

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:  
EULA W. BOWENS, Debtor**

**HOMEcomings FINANCIAL, LLC, as  
servicer for THE BANK OF NEW YORK  
TRUST COMPANY N.A. AS  
SUCCESSOR TO JPMORGAN CHASE  
BANK AS TRUSTEE F/K/A BANK ONE,  
NATIONAL ASSOCIATION, AS  
TRUSTEE, their successors and/or assigns,  
Movant**

**vs.**

**EULA W. BOWENS, Debtor and  
THOMAS POWERS, Trustee,  
Respondents**


§  
§  
§ **CASE NO. 06-34868-SGJ-13**  
§ **CHAPTER 13**  
§  
§  
§  
§  
§ **HEARING DATE AND TIME:**  
§ **MAY 3, 2007 AT 1:30 P.M.**  
§  
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§

**AFFIDAVIT IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY  
REQUESTING ONE (1) YEAR IN REM RELIEF AND 270 DAY BAR LANGUAGE**

Comes now **HOMEcomings FINANCIAL, LLC**, as servicer for **THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE**, their successors and/or assigns to file the attached Affidavit in support of its Motion for Relief from Automatic Stay.

Respectfully Submitted,

By: \_\_\_\_\_



June A. Mann / TBA No. 12928400  
Branch M. Sheppard/ TBA No. 24033057  
Mann & Stevens, P.C.  
550 Westcott Street, Suite 560  
Houston, Texas 77007  
(713) 293-3600  
(713) 293-3636 (Facsimile)  
ATTORNEY FOR MOVANT

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the attached Affidavit was served upon the following parties in interest on April 11, 2007, by United States First Class Mail, postage prepaid:

**Debtors' Attorney**

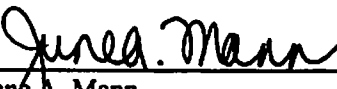
THEODORE O. BARTHOLOW, JR.  
5 KELVINGATE  
DALLAS, TEXAS 75225

**Debtors**

EULA W. BOWENS  
P.O. BOX 170267  
DALLAS, TX 75217

**Trustee**

THOMAS POWERS  
125 E. JOHN CARPENTER FREEWAY  
SUITE 1100, 11th FLOOR  
IRVING, TX 75062

  
\_\_\_\_\_  
June A. Mann  
Branch M. Sheppard

**IN RE:**  
**EULA W. BOWENS, Debtor**

**vs.**

\*\*\*\*\*

**HEARING DATE AND TIME:  
MAY 3, 2007 AT 1:30 P.M.**

**THE STATE OF MINNESOTA                   §**  
**COUNTY OF DAKOTA                       §**

**who is over the age of eighteen years, is fully qualified and authorized to give this Affidavit and has personal knowledge of the matters addressed herein. After being by me duly sworn on her/his oath deposed and stated:**

MS No. 147020

CHASE with regard to EULA W. BOWENS's loan with JPMORGAN CHASE. In the course of my employment, I have become familiar with the manner and method in which JPMORGAN CHASE maintains its books and records in its regular course of business. Those books and records are managed by employees and agents whose duty is to keep the books and records accurately and completely and to record each event or item at or near the time of the event or item so noted.

2. I have reviewed the books and records which reveal that JPMORGAN CHASE is the owner and holder of a Note ("Note") secured by a Deed of Trust of even date and executed by EULA MAE BOWENS, A SINGLE WOMAN on or about OCTOBER 22, 1998. The Note was assigned by AAMES FUNDING CORPORATION A CALIFORNIA CORPORATION, A CORPORATION to THE BANK OF NEW YORK TRUST COMPANY N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK AS TRUSTEE F/K/A BANK ONE, NATIONAL ASSOCIATION, AS TRUSTEE. The original mortgagors also executed a Deed of Trust in connection with the Note and it was duly recorded. True and correct copies of the loan documents are attached hereto as Exhibit "A" and incorporated herein for all purposes.

3. As of APRIL 4, 2007, Debtor was in default on **THREE (3)** contractual payments of **TWO (2)** at **\$958.31** each and **ONE (1)** at **\$915.04**, plus **TWO (2)** contractual late charges in the amount of **\$25.62** each and **\$329.37** in suspense. As of November 6, 2006, the approximate payoff amount owed by Debtor to Movant was **\$34,565.46**. This sum includes principal balance, accrued interest, accrued late charges and escrow advances, but does not include attorneys' fees or related costs.

This is the third filing for bankruptcy relief involving the Property.

