

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS

IN RE: )  
 ) CHAPTER 13  
 ) CASE NO: 06-13703  
ROBERT H. STRAYTON )  
 )  
 ) **ADVERSARY PROCEEDING NO:**  
 ) \_\_\_\_\_

**EMERGENCY MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE ROBERT SOMMA

Now comes the Debtor, plaintiff/debtor in the above captioned matter by and through Richard S. Ravosa, Esq., counsel for the above Debtor, and respectfully moves this Court, pursuant to F.R.B.P. 7065 and 11 U.S.C. §105, for a preliminary injunction enjoining both the defendant and interested party from continuing to interfere with STRAYTON's possession of his residence at 13 School Street, Unit #11, Natick, MA (hereinafter "RESIDENCE"). In support of this Motion attorney for the Debtor represents as follows:

1. On October 16, 2006 (the "Petition Date"), the Debtor filed a voluntary petition in the United States Bankruptcy Court for the Eastern District of Massachusetts under Chapter 13 of the Bankruptcy Code.
2. Defendant, Champion Mortgage, A division of Key Bank, USA National Association (hereinafter CHAMPION) was listed in the original matrix and was given notice of the Bankruptcy via fax on October 17, 2006.
3. CHAMPION, a Defendant herein is a servicing agent for the home equity loan on the Debtor's residence, CHAMPION is a New Jersey Corporation doing business in the state of Massachusetts. Upon information and belief its principle offices are located at 20 Waterview Boulevard, Parsippany, NJ 07054.

4. The interested party, Derek Davis is the successful bidder at the foreclosure sale of STRAYTON's residence whose attorney is Mark R. Haranas a member of the firm Hargaves, Karb, Wilcox & Galvani, LLP with its principle offices located at 439 Worcester Road, Framingham, MA 01701.
5. On September 27, 2006, without prior knowledge of the Debtors, an auction commenced outside their RESIDENCE. Said auction result in a Memorandum of Sale of Real Property.
6. RESIDENCE is listed on Schedule A and is property of the estate that is exempt property pursuant to M.G.L. Ch 188 §1.
7. The closing date for the foreclosure is October 27, 2006.
8. As stated in the Complaint to avoid transfer of real property CHAMPION has violated U.S.C. §548 and M.G.L. §109.
9. The legal standard for an injunction has been satisfied thusly:


“In the First Circuit, a plaintiff must satisfy four criteria in order to be entitled to a preliminary injunction. The Court must find: (1) that plaintiff will suffer irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which granting injunctive relief would inflict on the defendant; (3) that plaintiff has exhibited a likelihood of success on the merits; and (4) that the public interest will not be adversely affected by the granting of the injunction.” Planned Parenthood League of Massachusetts et al. v. Francis X. Bellotti, et al. 641 F 2d 1006 (1<sup>st</sup> Cir. 1981).
10. The Plaintiff has made numerous efforts to resolve the delinquency, CHAMPION agreed to a forbearance agreement on five occasions in 2006 with only a \$5,000.00 payment and payment of the remainder of the arrearages over a period of time, CHAMPION has been unable to follow through with the forbearance agreement due to significant losses in personnel and inexcusable lack of follow up.

11. CHAMPION put STRAYTON in a HELOC loan, interest only for ten years, when a conventional mortgage would have been more suitable for the Debtor.
12. CHAMPION has stated through its attorney that the Bankruptcy Filing had no effect on the foreclosure and inferred that CHAMPION will move forward to the closing which is scheduled to occur on this Friday.
13. Should the sale be completed, this would result in the loss of approximately \$145,038.00 to \$164,488.00 of equity to STRAYTON in his real estate.
14. Because of the actions of CHAMPION it is virtually certain that the plaintiff will prevail on the merits.
15. The public interest will not be adversely affected by granting the injunction because it will fully restore to the plaintiff property that belongs to the Debtor.

WHEREFORE, the Debtor prays that this Court enter an Order to

1. Enjoin Champion Mortgage, a Division Of Key Bank from continuing to interfere with their possession of the debtor's residence located at 13 School Street, Unit #11, Natick Massachusetts;
2. Issue a preliminary injunction or temporary restraining order forthwith and schedule a hearing at a time the Court deems appropriate; and
3. Grant any other relief which this Court deems necessary and proper.

Respectfully submitted,  
The Debtor  
Robert Strayton  
By his attorney,



Richard S. Ravosa, Esquire  
Town & Country Legal Associates, LLC  
220 N Main Street  
Suite 101  
Natick, MA 01760

(508) 655-3013  
(617) 720-1104 (fax)  
BBO No.635846

**CERTIFICATE OF SERVICE**

I, Richard S. Ravosa, Esq., the attorney for the Debtor, Robert Strayton hereby certify that I served the foregoing *Emergency Motion for Preliminary Injunctive Relief* by causing a true copy thereof to be delivered as follows:

**06-13703 Notice will be electronically mailed to:**

Carolyn Bankowski 13trustee@ch13boston.com

John Fitzgerald USTPRegion01.BO.ECF@USDOJ.GOV

**06-13703 Notice will not be electronically mailed to:**

Harry Castleman  
Michienzie & Sawin LLC  
745 Boylston Street  
Boston, MA 02116  
**Notified via fax: (617) 227-5582**

Mark R. Haranas,  
Hargraves, Karb, Wilcox, & Galvani, LLP  
439 Worcester Road  
Framingham, MA 01701  
**Notified via fax (508) 875-7728**

**DATED: October 25, 2006**

  
**RICHARD S. RAVOSA**