

04-29394

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-35319-GFK
Chapter 7

Brad Dunn
January Dunn,

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. Mortgage Electronic Registration Systems, Inc. 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.
3. Any response to this motion must be filed and delivered no later than October 14, 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 October 7, 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 September 10, 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 October 31, 2003, in the original principal amount of \$152,500.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. A495875, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

That part of Lot I of the Auditor's Subdivision of the Southeast Quarter of the Southwest Quarter of Section 3, Township 109 North, Range 18 West, Goodhue County, Minnesota, described as follows: Commencing at the Northwest corner of the Southeast Quarter of the Southwest Quarter of said Section 3; thence on an assumed bearing of South 00 degrees 12 minutes 57 seconds East, along the West line of the Southeast Quarter of the Southwest Quarter of said Section 3 a distance of 188.00 feet to the point of beginning of the land to be described; thence South 86 degrees 46 minutes 46 seconds East, a distance of 280.04 feet to the westerly line of the right of way formerly owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence South 32 degrees 30 minutes 06 seconds West along said Westerly line, a distance of 176.46 feet to the most Easterly corner of the Larry Johnson property as described in Goodhue County Document Number 239967 as determined by existing survey monuments; thence South 89 degrees 47 minutes 03 seconds West, along the Northerly line of said Johnson property, a distance of 183.80 feet to the west line of the Southeast Quarter of the Southwest Quarter of said Section 3; thence North 00 degrees 12 minutes 57 seconds West, along said West line, a distance of 165.03 feet to the point of beginning.

The Mortgage was filed in the offices of the Recorder, for Goodhue County, Minnesota on November 6, 2003, as Document No. A495875. 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:

4 payments @ \$1,334.80	\$5,339.20
4 late charges @ \$59.31	\$237.24
Accrued late charges	\$59.31
Suspense Balance	-\$365.20
Attorneys Fees & Cost	\$1,235.00
TOTAL	\$6,505.55

The outstanding principal balance due to Movant under the terms of the note is \$151,949.98 as of September 13, 2004, and interest accrues at the rate of 8.63% per diem per day. The amount therefore due and owing on said note is as follows:

Principal Balance	\$151,949.98
Late charges	\$296.55
Interest	\$4,986.80
Suspense Balance	-\$365.20
Attorneys Fees & Costs	\$1,235.00
TOTAL	\$158,103.13

The fair market value of the Property as averred by the debtor is approximately \$152,000.00.

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: _____

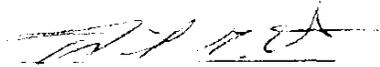
9-17-04

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 Ainters, 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: 9-15-04 Signed: 

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

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DOC: A 495875

Recorded
NOV. 06, 2003 AT 08:00AM

Signed: *[Signature]*
JEAN H. DANVERS DEPUTY
GOODHUE COUNTY RECORDER

Fee Amount: \$28.00


MORTGAGE REGISTRY 350.75
78 11/03
Goodhue County A/T OR Deputy - Date

(Space Above This Line For Recording Data)

SERV #: **MORTGAGE**
After Recording Return To:
CENTENNIAL MORTGAGE & FUNDING, INC.
1210 NORTHLAND DRIVE #180
MENDOTA HEIGHTS, MN 55120

DUNN
LOAN #: 8445729
CASE #:
PIN #: 66-120-0050
MIN: 100232301120000799

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 OCTOBER 31, 2003 together with all Riders to this document.
- (B) "Borrower" is BRAD L. DUNN AND JANUARY DUNN, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is CENTENNIAL MORTGAGE & FUNDING, INC.

Lender is a CORPORATION organized and existing under the laws of MINNESOTA. Lender's address is 1210 NORTHLAND DRIVE #180 MENDOTA HEIGHTS, MN 55120

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 31, 2003

The Note states that Borrower owes Lender ONE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED AND 00/100 Dollars (U.S. \$ 152,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than NOVEMBER 1, 2033

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-35319-GFK
Chapter 7

Brad Dunn
January Dunn

Debtor(s)

MEMORANDUM OF LAW

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, 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 \$6,505.55.

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 3 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 \$158,103.13. The fair market value of the property is approximately \$152,000.00. 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: 9-17-04.

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

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-35319-GFK

Brad Dunn
January Dunn,

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 Mortgage Electronic Registration Systems, Inc., 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 Mortgage Electronic Registration Systems, Inc., its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

That part of Lot I of the Auditor's Subdivision of the Southeast Quarter of the Southwest Quarter of Section 3, Township 109 North, Range 18 West, Goodhue County, Minnesota, described as follows: Commencing at the Northwest corner of the Southeast Quarter of the Southwest Quarter of said Section 3; thence on an assumed bearing of South 00 degrees 12 minutes 57 seconds East, along the West line of the Southeast Quarter of the Southwest Quarter of said Section 3 a distance of 188.00 feet to the point of beginning of the land to be described; thence South 86 degrees 46 minutes 46 seconds East, a distance of 280.04 feet to the westerly line of the right of way formerly owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad; thence South 32 degrees 30 minutes 06 seconds West along said Westerly line, a distance of 176.46 feet to the most Easterly corner of the Larry Johnson property as described in Goodhue County Document Number 239967 as determined by existing survey monuments;

thence South 89 degrees 47 minutes 03 seconds West, along the Northerly line of said Johnson property, a distance of 183.80 feet to the west line of the Southeast Quarter of the Southwest Quarter of said Section 3; thence North 00 degrees 12 minutes 57 seconds West, along said West line, a distance of 165.03 feet to the point of beginning.

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

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court