- (a) The first bankruptcy case was filed by Eula M. Bowens, the Debtor in this current case, on April 12, 1999, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No. 99-32823-HCA-13. The Debtor failed to timely remit the post-petition mortgage payments and Movant was forced to file a motion for relief. An agreed order was entered on May 16, 2000. An Order Granting Motion to Dismiss Case with Prejudice to Refiling for 180 Days was entered on February 12, 2001. This bankruptcy case was closed on March 15 2001.

(b) On August 6, 2001, the Debtor in this current case, filed the second bankruptcy case in the United States Bankruptcy Court, Northern District of Texas, Dallas Division, under Case No.01-36502-BJH-13. This bankruptcy was filed to stop a foreclosure sale scheduled for August 7, 2001. An Order Discharging Debtor was entered on September 20, 2006, and the case was closed on January 31, 2007.

(c) On November 6, 2006, Debtor filed this current case, which is the third bankruptcy case involving the Property.

4. JPMORGAN CHASE has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees of at least \$800.00 for handling the Motion for Relief from Stay for which it is entitled to reimbursement under the terms of the Note.

5. The foregoing facts are of my own personal knowledge and belief, and if called upon to appear as a witness, I could, and would, testify competently thereto. I declare under penalty of perjury that to the best of my knowledge the foregoing facts are true and correct."

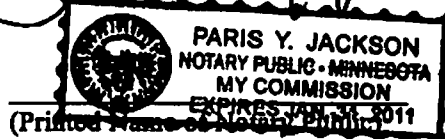
By: \_\_\_\_\_

Name **Dory Goebel**  
Default Services Junior Officer

SUBSCRIBED AND SWORN TO BEFORE ME, on April 10<sup>th</sup>, 2007.

My commission expires: 031-01

NOTARY PUBLIC



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 07-05820-JAF  
CHAPTER 13

IN RE:

VIVIAN D. JOHNSON

Debtor(s)

AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebe!,  
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of* Movant, Franklin Credit Management Corp., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

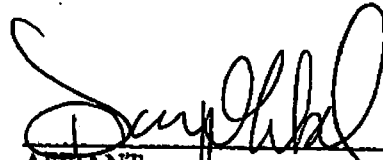
- |  |             |
|--|-------------|
| (a) Principal balance on note and mortgage as of January 1, 2008 | \$54,076.99 |
| (b) 9 Payments @ \$737.98 [May 2007 to January 2008]             | \$6,641.82  |

(c) Late Charges \$480.42

(d) Bankruptcy Fees & Costs \$800.00

**TOTAL** **\$61,999.23**

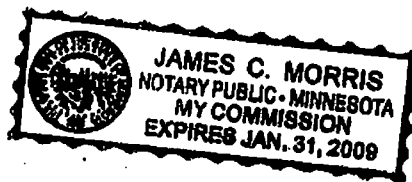
FUTHER AFFIANT SAYETH NAUGHT

  
AFFIANT **Dory Goebel**  
Vice President

Sworn to and subscribed before me  
This 17 day of January, 2008.

  
Notary Public, State of MINN At Large

Commissioned Name of Notary Public James Morris  
Personally known, or produced identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-00302  
CHAPTER 7

IN RE:

WILLIAM M. MITZLAFF  
AKA WILLIAM MICHAEL MITZLAFF

Debtor(s)

AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

STATE OF MN

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel  
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant, IndyMac Bank, F.S.B.*, and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

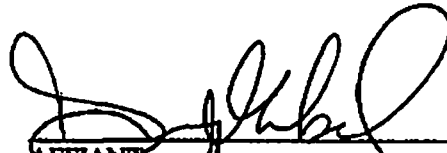
(a) Principal balance on note and mortgage as of February 26, 2008	\$51,848.02
(b) 6 Payments @ \$544.70 [December 2007 to February 2008]	\$3,268.20
(c) Accumulated Late Charges	\$190.68



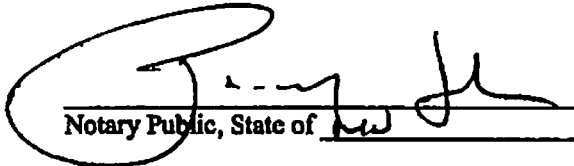
(d) Fees / Corporate Advance	\$71.50
(f) Bankruptcy Fees & Costs	\$800.00

<b>TOTAL</b>	<b>\$56,178.40</b>
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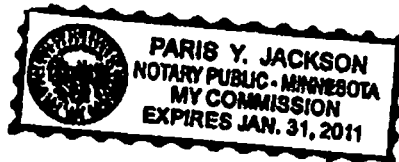
FUTHER AFFIANT SAYETH NAUGHT

  
AFFIANT  
Dory Goebel  
Assistant Secretary

Sworn to and subscribed before me  
This 28 day of February, 2008.

