Fees:

Received from/return to:
BURNET TITLE
140 ELTON HILLS LANE NW
ROCHESTER, MN 55901

Same as 955101

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

PHA Case No.

271-8864428-703

Record and Return to:
Burnet Home Loans
2001 Bishop's Gate Blvd. Mount Laurel, NJ 08054

MIN 100020000209411838

THIS MORTGAGE ("Security Instrument") is given on January 30th, 2003
The Mortgagor is Brian D Meurer, AN UNMARRIED MAN

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"),
(solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is
organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026,
Ft. Worth, TX 76101-2026, tel. (817) 679-MERS. Lender is Burnet Home Loans Corporation d/b/a Burnet Home
Loans

("Lender") is organized and existing under the laws of New Jersey, and
has an address of 3000 Laidenhall Road Mount Laurel, NJ 08054

Borrower owes Lender the principal sum of
One Hundred Twenty-Six Thousand Nine Hundred Seventy-Six Dollars and Zero Cents
Dollars (U.S. \$126,976.00).

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 February 1st, 2033
and for interest at the yearly rate of 6.000 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

MINN. MORTGAGE WITH MERS - 4/96
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Revised: BSM

VMP MORTGAGE FORMS • (800)821-7281

3-21976/327685

111PAID 2-12-03H064

6292.04 \$ M.M.

Burnet Title
2-12-03
2-2
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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 MERS, (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in OLMPSTED

County, Minnesota:

LOT 16, BLOCK 2, HARVEY SANDERSON ADDITION TO THE CITY OF ROCHESTER, OLMPSTED
COUNTY, MINNESOTA .

which has the address of 1342 1ST STREET SOUTHEAST [Street]
ROCHESTER [City], Minnesota 55904 [Zip Code] ("Property Address");

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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized 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.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.
2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures

initials: 

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Brian Meurer

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-34882

Mortgage Electronic Registration Systems, Inc. ("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 Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$6,157.26.

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 Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 6 months. Debtor has 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 \$131,000.00. The value of the property is approximately

\$112,500.00. Clearly, the Debtor has 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:

Brian Meurer

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-34882

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

Charles Ries
Chapter 7 Trustee
P.O. Box 7
Mankato, MN 56002-0007

Jeff Bagniefski
Attorney at Law
PO box 6
Rochester, MN 55903

Brian Meurer
1342 1st Street Southeast
Rochester, MN 55904

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Brian Meurer

ORDER

Debtor.

Chapter 7, Case No. 04-34882

The above entitled matter came on for hearing upon motion of Mortgage Electronic Registration Systems, Inc., ("Movant"), pursuant to 11 U.S.C. Section 362 on September 27, 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 16, Block 2, Harvey Sanderson Addition to the City of Rochester, Olmsted 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