UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 20, 2014 at 1:30 p.m.

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1. 14-20315-E-13 MONTY MANTOVAN
DBL-2 Scott A. CoBen

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-7-14 [36]

RESOLUTION FUND MANAGEMENT, LLC VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Movant Resolution Fund Management LLC ("Creditor") seeks relief from

the automatic stay pursuant to 11 U.S.C. § 362(d)(1) alleging that cause exists to allow them to continue litigation in Superior Court. Creditor also argues that pursuant to 11 U.S.C. § 362(d)(2) Debtor has no equity in the subject real property and that the property is not necessary for a reorganization as the Debtor seeks to surrender it.

DOCUMENTS

The moving party filed the moving documents and each proof of service as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

DECLARATION

Movant provides the Declaration of David Leventhal, attorney and investor of Movant Resolution Fund Management LLC to support its claims.

Federal Rules of Evidence

The Federal Rules of Evidence are clear and straight forward with respect to what constitutes proper and competent evidence. These Rules include the following.

Federal Rule of Evidence 602. Need for Personal Knowledge

> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. FN.1.

FN.1. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VI, § 602.02

§ 602.02 Purpose and Applicability of Rule

[1] Personal Knowledge as Most Reliable Evidence

A witness may testify only about matters on which he or she has first-hand knowledge. The witness's testimony must be based on events perceived by the witness through one of the five senses.

The Rule is an extension of the law's usual preference that decisions be based on the best evidence available, although this preference is not an actual rule of evidence. The Rule acknowledges that distortion increases with transfers of testimony, and that the most reliable testimony is

obtained from a witness who has actually perceived the event.

Rule 602 permits evidence of the requisite personal knowledge to be provided either through the witness's own testimony or through extrinsic testimony. The Rule authorizes the judge to exercise some, although minimal, control over the jury by empowering the judge to reject inherently incredible testimonial evidence, something that rarely occurs (see § 602.03).

> Federal Rule of Evidence 701. Opinion Testimony by Lay Witnesses
>
> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. FN.2.

FN.2. WEINSTEIN'S FEDERAL RULES OF EVIDENCE MANUAL 2ND EDITION, MATTHEW BENDER & COMPANY, INC., ARTICLE VII, § 701.03, 701.06

§ 701.03 Requirements for Admissibility

[1] Opinion Must Be Based on Personal Perception

To be admissible, lay opinion testimony must be based on the witness's personal perception. This requirement is no more than a restatement of the traditional requirement that most witness testimony be based on first-hand knowledge or observation.

In its purest form, lay opinion testimony is based on the witness's observations of the event or situation in question and amounts to little more than a shorthand rendition of facts that the witness personally perceived. Lay opinion testimony is also admissible when the opinion is a conclusion drawn from a series of personal observations over time. Most courts have also permitted lay witnesses to testify under Rule 701 to their opinions when those opinions are based on a combination of their personal observations of the incident in question and background information they acquired through earlier personal observations....

§ 701.06 Trial Judge Has Broad Discretion to Admit or Exclude Lay Opinion Testimony

Trial courts have broad discretion in determining whether to admit or to exclude lay opinion testimony. This discretion applies both to the general decision to admit or exclude the evidence and to the subsidiary questions included in that determination:

> Whether the opinion is based on the witness's personal perception.

Whether the opinion is rationally connected to the witness's personal perceptions.

Whether the opinion will assist the trier of fact in understanding the witness's testimony or in determining a fact in issue. (cont.)

Whether the probative value of the testimony outweighed its potential prejudicial effect.

Federal Rule of Evidence 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Federal Rule of Evidence 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Personal Knowledge Testimony of Counsel

Mr. Leventhal provides his personal knowledge testimony relevant to the present Motion as to the following facts:

1. On July 30, 2007, Kimberlee Spinella, Trustee of the Kimberlee Spinella 2007 Revocable Living Trust, and Monty Mantovan, Trustee of the Monty J. Mantovan 2007 Revocable Living Trust, signed a Note and Deed of Trust with Zions First National Bank, for $632,100. Creditor is the successor in interest to Zions. The Debtor and Kimberlee Spinella guaranteed the Note and Deed of Trust.