  
Notary Public, State of Minnesota At Large

Commissioned Name of Notary Public Paris Y. Jackson  
Personally known, or produced identification x  
Type of Identification Produced \_\_\_\_\_



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-1917-JAF  
CHAPTER 7

IN RE:

THERON DOUGLAS COLLINS

PATRICE ROBERTS COLLINS  
AKA PATRICE R. MANLEY

Debtor(s)

AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,  
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of* Movant, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

(a) Principal balance on note and mortgage as of April 10, 2008	\$46,362.04
(b) 7 Payments @ \$318.74 [October 2007 to April 2008]	\$2,231.18

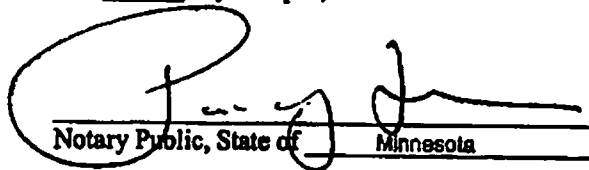
(c) Accumulated Late Charges	\$95.64
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$71.50
(e) Corporate Advances	\$1,727.50
(f) Escrow Advances	\$660.05
(g) Bankruptcy Fees & Costs	\$800.00

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<b>TOTAL</b>	<b>\$51,947.91</b>
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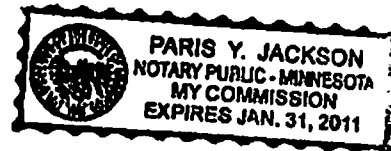
FUTHER AFFIANT SAYETH NAUGHT

Sworn to and subscribed before me  
This 15 day of April, 2008.

  
Notary Public, State of Minnesota At Large

Commissioned Name of Notary Public Paris Y. Jackson  
Personally known, or produced identification x  
Type of Identification Produced \_\_\_\_\_

  
AFFIANT  
Dory Goebel  
Assistant Secretary



In Re:  
  
EILEEN FAGAN,  
  
Debtor.

**EILEEN FAGAN,**

STATE OF MINNESOTA )  
CITY OF MENDOTA HEIGHTS )

**Case No.: 04-23460-ash  
(Chapter 13)**

**Assigned to:**  
**Hon. ADLAI S. HARDIN, JR.**  
**Bankruptcy Judge**

**Dory Goebel, being duly sworn deposes and says:**

1. I am a Bankruptcy Representative of HOMECOMINGS FINANCIAL, LLC, secured creditor ("Secured Creditor") herein, and as such, I am fully familiar with the facts and circumstances hereinafter set forth.
2. This affidavit is submitted in support of Secured Creditor's application for stay relief as set forth in the moving papers.
3. Secured Creditor is the holder of a mortgage covering the premises commonly known as 16 BREWSTER AVENUE, STONY POINT, NY 10980 ("Mortgaged Premises").
4. On the 21st day of September, 2004, Debtor EILEEN FAGAN filed a Petition under Chapter 13 of Title 11 U.S.C. § 101 et seq with this Court under case no. 04-23460-ash, and an Order for relief was duly entered.

5. The Note and Mortgage provide that the Debtor will be in default if he or she does not make full monthly payments on each due date. As of the 30th day of May, 2007, the Debtor has failed to make 4 post-petition payments in the amount of \$4,020.03 which represents the payments due the 1st day of February, 2007 through May, 2007 and has not cured said default.
6. That as of the 30th day of May, 2007, there was an unpaid principal balance owed on the Note and Mortgage in the sum of \$278,043.61, with interest thereon in the amount of \$20,553.51, plus late charges in the amount of \$946.28, for an estimated amount owing Secured Creditor in the amount of \$299,543.40. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make further advances for property taxes, insurance and related matters.

WHEREFORE, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises, together with such other, further and different relief as the Court may deem just in this matter.

