

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Julie Ann Montgomery  
SSN XXX-XX-2053

**CASE NO. 04-35387 DDO**

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. JPMorgan Chase Bank, as Trustee for the certificateholders of Bear Stearns Asset Backed Securities, Inc., Asset-Backed Certificates, Series 2003-1 c/o EMC Mortgage Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on December 9, 2004, before the Honorable Dennis D. O'Brien in Courtroom 228A at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on December 8, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than December 6, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed September 15, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$50,000.00, as evidenced by that certain Promissory Note dated September 18, 2002, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated September 18, 2002, executed by Julie Anne Montgomery, unmarried, recorded October 10, 2002, as Document No. 3269332, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in her pre-petition monthly mortgage payments to Secured Creditor for the months of February, 2004 through September, 2004, in the total amount of \$11,671.75, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrcty.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 41 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The plan, as proposed, is not made in good faith by Debtor.

. . .  
. . .

11. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 12th day of October, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

276.02

3269332



Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2002/10/10 2:00:00 PM

3269332



Cheryl Franzen  
County Registrar

*Cheryl Franzen*

WASHINGTON COUNTY

Receipt No: 109891 Date: 10/10/2002  
Registration tax hereon of \$115.00 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Molly F. O'Rourke, Auditor by BKHaan

1000086400

(Space Above This Line For Recording Data)

26-

MORTGAGE

209182

Return To:  
BARBARA LICON  
FREMONT INVESTMENT & LOAN  
P.O. BOX 14242  
ORANGE, CA 92663

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 18, 2002 together with all Riders to this document.

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 5084 1/01

5084 - 6(MN) (0008).01

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*Jm*



VMP MORTGAGE FORMS • (800) 271-7201

EXHIBIT A

(B) "Borrower" is JULIE ANNE MONTBONERY, unmarried

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is FREMONT INVESTMENT & LOAN

Lender is a CORPORATION  
organized and existing under the laws of CALIFORNIA  
Lender's address is  
175 N. RIVERVIEW DRIVE, ANAHEIM CA 92808

Lender is the mortgagee under this Security Instrument.  
(D) "Note" means the promissory note signed by Borrower and dated September 18, 2002

The Note states that Borrower owes Lender Fifty Thousand and No/100 -----  
----- Dollars  
(U.S. \$ 50,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic  
Payments and to pay the debt in full not later than October 1, 2032

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the  
Property."

(F) "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.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
Riders are to be executed by Borrower (check box as applicable):

- Adjustable Rate Rider
- Balloon Rider
- VA Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- 1-4 Family Rider
- Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
charges that are imposed on Borrower or the Property by a condominium association, homeowners  
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,  
draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,  
computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an  
account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine  
transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

Initials 

- (L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section J of this Security Instrument.
- (O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 and Lender's successors and assigns, with power of sale, the following described property located in the County [Type of Recording Jurisdiction]  
of WASHINGTON [Name of Recording Jurisdiction]  
**LEGAL DESCRIPTION ATTACHED HERETO AND MADE PART HEREOF.**

Parcel ID Number: 2103020430014  
1120 1ST ST N  
STILLWATER  
("Property Address"):

which currently has the address of  
[Street]  
[City], Minnesota 55082 [Zip Code]

Initials 

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witness:

\_\_\_\_\_

*Julie Anne Montgomery* (Seal)  
JULIE ANNE MONTGOMERY - Borrower

\_\_\_\_\_

\_\_\_\_\_ (Seal)  
- Borrower

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Julie Ann Montgomery  
SSN XXX-XX-2053

**CHAPTER 13 CASE**

**CASE NO. 04-35387 DDO**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 12, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Julie A. Montgomery  
1120 N First St  
Stillwater, MN 55082

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

Craig W. Andresen  
2001 Killebrew Dr Ste 330  
Bloomington, MN 55425

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

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 12th day of October, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Julie Ann Montgomery  
SSN XXX-XX-2053

Debtor.

**CASE NO. 04-35387 DDO**

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This Chapter 13 Case came on before the Court on December 9, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 15, 2004, is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court