

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

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In re: KEVIN C. STEALY,  
ELLEN M. STEALY,

BKY. No.: 04-51031  
Chapter 7

Debtors.

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

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TO: KEVIN C. STEALY, ELLEN M. STEALY AND THEIR ATTORNEY,  
ROBERT L. KALENDA, KALENDA & ASSOCIATES, 919 W. ST.  
GERMAIN ST., STE. 2000, ST. CLOUD, MN 56301.

1. Mortgage Electronic Registration Systems, Inc. as nominee for Decision One Mortgage Company, LLC, 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 December 8, 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 December 3, 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 November 29, 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 September 14, 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 June 17, 2004 to date in the amount of \$821.92 per month, plus accrued late charges.

b) That as of the date of filing herein, the amount due under said mortgage loan was approximately \$98,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$26,077.00. According to the Debtors the fair market value of the property is estimated at \$125,000.00.

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, Mortgage Electronic Registration Systems, Inc.,

as nominee for Decision One Mortgage Corporation, 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: November 2, 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  
(F0477)

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

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: November 2, 2004

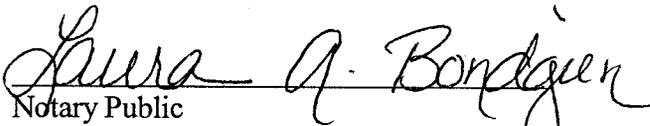
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

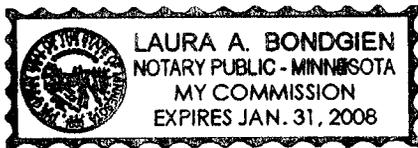
By:   
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

2nd day of November, 2004.

  
Notary Public



Tax 3/14/03

HH

2200

DATE 2.25, 2003 REC# 68554  
 REGISTRATION TAX HEREON OF \$ 215.05  
 BY James E. Boden  
 CROW WING COUNTY TREASURER  
 BY Roy A. Munkkonen  
 CROW WING COUNTY AUDITOR  
 790252206B00009

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 25 day of Feb  
 A.D. 2003 at 8 o'clock A.M.  
 and was duly recorded as Doc. No 0630716  
 By Vicki Stange  
 County Recorder  
 Deputy

[Space Above This Line For Recording Data]

19177 12558926  
 Recording Requested by & **MORTGAGE**  
 When Recorded Return To:  
 US Recordings, Inc.  
 2925 Country Drive Ste 201  
 St. Paul, MN 55117

Loan Number 2280021224010  
 MIN: 100077910000216800

DEFINITIONS  
 US Recordings, Inc.  
 2925 Country Drive Ste 201  
 St. Paul, MN 55117

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 13, 2003, together with all Riders to this document.
- (B) "Borrower" is KEVIN C. STEALY AND ELLEN STEALY 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 Decision One Mortgage Company, LLC. Lender is a LIMITED LIABILITY COMPANY organized and existing under the laws of NORTH CAROLINA. Lender's address is 6060 J.A. JONES DRIVE, SUITE 1000, CHARLOTTE, NORTH CAROLINA 28287.
- (E) "Note" means the promissory note signed by Borrower and dated JANUARY 13, 2003. The Note states that Borrower owes Lender NINETY-THREE THOUSAND FIVE HUNDRED AND 00/100ths Dollars (U.S.\$93,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 17, 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.
- (H) "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
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- Other(s) [specify] Floor Rate Rider

HMS 7023864

(A)

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:

\_\_\_\_\_ Kevin C. Stealy (Seal)  
 KEVIN C. STEALY -Borrower

\_\_\_\_\_ Ellen Stealy (Seal)  
 ELLEN STEALY -Borrower

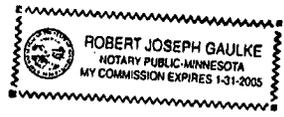
\_\_\_\_\_ (Seal) \_\_\_\_\_ (Seal)  
 -Borrower -Borrower

STATE OF MINNESOTA )  
 COUNTY OF STEARNS )

This instrument was acknowledged before me on JANUARY 13, 2003 by KEVIN C. STEALY AND ELLEN STEALY HUSBAND AND WIFE .