/s/ Dory Goebel

---

Dory Goebel Default Services Junior Officer

Subscribed and sworn to before me  
this 1st day of June, 2007.  
/s/ Paris Y. Jackson

---

Paris Y. Jackson  
Notary Public-Minnesota  
My Commission  
Expires Jan 31, 2011

FEIN, SUCH, KAHN & SHEPARD, PC.  
Counsellors at Law  
7 Century Drive - Suite 201  
Parsippany, New Jersey 07054  
(973) 538-9300  
Attorneys for Secured Creditor  
TAMMY L. TERRELL, ESQ.- 4062  
FMT099

IN RE:

DANIEL G. BENTANCUR

Debtor.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Chapter : 13

Case No. 07-10160 NLW

SUPPLEMENTAL CERTIFICATION BY  
MORTGAGEE (Default in Chapter 13  
Payments Outside of Plan)

Hearing Date: November 5, 2007

I, Dory Goebel, hereby deposes and says:

1. I am the Attorney in Fact of FREMONT INVESTMENT AND LOAN.
2. Date Debtor's petition was filed on January 4, 2007.
3. (a) Amount of Debtor's monthly mortgage payment  
\$3,013.19.  
(b) Amount of monthly late charges \$103.18.  
(c) Total monthly payment including late charge  
\$3,116.37.
4. Debtor's last mortgage payment was applied to  
07/01/07.
5. Debtor should have made 2 payments outside of the  
plan since the date of the filing petition.

6. Since the date of the filing, Debtor has made 6 payments.

7. Debtor is behind 3 months in payments outside of the plan, through the payment due October 01, 2007.

8. The total amount of delinquency outside of the plan is \$9,349.11. That amount is computed in the following manner:

$\$3,013.19 \times 3 = \$9,039.57$  (08/01/07 - 10/01/07 Monthly payments)

$\$103.18 \times 3 = \$309.54$  (08/01/07 - 10/01/07 Late charges).

9. The figures contained in this certification are current as of payment received on or before October 12, 2007.

10. Attached are true copies of the documents.

11. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 12, 2007

/s/ Dory Goebel  
DORY GOEBEL  
ATTORNEY IN FACT

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-  
2(c)

FEIN, SUCH, KAHN & SHEPARD PC  
Counsellors at Law  
7 Century Drive - Suite 201  
Parsippany, New Jersey 07054  
(973) 538-9300  
Attorneys for Secured Creditor  
FMT099

In Re:

DANIEL G. BENTANCUR

Debtor.

Case No.: 07-10160 NLW

Adv. No.:

Hearing Date: November 5, 2007

Judge: Honorable Novalyn L.  
Winfield

CERTIFICATION RE CALCULATION OF AMOUNTS DUE  
NOTE AND MORTGAGE

Dory Goebel of full age, as Attorney in Fact by FREMONT INVESTMENT  
AND LOAN, hereby certifies the following information:

Recorded on December 12, 2005 in UNION County, in Book 11482 at  
Page 0212

Property Address: 711 EMERSON AVENUE, ELIZABETH, NJ 07208

Mortgage Holder: FREMONT INVESTMENT

I. PAYOFF STATEMENT

Unpaid Principal Balance	_____	<u>\$311,880.00</u>
Interest	_____	<u>\$26,036.10</u>
Total Expense	_____	<u>\$3,024.02</u>
Total Suspense	_____	<u>\$(2,643.00)</u>
TOTAL DUE AS OF <u>10 / 11 / 07</u>	_____	<u>\$333,297.12</u>



II. EQUITY ANALYSIS(When Appropriate)

Estimated fair market value of real estate(as of 01/04/07)\_

\$550,000.00\*

Liens on the real estate:

1. Real estate taxes as of \_\_\_\_\_\$\_\_\_\_\_

2. First Mortgage(principal & interest)

as of 10/11/07 \$333,297.12

3. Second Mortgage(principal & interest)

as of 01/04/07 \$56,882.00

4. Other(specify on separate exhibit) \$\_\_\_\_\_

TOTAL LIENS \_ \_ \_ \_ \_ (\$390,179.12)

APPARENT EQUITY AS OF 10 / 12 / 07 \_ \$159,820.88\*\*

\*Source: Schedule (e.g. appraisal, tax bill/assessment, contract of sale, debtor's schedules, etc.)

\*\*If negative, insert zero(0).

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 12, 2007

/s/ Dory Goebel  
DORY GOEBEL  
ATTORNEY IN FACT

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-  
2(c)

FEIN, SUCH, KAHN & SHEPARD PC  
Counsellors at Law  
7 Century Drive - Suite 201  
Parsippany, New Jersey 07054  
(973) 538-9300  
Attorneys for Secured Creditor  
FMT099

In Re:

DANIEL G. BENTANCUR

Debtor.

