

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Erik Widvey  
Krisie Widvey

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-50919  
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TO: Erik Widvey and Krisie Widvey, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Chase Manhattan 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 1:30 pm on November 3, 2004, in Courtroom 2, 515 West Fifth Street, Duluth, MN 55802 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 29, 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 October 25, 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 12, 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 Debtors, subject to a mortgage to Movant.

6. Debtors above-named are the owners of certain real property located at 555 2nd Avenue Southwest, Milaca, MN 56353, legally described as follows, to-wit:

Lot 12, Block 41, Flink's Addition to Milaca, according to the plat there of on file and of record in the office of the Recorder, Mille Lacs County, Minnesota

7. The indebtedness of Erik Widvey and Krisie Widvey is evidenced by a Promissory Note and Mortgage dated August 28, 1998, filed of record in the Mille Lacs County Recorder's office on September 18, 1998, and recorded as Document No. 258262. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage has been or will soon be assigned to Movant.

8. The Debtors have failed to pay monthly mortgage payments since July 1, 2004, and are in default in the amount of \$3,446.24 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtors have 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 \$65,000.00.

10. The Debtors have scheduled a second mortgage in favor of US Bank in the amount of \$34,110.00. 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 \$104,000.00, and accordingly, Debtors have limited equity in the premises and, presuming typical selling costs, have no equity in the property and therefore cause exists to find lack of adequate protection.

12. 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: October 18, 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:

Erik Widvey  
Krisie Widvey

AFFIDAVIT OF PETITIONER

Debtors

Chapter 7, Case No. 04-50919  
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STATE OF CALIFORNIA     )

COUNTY OF SAN DIEGO    )

Candice L Hobbs, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan 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.

Candice L. Hobbs

Subscribed and sworn to before me this  
15 day of Sept, 2004.

Carly S. Crown  
Notary Public



15180  
 9-1-98  
 16346  
 F. ALPHEUS  
 M. J. Widvey

OFFICE OF COUNTY RECORDER  
 MILLE LACS COUNTY, MINNESOTA  
 258262  
 COUNTY RECORDER  
 DEPUTY  
 REC'D

(Space Above This Line For Recording Data)

State of Minnesota

**MORTGAGE**

FHA Case No. 2717931794

Loan ID: 0011918059

THIS MORTGAGE ("Security Instrument") is given on August 28th, 1998  
 The Mortgagor is  
 ERIK J WIDVEY and KRISIE M WIDVEY, husband and wife

("Borrower"). This Security Instrument is given to  
 PREFERRED BANK

which is organized and existing under the laws of THE STATE OF MINNESOTA, and  
 whose address is 611 ROSE DRIVE, BIG LAKE, MN 55309  
 ("Lender"). Borrower owes Lender the principal sum of  
 Sixty Five Thousand Nine Hundred Fifty One and no/100-----  
 Dollars (U.S. \$ 65,951.00 ).  
 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 September 1st,  
 2028 and for interest at the yearly rate of 6.750 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



258262

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in MILLE LACS

County, Minnesota:  
LOT 12, BLOCK 41, FLINK'S ADDITION TO MILACA, ACCORDING TO THE PLAN  
THEREOF ON FILE OF RECORD IN THE OFFICE OF THE RECORDER, MILLE LACS  
COUNTY, MINNESOTA.

Item #: 212800161  
which has the address of  
Minnesota

555 2ND AVENUE SW, MILACA  
56353 (Zip Code) ("Property Address");

(Street, City).

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 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 Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Erik Widvey  
Krisie Widvey

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-50919  
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Chase Manhattan 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 Debtors were delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$3,446.24.

**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 have failed to make payments required by the note and mortgage for a period of more than 5 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 (Bkrtcy. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtors have 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 (Bkrtcy. D. N. H. 1983). In this case the balance due Movant is approximately \$65,000.00 and including the amounts due the second mortgage holder, the approximate total amount encumbering the property is \$99,110.00. The value of the property is approximately \$104,000.00. 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 Debtors have 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: October 18, 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:

Erik Widvey  
Krisie Widvey

Debtors

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-50919  
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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 October 18, 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

Robert R. Kanuit  
Chapter 7 Trustee  
4815 W. Arrowhead Rd. Suite 230  
Hermantown, MN 55811

Samuel V. Calvert  
Attorney at Law  
PO Box 1044  
St. Cloud, MN 56302-1044

Erik Widvey  
906 N. Robin Avenue  
Duluth, MN 55811

Krisie Widvey  
1120 Garden Brook Drive  
Sauk Rapids, MN 56379

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Erik Widvey  
Krisie Widvey

ORDER

Debtors.

Chapter 7, Case No. 04-50919  
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The above entitled matter came on for hearing upon motion of Chase Manhattan Mortgage Corporation, ("Movant"), pursuant to 11 U.S.C. Section 362 on November 2, 2004, at the U.S. Bankruptcy Court, Duluth, 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 12, Block 41, Flink's Addition to Milaca, according to the plat there of on file and of record in the office of the Recorder, Mille Lacs 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