2. The Deed is in first position in front of a second Deed of Trust with US Small Business Administration, and a third Deed of trust in favor of Doug & Jonnie Nicholson. The SBA is owed approximately $475,500 and Doug and Jonnie Nicholson are owed approximately $300,000.

A witness is one who has personal knowledge (other than an expert witness) of the facts which are to be presented to the court. The court cannot determine what, if any, of what Mr. Leventhal is testifying to is of his personal knowledge and what is made up or hearsay testimony.

Counsel, who states that he is also an investor in the Movant, has taken it upon himself to provide statements under penalty of perjury for which he either does not have personal knowledge or are his legal opinion (argument). Non-personal knowledge statements or arguments by counsel are not properly presented as testimony under penalty of perjury.

As the court does not have sufficient evidence to support the motion, it is denied without prejudice.

Furthermore, the case was dismissed on May 10, 2014, making the Motion moot.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the Motion is denied without prejudice.

2. 14-23554-E-13 PAULA CAMPBELL
TC-37 David Foyil

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-21-14 [16]

FIRST TECHNOLOGY FEDERAL CREDIT UNION VS.

Final Ruling: No appearance at the May 20, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on April 21, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Paula Eileen Campbell("Debtor") commenced this bankruptcy case on April 7, 2014. First Technology Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Nissan Versa, VIN ending in 47035 (the "Vehicle"). The moving party has provided the Declaration of Anna Fowler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Fowler Declaration provides testimony that Debtor has not made one (1) post-petition payment, with a total of $344.75 in post-petition payments past due. The Declaration also provides evidence that there are ten (10) pre-petition payments in default, with a pre-petition arrearage of $3,792.25.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $24,657.76, as stated in the Fowler Declaration. while the value of the Vehicle is determined to be $15,038.00, as stated in Schedules B and D filed by Debtor.

The Fowler Declaration also seeks to introduce evidence establishing the value of the asset through a VIN Explosion median value. Though the valuation

is attached as an Exhibit, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17).

NON-OPPOSITION TO MOTION

The Chapter 13 Trustee filed a statement of non-opposition to the Motion for Relief.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow First Technology Federal Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by First Technology Federal Credit Union ("Movant") having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Nissan Versa, VIN ending in 47035 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

3. 10-44161-E-13 STEPHEN BARNETT — **MOTION FOR RELIEF FROM AUTOMATIC STAY**
NLG-1 Curt F. Hennecke — **4-9-14 [64]**

DEUTSCHE BANK NATIONAL TRUST
VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is denied without prejudice.

Deutsche Bank National Trust Company as Indenture Trustee for MortgageIT Trust 2004-1("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 614 Maddalena Way, Fairfield, California (the "Property"). Movant has provided the Declaration of Therese Pfullmann to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Pfullmann Declaration states that there are four (4) post-petition defaults in the payments on the obligation secured by the Property, with a total of $6,404.56 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $534,876.75 (including $474,376.75 secured by Movant's first deed of trust), as stated in the Pfullmann Declaration and Schedule D filed by Steven Barnett("Debtor"). The value of the Property is determined to be $338,000.00, as stated in Schedules A and D filed by Debtor.

DEBTOR'S OPPOSITION

Opposition has been filed by Debtor asserting that Debtor is now current with the Chapter 13 plan payments and Movant is receiving the post-petition mortgage payments on the First Deed of Trust. Debtor states that the Chapter 13 Trustee filed a Notice of Default and Application to dismiss on April 16, 2014, which indicated that the Debtor was delinquent $4,270.96, with an additional $2,441.42 due for the April, 2014 plan payment. Debtor states he mailed a cashier's check in the amount of $6,720.00 on April 21, 2014, which was received by the Chapter 13 Trustee on April 25, 2014. The Debtor states he has now cured the default with the Chapter 13 Trustee and is current with his plan payment.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response stating that the Debtor is now current under the plan and has paid a total of $102,011.24 to date.