Case No.: 07-10160 NLW

Adv. No.:

Hearing Date: November 5, 2007

Judge: Honorable Novalyn L.  
Winfield

CERTIFICATION RE POST PETITION PAYMENT HISTORY  
ON THE NOTE AND MORTGAGE

Dory Goebel of full age, as Attorney in Fact by FREMONT INVESTMENT  
AND LOAN, hereby certifies the following information:

Recorded on December 12, 2005 in UNION County, in Book 11482 at  
Page 0212

Property Address: 711 EMERSON AVENUE, ELIZABETH, NJ 07208

Mortgage Holder: FREMONT INVESTMENT

Mortgagors/Debtors: DANIEL G. BENTANCUR

POST PETITION PAYMENTS (Petition filed on 01/04/07)

Amount Due	Date Payment Was Due	How Payment Was Applied (Mo/Yr)	Amount Received	Date Payment Received	Check or Money Order Number
1. \$3,013.18	02/01/07	02/01/07	\$3,013.18	02/20/07	
2. \$3,013.18	03/01/07	03/01/07	\$3,013.18	05/02/07	
3. \$3,013.18	04/01/07	04/01/07	\$3,116.37	05/02/07	
4. \$3,013.18	05/01/07	05/01/07	\$3,013.18	05/10/07	
5. \$3,013.18	06/01/07	06/01/07	\$3,013.18	08/08/07	
6. \$3,013.18	07/01/07	07/01/07	\$3,013.18	08/13/07	
7. \$3,013.18	08/01/07	N/A	-0-	N/A	N/A
8. \$3,013.18	09/01/07	N/A	-0-	N/A	N/A
9. \$3,013.18	10/01/07	N/A	-0-	N/A	N/A
TOTAL					

[Continue on attached sheets if necessary]

\*MONTHLY PAYMENTS PAST DUE: 3 x \$3,013.19 = \$9,039.57 (08/01/07 - 10/01/07 Monthly payments) and 3 x \$103.18 = \$309.54 (08/01/07 - 10/01/07 Late Charges) ; (MONTHLY PAYMENT + LATE CHARGE) = \$9,349.11 AS OF October 12, 2007.

Each Monthly Payment is comprised of:

(Attach sheets if payment amounts varies from figures set forth below)

Principal & Interest .....\$2,384.99  
Escrow .....\$731.38  
Total .....\$3,013.18

If the monthly payment has changed during the pendency of the case, please explain (attach separate sheet(s) if necessary):

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 12, 2007

/s/ Dory Goebel  
DORY GOEBEL  
ATTORNEY IN FACT

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO: RE-06-168  
RAC - Cum - 9/5/2007 ✓

OPTION ONE MORTGAGE CORP.

Plaintiff  
STATE OF MAINE  
CUMBERLAND  
SEP 07 2007

v.

ORDER ON PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

SUSAN GILMAN, et. al.,

Defendants.

RECEIVED

DONALD L. GARRETT  
LAW LIBRARY

JAN 15 2008

This matter comes before the Court on Plaintiff's motion for summary judgment pursuant to M.R. Civ. P. 56(c).

### BACKGROUND

Defendant Susan Gilman ("Gilman") is a resident of Gorham, Maine. In February 2005, Gilman purchased property located at 22 Hay Field Drive in Gorham.<sup>1</sup> She later obtained financing in the amount of \$380,000 from Residential Mortgage Services, Inc. ("RMS"), a Maine corporation. Gilman executed an adjustable rate rider and note, as well as a mortgage in favor of Residential Mortgage Services, Inc. in January 2006.<sup>2</sup> The mortgage eventually was assigned to Plaintiff Option One Mortgage Corporation ("Option One"), a corporation with a principal place of business in California. Option One is now the holder of the mortgage.

Other parties in interest also have liens on the Gorham property by virtue of contract work they performed for Gilman in connection with the construction

<sup>1</sup> The deed is recorded in the Cumberland County Registry of Deeds at Deed Book 22332, Page 125.

<sup>2</sup> The mortgage is recorded in the Cumberland County Registry of Deeds at Deed Book 23610, Page 181.

of her Gorham residence. Phinney Lumber Company ("Phinney") of Gorham, Maine is a party in interest, having filed a Certificate of Lien for Contractor in the amount of \$38,698.46, dated February 3, 2006.<sup>3</sup> Martin & Sons Plumbing & Heating ("Martin") of Westbrook, Maine is a party in interest, and it filed a Statement and Certificate of Lien in the amount of \$3,472.60, dated March 17, 2006.<sup>4</sup> Both Phinney and Martin had provided equipment and materials for work on Gilman's property in 2005.<sup>5</sup>

Gilman was to begin sending her mortgage payments to Option One starting on March 1, 2006. Option One contends that it did not receive any payments on the loan after May 1, 2006. On June 5, 2006, Option One sent Gilman a notice of default and informed her how she could cure it. Because the default was not cured, Option One filed this action for foreclosure and sale in August 2006. It claims an amount due of \$403,769.44 as of November 2006. Gilman responded, seeking dismissal of Option One's complaint.<sup>6</sup> Phinney also filed an answer seeking dismissal of the complaint for failure to state a claim upon which relief could be granted. Phinney claims that its lien has priority, and that Maine mechanic's lien law bars the claim because Option One knew of and consented to Gilman's home construction. Lastly, Phinney notes that the total amount of its lien is \$41,200.05 as of the date of its affidavit.

