

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

**ENTERED**  
OCT 21 2004  
U.S. BANKRUPTCY COURT  
MDNC-SRW

IN RE: )  
 )  
Todd Kmiec, ) Case No. 04-80003C-7D  
 )  
Debtor. )  
\_\_\_\_\_)  
 )  
Stacy Sommer, )  
 )  
Plaintiff, )  
 )  
v. ) Adversary No. 04-9013  
 )  
Todd Kmiec, )  
 )  
Defendant. )  
 )

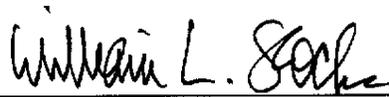
ORDER

This adversary proceeding came before the court on October 14, 2004, for hearing upon a motion by the plaintiff for entry of default and default judgment. Felipe Nery Gomez appeared by telephone on behalf of the plaintiff. Having considered the motion and the other matters of record in this adversary proceeding, and having heard the arguments of counsel, the court has concluded that hearing on the motion should be continued indefinitely. The claim involved in this dischargeability proceeding is the subject of a suit that is pending in state court in Illinois in which the plaintiff has sued the Debtor and a number of other defendants. An order has been entered in that suit dismissing the plaintiff's complaint in that proceeding with prejudice. Although plaintiff's appeal from such dismissal has been stayed as to the Debtor by the

automatic stay, this court is modifying the automatic stay to the extent of allowing the plaintiff to complete his state court appeal from the dismissal. Unless plaintiff's appeal is successful, the dismissal of plaintiff's suit in state court will preclude the plaintiff from obtaining any relief in this proceeding. Therefore, this court has concluded that the plaintiff's motion for entry of default and default judgment should be continued indefinitely pending the outcome of the state court appeal, which continuance is without prejudice to the motion being re-calendared once the state court appellate process pertaining to plaintiff's appeal from the dismissal order has been completed.

IT IS SO ORDERED.

This 20th day of October, 2004.

  
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WILLIAM L. STOCKS  
United States Bankruptcy Judge