

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: JULIA A. SULLIVAN,  
JOHN E. SULLIVAN,

BKY. No.: 04-50801  
Chapter 7

Debtors.

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: JULIA A. SULLIVAN, JOHN E. SULLIVAN AND THEIR  
ATTORNEY, JAMES P. FOSSUM, JAMES P. FOSSUM, PA, P.O. BOX  
552, BRAINERD, MN 56401.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on October 6, 2004 at 1:30 P.M. in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.
3. Any response to this motion must be filed and delivered not later than 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.**

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on July 13, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362(d)(1)(a), the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That the payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$626.07 per month, plus accrued late charges and inspection fees.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$90,000.00. According to the Crow Wing County Tax Department the fair market value of the property is estimated at \$92,300.00.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to

Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to pursue its rights under its mortgage and applicable state law, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 8, 2004

By:           /e/Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D1844)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

**VERIFICATION**

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 8, 2004.

WELLS FARGO BANK, N.A.

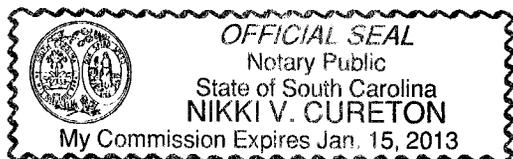
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

8<sup>th</sup> day of September, 2004.

[Signature]  
Notary Public



2100

DATE Dec. 26, 2003 REC# 77622  
REGISTRATION TAX HEREON OF \$ 205.62  
BY [Signature]  
CROW WING COUNTY TREASURER  
BY [Signature]  
CROW WING COUNTY AUDITOR

Office of County Recorder  
County of Crow Wing, MN  
I hereby certify that the within instrument was filed  
in this office for record on the 26 day of Dec  
A.D. 2003 at 8 o'clock A.M.  
and was duly recorded as Doc. No 0655089  
BY [Signature] County Recorder  
Deputy

091200060012009

[Space Above This Line For Recording Data]

### MORTGAGE

Recording requested by: LSI

Title Recording Services, Inc.  
1043 Grand Avenue #259  
St. Paul, MN 55105  
CROW WING U FIDELITY NATL WALK  
MTG  
RETURN TO 04033 631553

#### 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 JULY 31, 2003 together with all Riders to this document.

(B) "Borrower" is JOHN E SULLIVAN AND JULIA A SULLIVAN, HUSBAND AND WIFE, AS JOINT TRENANTS

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is WELLS FARGO HOME MORTGAGE, INC.

Lender is a CORPORATION organized and existing under the laws of THE STATE OF CALIFORNIA  
Lender's address is P.O. BOX 10304, DES MOINES, IA 503060304

Lender is the mortgagee under this Security Instrument.  
(D) "Note" means the promissory note signed by Borrower and dated JULY 31, 2003  
The Note states that Borrower owes Lender EIGHTY NINE THOUSAND FOUR HUNDRED AND 00/100 Dollars

(U.S. \$\*\*\*\*\*89,400.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than AUGUST 01, 2033

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

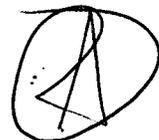
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(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



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.

Witnesses:

\_\_\_\_\_  
*John E. Sullivan* (Seal)  
JOHN E SULLIVAN -Borrower

\_\_\_\_\_  
*Julia A. Sullivan* (Seal)  
JULIA A SULLIVAN -Borrower

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

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

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

### Legal Description

#### Exhibit "A"

Loan Number :

Borrower : John E. Sullivan

REAL PROPERTY IN CROW WING COUNTY, MINNESOTA, DESCRIBED AS FOLLOWS:

*✓* LOTS ONE (1) AND TWO (2), BLOCK SIX (6), DAVIS ADDITION TO THE CITY OF BRAINERD.

APN: 0912000600Z009

↑  
1

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: JULIA A. SULLIVAN,  
JOHN E. SULLIVAN,

BKY. No.: 04-50801  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That the payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$626.07 per month, plus accrued late charges and inspection fees.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$90,000.00. According to the Crow Wing County Tax Department the fair market value of the property is estimated at \$92,300.00.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

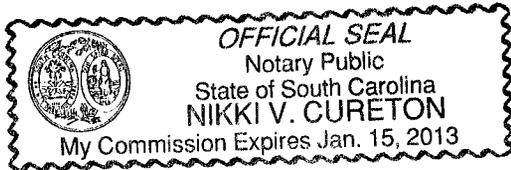
Dated: September 8, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

8<sup>th</sup> day of September, 2004.

Nikki V. Cureton  
Notary



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: JULIA A. SULLIVAN,  
JOHN E. SULLIVAN,

BKY. No.: 04-50801  
Chapter 7

Debtors.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

-----  
**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on July 13, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Crow Wing County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lots One (1) and Two (2), Block Six (6), Davis Addition to the City of Brainerd.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$90,000.00. According to the Crow Wing County Tax Department the fair market value of the property is estimated at \$92,300.00. The payments due under said mortgage are in default from August 1, 2004 to date in the amount of \$626.07 per month, plus accrued late charges and inspection fees.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have not offered any form of adequate protection to the Movant as the loan debt increases. The amount due under Movant's loan totals approximately \$90,000.00 and the fair market value of the property is estimated at \$92,300.00. The Debtors lack any equity in said real property.

In view of the Debtors' inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors' offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 8, 2004

By:           /e/ Thomas J. Reiter          

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street, 2<sup>nd</sup> Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D1844)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: JULIA A. SULLIVAN,  
JOHN E. SULLIVAN,

BKY. No.: 04-50801  
Chapter 7

Debtors.  
-----

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on September 14, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Terri A. Georgen  
Trustee  
P.O. Box 16355  
St. Paul, MN 55116

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Julia A. Sullivan  
John E. Sullivan  
1024 SE 12<sup>th</sup> Street  
Brainerd, MN 56401

James P. Fossum  
James P. Fossum, PA  
P.O. Box 552  
Brainerd, MN 56401

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

REITER & SCHILLER

Dated: September 14, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2<sup>nd</sup> Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1844)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: JULIA A. SULLIVAN,  
JOHN E. SULLIVAN,

BKY. No.: 04-50801  
Chapter 7

Debtors.

**ORDER TERMINATING STAY**

-----  
This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 6, 2004 in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. 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:

Lots One (1) and Two (2), Block Six (6), Davis Addition to the City of Brainerd, Crow Wing County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

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

\_\_\_\_\_  
The Honorable Gregory F. Kishel  
Chief Judge of the U.S. Bankruptcy Court