Option One now moves for summary judgment. In its proposed judgment, it claims that it is the priority lien holder, followed by Martin and

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<sup>3</sup> The certificate is also recorded in Cumberland County at Deed Book 23651, Page 10.

<sup>4</sup> This lien is recorded in Cumberland County at Deed Book 23767, Page 21.

<sup>5</sup> Phinney also brought a complaint for damages in the district court, which has been transferred to this Court and consolidated with this action as RE07-118.

<sup>6</sup> Gilman did not specify the basis upon which she sought dismissal, nor did she raise any affirmative defenses.

Phinney. Phinney and Martin both object, not to judgment generally, but to Option One's proposed judgment. They each contend that the mechanic's liens have priority over Option One's mortgage. Phinney submitted its own proposed judgment, with which Martin agrees, stating that the priority of lien holders is as follows: Martin, Phinney, and Option One.

## DISCUSSION

### 1. Summary Judgment Standard.

Summary judgment is proper where there exist no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *see also Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 4, 770 A.2d 653, 655. A genuine issue is raised "when sufficient evidence requires a fact-finder to choose between competing versions of the truth at trial." *Parrish v. Wright*, 2003 ME 90, ¶ 8, 828 A.2d 778, 781. A material fact is a fact that has "the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. At this stage, the facts are reviewed "in the light most favorable to the nonmoving party." *Lightfoot v. Sch. Admin. Dist. No. 35*, 2003 ME 24, ¶ 6, 816 A.2d 63, 65.

When contesting a party's statement of material facts, the opponent must provide support for its qualifications or denials by citing to the record. M.R. Civ. P. 56(h)(2). Failure to properly provide record citations gives this Court discretion to disregard the unsupported statements, and the Court is not required to evaluate parts of the record that are not specifically cited in the statement of material facts. M.R. Civ. P. 56(h)(4).

2. Is Summary Judgment Warranted on the Foreclosure Claim?

A party may seek a court-ordered foreclosure by sale when a breach of condition in a mortgage has occurred. 14 M.R.S. § 6321 (2005). "The foreclosure statute provides that 'after hearing the court shall determine whether there has been a breach of condition in the plaintiff's mortgage, the amount due thereon, including reasonable attorney's fees and court costs, *the order of priority and those amounts, if any, that may be due to other parties that may appear. . .*' " *Dept. of Agriculture, food & Rural Resources v. Ouellette*, 2007 ME 117, ¶ 11, \_\_ A.2d \_\_ (quoting 14 M.R.S. § 6322 (2006) (emphasis added)). If a judgment of foreclosure is entered, the debtor is entitled to a 90-day redemption period from the date of the judgment. *Id.* § 6322. Option One contends there are no genuine issues of material fact regarding Gilman's breach of conditions; therefore, it is entitled to a judgment of foreclosure. Its statement of material facts ("SMF") establishes how the loan came into existence, and sets forth the amount it claims is due. Option One's SMF cites to specific portions of the affidavit of Dory Goebel, its Assistant Secretary.<sup>7</sup>

Gilman filed a response which seems intended to serve both as a memorandum of law and as an opposition to the SMF. The majority of the filing contests Option One's SMF, but does not include record citations for the denials or qualifications it makes, which it terms "objections." Additionally, the response to the SMF improperly contains legal argument. Also, Gilman contends that Option One "is not the holder of the Note and Mortgage involved in this case and apparently was not at the time the case commenced," so it lacks

<sup>7</sup> Because she is custodian of Option One's records, Goebel's statements are deemed admissible as business records for purposes of this motion per M.R. Evid. 803(6).

standing to seek foreclosure. In her answer, however, Gilman did not raise the affirmative defense that Option One is not the mortgage holder and lacks standing to bring the foreclosure action. She is barred from raising the issue at this juncture.

As this Court will not consider the arguments and issues raised in Gilman's responsive filings, all of the facts in Option One's SMF are deemed admitted, including that Option One is the holder of the note and mortgage executed by Gilman in 2006 in the amount of \$380,000, and that Gilman is in default because she failed to make payments after May 1, 2006. Thus, Option One has properly established its entitlement to foreclosure through its memorandum, SMF, and affidavit.

