

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In re: MARK ANDREW MAGOON,
GINA LEE MAGOON,

BKY. No.: 04-50921
Chapter 7

Debtors.

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

TO: MARK ANDREW MAGOON, GINA LEE MAGOON AND THEIR
ATTORNEY, JOSPEH V. FERGUSON, III, JOHNSON, KILLEN &
SEILER, PA, 230 W. SUPERIOR ST., STE. 800, DULUTH, MN 55802.

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 25, 2004 at 10:30 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 Robert J. Kressel, United States Bankruptcy Court Judge.
3. Any response to this motion must be filed and delivered not later than October 20, 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 14, 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 August 12, 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 terms 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 in the amount of \$577.83 for the month of August, 2004 and \$603.33 per month from September 1, 2004 to date, 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 \$77,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$9,421.11. According to the Lake County Tax Department the fair market value of the property is estimated at \$65,800.00.

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, 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 22, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(D1903)

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 22, 2004.

WELLS FARGO BANK, N.A.

By: Karan Abernethy
Karan Abernethy

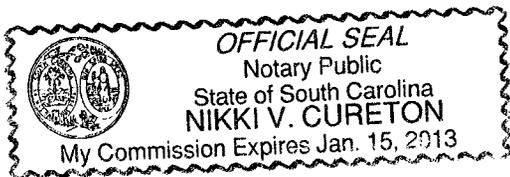
Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

22nd day of September, 2004.

Nikki V. Cureton

Notary Public



REGISTRATION TAX HEREON
 PAID FEBRUARY 2002
 JAMES B. McMAHON
 COUNTY AUDITOR
 BY JAMES B. McMAHON
 DEPUTY

DCL. NO. _____
 OFFICE OF COUNTY RECORDER
 State of Minnesota, } ss.
 COUNTY OF LAKE
 I hereby certify that the with-
 in instrument was filed for rec-
 ord in this office on the 1st
 day of February,
 2002, at 3:15 o'clock
 P.M., and was duly recorded
 in book 138 of Mort records
 page 230
 Erica Kraki
 County Recorder
 Deputy

[Space Above This Line For Recording Data]

MORTGAGE

Return To:
 WELLS FARGO HOME MORTGAGE, INC.,
 3601 MINNESOTA DR. SUITE 200
 BLOOMINGTON, MN 55435

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 JANUARY 25, 2002 together with all Riders to this document.

(B) "Borrower" is MARK A MAGOON AND GINA L MAGOON, HUSBAND AND WIFE

472 9677467 14312

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 5137, DES MOINES, IA 503065137

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated JANUARY 25, 2002

The Note states that Borrower owes Lender SEVENTY SIX THOUSAND FIVE HUNDRED AND 00/100

Dollars (U.S. \$*****76,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 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

(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 3 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 LAKE

[Name of Recording Jurisdiction]:

Lots Seven (7) and Ten (10), the West Half (W $\frac{1}{2}$) of Lot Six (6) and the West Half (W $\frac{1}{2}$) of Lot Eleven (11), Block Nine (9), SEGOG'S ADDITION TO TWO HARBORS, according to the plat thereof on file and of record in the office of the County Recorder of Lake County, Minnesota.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 5137, DES MOINES, IA 503065137

Parcel ID Number:
1823 8TH AVENUE
TWO HARBORS
("Property Address"):

which currently has the address of
[Street]
[City], Minnesota 55616 [Zip Code]

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:


MARK A. MAGOON (Seal)
-Borrower


GINA L. MAGOON (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

UNITED STATES BANKRUPTCY COURT
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**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 in the amount of \$577.83 for the month of August, 2004 and \$603.33 per month from September 1, 2004 to date, 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 \$77,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$9,421.11. According to the Lake County Tax Department the fair market value of the property is estimated at \$65,800.00.

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.

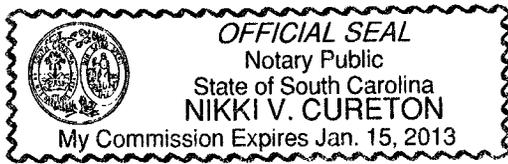
Dated: 9/22/04

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

Subscribed to and sworn before me this

22nd day of September, 2004.

Nikki V. Cureton
Notary



UNITED STATES BANKRUPTCY COURT
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**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtors filed their petition on August 12, 2004 under Chapter 7 of the Federal Bankruptcy Code and listed real property located in Lake County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lots Seven (7) and Ten (10), the West Half (W ½) of Lot Six (6) and
the West Half (W ½) of Lot Eleven, Block Nine (9),
SEGOG'S ADDITION TO TWO HARBORS.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$77,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$9,421.11. According to the Lake County Tax Department the fair market value of the property is estimated at \$65,800.00. The payments due under said mortgage are in default in the amount of \$577.83 for the month of August, 2004 and \$603.33 per month from September 1, 2004 to date, 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 combined encumbrances on the property total approximately \$86,421.11 and the fair market value of the property is estimated at \$65,800.00. 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 22, 2004

By: /e/ Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
152262/231605
(D1903)

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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, 2nd Floor, St. Paul, MN 55102-2227 declares that on September 28, 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.

Robert R. Kanuit
Trustee
4815 W. Arrowhead Rd., Ste. 230
Hermantown, MN 55811

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

Mark Andrew Magoon
201 E. Nelson
Litchfield, MN 55355

Joseph V. Ferguson, III
Johnson Killen & Seiler, PA
230 W. Superior St., Ste. 800
Duluth, MN 55802

Gina Lee Magoon
1823 8th Avenue
Two Harbors, MN 55616

General Motors Acceptance Corp.
c/o Riezman Berger, PC
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105

Wells Fargo Bank
Home Equity Access
622 1st Avenue
Two Harbors, MN 55616

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

REITER & SCHILLER

Dated: September 28, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(D1903)

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ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 25, 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 Seven (7) and Ten (10), the West Half (W ½) of Lot Six (6) and the West Half (W ½) of Lot Eleven (11), Block Nine (9), SEGOG'S ADDITION TO TWO HARBORS, Lake County, Minnesota.

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

Dated: _____

The Honorable Robert J. Kressel
Judge of the U.S. Bankruptcy Court