

SIGNED.



Dated: July 26, 2007

*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re	)	Chapter 7
WENDY LEE NICHOLS,	)	
	)	NO. 0:07-BK-00051-RJH
Debtor.	)	
_____	)	
DLJ MORTGAGE CAPITAL, INC.,	)	
	)	
Movant,	)	
	)	
v.	)	
WENDY LEE NICHOLS, Debtor; and	)	MEMORANDUM DECISION AND PROPOSED RULING RE: DAMAGES TO BE AWARDED AGAINST DLJ MORTGAGE CAPITAL, INC. FOR WRONGLY WITHHOLDING FUNDS
WILLIAM E. PIERCE, Chapter 7 Trustee,	)	
Respondents.	)	
_____	)	

A continued hearing was held on July 24, 2007 on the lift stay motion filed by DLJ Mortgage Capital. At the hearing, the Debtor, and her non-debtor husband, David Harding, requested that the Court grant the relief requested in a previous motion. The Court indicated that the only matter before the Court for the July 24, 2007 hearings were the two lift stay motions listed on calendar but the Court would look into Debtor's request and issue an order, if appropriate.

The Court notes that the Debtor filed a response to DLJ Mortgage Capital's motion for relief from stay and that Debtor filed a separate motion for emergency hearing requesting DLJ Mortgage Capital to release funds in the approximate amount of \$40,000.00 that DLJ had received in settlement from a fire insurance claim. In both the response to the lift stay and the motion for emergency hearing to release funds, Debtor requested the specific relief of: 1) release of the funds wrongfully withheld; 2) payment of interest for a period of eleven months on the money

1 wrongfully withheld; 3) that DLJ Mortgage pay a rental deposit and additional living expenses to  
2 Debtor in the amount of \$1,650.00 per month, plus utilities until the repairs are completed on the  
3 fire damaged property; and 4) that DLJ Mortgage repair Debtor's credit to all three credit bureaus.

4 Per the June 25, 2007 Minute Entry, the Debtor confirmed that she had received the  
5 previously withheld funds on May 14, 2007.

6 The Court finds and concludes that the proper remedy in a case of wrongfully  
7 withheld funds is an order directing the payment of the funds, plus an award of damages incurred  
8 by the Debtor. However, the proper measure of damages for delay in payment is measured by the  
9 interest that accrued during the time that the funds were wrongfully withheld. As previously  
10 stated, the Debtor confirmed that the funds were paid to her on May 14, 2007, so the only remedy  
11 left for the Debtor would be an award of interest during the eleven months that the funds were  
12 wrongfully withheld. The Court therefore denies Debtor's request for payment of a rental deposit,  
13 payment of living expenses of \$1,650.00 per month and monthly utilities until the repairs to the  
14 damaged property are completed, or to direct the repair of Debtor's credit with the three credit  
15 bureaus.

16 In the federal courts, unless a statute specifies otherwise, the proper interest rate to  
17 be awarded is the federal rate of interest. The current federal rate of interest is 4.99% per annum.  
18 Just for purposes of a rough calculation, and to give the parties an idea of the amount we are  
19 talking about, interest at the federal rate on \$40,000.00 for one year would equal approximately  
20 \$2,000.00.<sup>1</sup> However, the Debtor indicated at the July 24, 2007 hearing that she has not been  
21 making mortgage payments to DLJ Mortgage Capital, so she presumably owes past mortgage  
22 payments, and the lender would likely have a right to set-off an award of interest against the  
23 outstanding mortgage payments that are now due, or that become due in the immediate future.

24 The Court has set a continued hearing on DLJ Mortgage Capital's motion for relief  
25 from the automatic stay on August 20, 2007 at 11:00 a.m. The Court will allow DLJ Mortgage

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27 <sup>1</sup> \$40,000.00 multiplied by 4.99% equals \$1,996.00.

1 Capital until August 13, 2007 to file a response to the Court's proposed ruling on the damages  
2 incurred for wrongfully withholding the funds due to the Debtor. The Court will make its final  
3 ruling on this matter at the August 20, 2007 hearing.

4 DATED AND SIGNED ABOVE

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6 Copy of the foregoing mailed or e-mailed  
7 this 26<sup>th</sup> day of July, 2007, to:

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