3. Order of Priority of Lienholders.

Having determined that Option One is entitled to a judgment of foreclosure, this Court must determine the priority order of the three lien holders. Maine law provides that someone who, under a contract or with the owner's approval, provides materials and/or labor for building or improving a home has a mechanic's lien on the property. 10 M.R.S.A. § 3521 (2005). For a mechanic's lien to have priority over a mortgage, the mortgagee must "consent," or be aware of "the nature and extent of the work being performed on the mortgaged premises." *Gagnon's Hardware & Furniture, Inc. v. Michaud*, 1998 ME 265, ¶ 7, 721 A.2d 193, 194 (citing *Carey v. Boulette*, 158 Me. 204, 213, 182 A.2d 473, 478 (1962)).

In *Michaud*, the Law Court found that a bank, which had made a commercial loan to the defendant, did not know enough about the particulars of the project to have consented to the displacement of its mortgage in favor of a



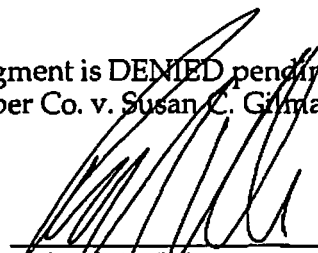
hardware store's lien for supplying materials. *Id.* ¶ 8, 721 A.2d at 195. As the bank had not technically consented, the trial court correctly found that the bank's mortgage took priority over the mechanic's lien. *Id.* ¶ 10, 721 A.2d at 195.

Because the original lender allegedly knew about the construction they performed, Martin and Phinney argue that the mortgage became subordinate to their liens. It makes sense that the original lender, RMS, may have known about the work because it occurred prior to the execution of the note and mortgage. There is insufficient evidence in this record, however, to establish what RMS knew about the work performed by Martin and Phinney to give the mechanic's liens priority over the mortgage. The mechanic's liens exist as a result of contracts between Gilman and the two service providers, and it is unclear whether the lender was aware of and consented to those contracts, although it is undisputed that the mortgage was recorded before the liens. Whether RMS consented to the liens, giving them priority over its mortgage, is a genuine issue of material fact incapable of resolution at this stage. This Court orders that a hearing be scheduled to determine the order of priority and amount due to lienholders.

**The entry is:**

Plaintiff's Motion for Summary Judgment is DENIED pending damages hearing in consolidation with Phinney Lumber Co. v. Susan C. Gilman, et. al., RE-07-118.

DATE: September 5, 2007

  
\_\_\_\_\_  
Roland A. Cole  
Justice, Superior Court

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-02598  
CHAPTER 7

IN RE:

AMANDA MARIE MCDANIEL  
AKA AMANDA MARIE WATSON  
AKA MANDI MARIE WATSON  
AKA MANDI MARIE MCDANIEL

Debtor(s)

AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

STATE OF MN  
COUNTY OF Dalwater

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,  
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of* Movant, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

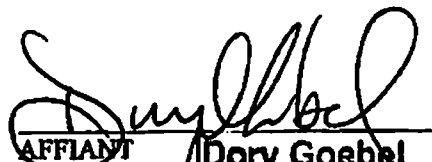
(a) Principal balance on note and mortgage as of May 9, 2008	\$212,012.85
(b) 5 Payments @ \$1,557.82 [January 2008 to May 2008]	\$7,789.10

(c) Accumulated Late Charges	\$728.90
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$61.50
(e) Corporate Advance	\$11.00
(f) Bankruptcy Fees & Costs	\$800.00

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<b>TOTAL</b>	<b>\$221,403.35</b>
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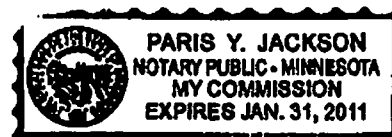
FUTHER AFFIANT SAYBETH NAUGHT

  
AFFIANT **Dory Goebel**  
Assistant Secretary

Sworn to and subscribed before me  
This 14 day of May, 2008.

  
Notary Public, State of MR At Large

Commissioned Name of Notary Public Paris y Jack  
Personally known, or produced identification x  
Type of Identification Produced \_\_\_\_\_



UNITED STATES BANKRUPTCY COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

IN RE:

David Louis Bledsoe and Joyce Moore  
Bledsoe

Debtor(s).