DISCUSSION

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Here, Debtor cured the default in plan payments after the Motion for Relief from Stay was filed. Debtor now being current under the plan payment, the Motion is denied without prejudice.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Deutsche Bank National Trust Company having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

4. 14-23471-E-13 ERROL/SUZANNE BURR
KMT-1 Iain A. MacDonald

MOTION FOR ORDER APPROVING STIPULATION FOR MODIFICATION OF THE AUTOMATIC STAY
5-5-14 [19]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Order Approving Stipulation for Modification of Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Order Approving Stipulation for Modification of Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditors Gary and Linda Zolldan ("Creditor") move the court for an order approving the stipulation regarding modification of the automatic stay to proceed with litigation in a non-bankruptcy forum, pursuant to Federal Rule of Bankruptcy Procedure 4001(d)(1). Creditor states that the terms and conditions of the agreement between the Creditor and Debtors and the facts that establish cause for relief from stay are set forth in the Stipulation and Declaration. FN.1.

FN.1. The moving party filed the declaration and exhibits in this matter as

one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

DISCUSSION

Federal Rule of Bankruptcy Procedure 4001(d) specifies how a creditor obtains approval of a stipulation and order for relief from the automatic stay to be, in pertinent part,

> (d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.
>
> (1) Motion; Service.
>
> (A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:
>
> (I) an agreement to provide adequate protection;
>
> (ii) an agreement to prohibit or condition the use, sale, or lease of property;
>
> (iii) an agreement to modify or terminate the stay provided for in §362;
>
> (iv) an agreement to use cash collateral; or
>
> (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property....
>
> (B) Contents. The Motion shall consist of... a concise statement of the relief requested...that lists, or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement...
>
> (C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under

> §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs....
>
> (3) Disposition; Hearing. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

Here, the Motion fails to state the material provisions of the agreement, as required by Federal Rule of Bankruptcy Procedure 4001(d)(1)(B). The local rule requires that the material provisions be listed in the Motion itself.

The Motion merely states that in the California Superior Court, County of Sierra, the Movant and Debtors want to proceed is some litigation. The court is then directed to read other documents and assemble for Movant the grounds for the relief, the relief requested, and the scope of any modification of the automatic stay, and then provide associate attorney services to state those grounds for Movant. The court declines the opportunity to provide such services.

Quite possibly counsel for Movant may believe that it is so "simple" that even the court's law clerk or judge could figure out the grounds and state them for Movant. If they are that "simple," then counsel could have stated them in the Motion.

The court also notes that Movant and Debtor's counsel have attached a proposed form of an order to counsel's declaration. This order has several glaring defects:

A. First, it merely states that the "Stipulation is approved." The court has little idea what that means. Is the Stipulation the court's order, with each term and provision thereof constituting a factual and legal determination by the court, and then each and every provision there of is ordered by the court – with the smallest failure to comply putting the party in contempt of court?

B. Second, the automatic stay is modified so that the parties may proceed with some Superior Court litigation, which is stated and identified in the Stipulation, not clearly stated in the order.

C. Third, the stay is "modified" to allow the parties to "resolve all issues in the State Court Action." Movant making no effort to clearly state the grounds and relief requested in the Motion and using the "everything the parties have stated in the Stipulation is granted" language , there could be buried in the Stipulation provisions duping this court into abdicating its proper exercise of federal court jurisdiction.

The Stipulation makes reference to the State Court litigation, a complaint filed by Movants, a First Amended Supplemental Complaint filed by the Debtors to enforce an alleged settlement, and Movant's motion for attorneys' fees from a judgment on the First Amended Supplemental Complaint. It appears that in the Superior Court litigation judgments have been entered. No copies of the Complaints or the judgments have bene provided. No statements of the outcome of the State Court Litigation or what further action is intended in the State Court. Rather, only very generic, partial, and apparently inconsistent (attorneys' fees being awarded on judgment and statements that the parties need to proceed with the litigation in the Superior Court).

This court has repeatedly addressed the basic requirement of stating with particularity the grounds for relief in the Motion itself. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007, 9013. The court declines the opportunity to draft a motion for counsel.

Further, the court does not merely issue orders stating, "whatever relief you think you asked for in the motion is granted, you tell the state court what it is, and you all decide what issues will be litigated in state court."

The motion is denied without prejudice. (Though the court is sorely tempted to deny the motion with prejudice and allow the parties to explain to an appellate court what was presented and why it was denied.)

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.