(Seal)  
 My commission expires: 1-31-2005  
 \_\_\_\_\_  
 (Typed or printed name) Robert Gaulke  
 Notary Public

This instrument was prepared by: John Palmer  
 Decision One Mortgage Company, LLC  
 PARK PLACE W 6465 WAYZATA BLVD, STE 970, , ST. LOUIS PARK



~~After Recording, Return To:~~

~~Decision One Mortgage Company, LLC  
 6060 J.A. Jones Drive, Suite 1000  
 Charlotte, North Carolina 28287~~

Legal Description  
 K & M Title File No.: 19177  
 STCJ File No.:

SCHEDULE "A"

LEGAL DESCRIPTION

South Half of the Northwest Quarter of the Northwest Quarter in Section 25, Township 45, Range 30, in Crow Wing County, Minnesota. (abstract)

Property Address: 13760 Five Mile Road  
 Brainerd, MN 56401

Permanent Index Number:

UNITED STATES BANKRUPTCY COURT  
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FIFTH DIVISION

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ELLEN M. STEALY,

BKY. No.: 04-51031  
Chapter 7

Debtors.

**AFFIDAVIT OF MOVANT'S**  
**VICE PRESIDENT**

-----  
STATE OF MINNESOTA )

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc., in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, 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 June 17, 2004 to date in the amount of \$821.92 per month, plus accrued late charges.

3. That as of the date of filing herein, the amount due under said mortgage loan was approximately \$98,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$26,077.00. According to the Debtors the fair market value of the property is estimated at \$125,000.00.

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.

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.

Dated: November 2, 2004

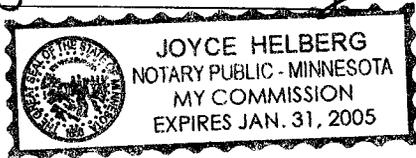
By: 

Scott Barnes  
Vice President  
1270 Northland Drive, Ste. 200  
Mendota Heights, MN 55120

Subscribed to and sworn before me this

2nd day of November, 2004.





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVIN C. STEALY,  
ELLEN M. STEALY,

BKY. No.: 04-51031  
Chapter 7

Debtors.

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

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on September 14, 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:

South Half of the Northwest Quarter of the Northwest Quarter in  
Section 25, Township 45, Range 30, in Crow Wing County, Minnesota.

The amount due under the Movant's mortgage as of the date of filing herein is approximately \$98,000.00. The property is encumbered by a second mortgage lien in the amount of approximately \$26,077.00. According to the Debtors the fair market value of the property is estimated at \$125,000.00. The payments due under said mortgage are in default from June 17, 2004 to date in the amount of \$821.92 per month, plus accrued late charges.

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 \$124,077.00 and the fair market value of the property is estimated at \$125,000.00. 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: November 2, 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  
Atty. Reg. 152262/231605  
(F0477)

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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, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on November 3, 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.

Dorraine A. Larison  
Trustee  
1010 W. St. Germain, Rm. 600  
St. Cloud, MN 56301

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

Kevin C. Stealy  
Ellen M. Stealy  
11196 2 Leisure Lane  
Brainerd, MN 56401

Robert L. Kalenda  
Kalenda & Associates  
919 W. St. Germain St., Ste. 2000  
St. Cloud, MN 56301

Citifinancial  
P.O. Box 7490  
St. Cloud, MN 56302-7490

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

REITER & SCHILLER

Dated: November 3, 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

(F0477)

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In re: KEVIN C. STEALY,  
ELLEN M. STEALY,

BKY. No.: 04-51031  
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Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on December 8, 2004 in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., as nominee for Decision One Mortgage Company, LLC, 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:

South Half of the Northwest Quarter of the Northwest Quarter in Section 25, Township 45, Range 30, in 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