Case No. 07-bk-05192-JAF  
Chapter 7

AFFIDAVIT OF INDEBTEDNESS

STATE OF mn :  
: SS  
COUNTY OF Dakota :

Before me, this day, personally appeared, Dory Goebel, who being first duly sworn, deposes and says:

1. That this Affidavit is based upon personal knowledge and not upon information or belief.
2. That he/she is Avp for Secured Creditor, WASHINGTON MUTUAL BANK, as such is authorized to make this Affidavit; that he/she is familiar with the payments and charges due and payable under the debtor(s) promissory note and mortgage, the credits which have been made thereon, and with the financial records kept in connection therewith; that there is now unpaid on said note, together with the costs expended by plaintiff and or plaintiff's behalf the following:

Unpaid principal balance	<u>\$27,339.11</u>
Interest due	<u>\$198.96</u>
Bankruptcy fees	<u>\$650.00</u>
Bankruptcy Costs	<u>\$150.00</u>

TOTAL DUE PLAINTIFF

\$28,338.07

Monthly Payment Amount

\$650.38

By: 

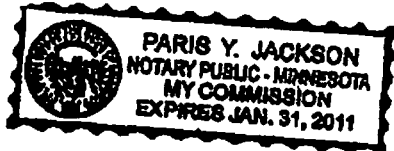
Jory Goebel *AP*

Sworn to and subscribed before me this 4 day of JAN, 2008.

  
NOTARY PUBLIC

My Commission Expires: 1-31-11

My Commission Number: 3110141  
08-089171



UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

CASE NO. 08-02861-JAF  
CHAPTER 7

IN RE:

ROBERT S. PATTON  
AKA ROBERT SCOTT PATTON

KIMBERLY J. PATTON  
AKA KIMBERLY JANE PATTON  
AKA KIMBERLY JANE SCHAEFFER

Debtor(s)

AFFIDAVIT IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY

STATE OF Minnesota

COUNTY OF Dakota

BEFORE ME, the undersigned authority, personally appeared Dory Goebel,  
who, being first duly sworn, deposes and says:

1. Affiant is an *Officer of Movant*, IndyMac Bank, F.S.B., and is personally familiar with the note and mortgage which are the basis of Movant's Motion for Relief from Stay. The information hereinafter given as to the indebtedness arising under the terms of the note and mortgage is contained in the original books and records maintained in the office of said servicing agent.

2. The allegations of the Motion for Relief from Stay filed in this case are true and correct.

3. There is now due and owing to the Movant upon the note and mortgage the following amounts:

(a) Principal balance on note and  
mortgage as of May 22, 2008

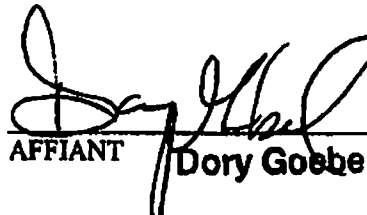
\$348,000.00

(b) 3 Payments @ \$3,000.59[March 2008 to May 2008]	\$9,001.77
(c) Accumulated Late Charges	\$304.50
(d) Fees [Recording, Fax/Quote, Wire, E-Pay]	\$51.00
(e) Bankruptcy Fees & Costs	\$800.00

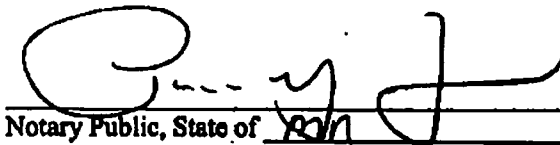
**TOTAL**

**\$358,157.27**

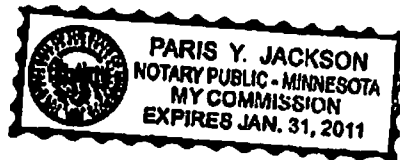
FUTHER AFFIANT SAYETH NAUGHT

  
AFFIANT **Dory Goebel**  
Assistant Secretary

Sworn to and subscribed before me  
This 28 day of May, 2008.

  
Notary Public, State of mn At Large

Commissioned Name of Notary Public Paris Jackson  
Personally known, or produced identification ✓  
Type of Identification Produced \_\_\_\_\_

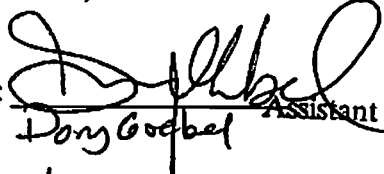







TOTAL DUE PLAINTIFF \$157,108.96

Monthly Payment Amount \$1,218.11

By:  Assistant Secretary  
Don Guebel

Sworn to and subscribed before me this 25 day of Feb, 2008.

  
NOTARY PUBLIC  
My Commission Expires: 8/1-11  
My Commission Number: 31101-4  
07-84069T

