

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
KEITH G. KLEIN) CASE NO. 08-10836
)
)
Debtor)

DECISION DENYING MOTION FOR RELIEF FROM STAY

At Fort Wayne, Indiana, on October 30, 2008.

The issues raised by GEMB Lending, Inc’s motion for relief from stay are scheduled to come before the court for trial on the afternoon of November 3, 2008. See, Order dated October 9, 2008. The order scheduling trial required the parties to “jointly file appropriate stipulations of fact, witness and exhibit lists seven (7) days prior to the scheduled trial.” Because the bar has demonstrated an increasingly common propensity to ignore the court’s deadlines, the order went on to provide:

The failure to do so will constitute a waiver of the opportunity to submit evidence or arguments and may subject the matter to a summary disposition without further hearing.

The deadline has come and gone. Counsel for GEMB Lending, Inc. and debtor’s counsel and have failed to file the required joint submission; neither have they sought an extension of time within which to do so. Accordingly, the court finds that they have waived the opportunity to submit evidence or arguments with regard to the issues raised by GEMB Lending, Inc.’s motion for relief from stay and it is appropriate to dispose of the matter without further hearing.

Relief from the automatic stay requires the creditor to identify an appropriate cause for relief, then to offer proof that its fears may be real and/or proof that there is no equity in property. See, 11 U.S.C. §§ 362(d)(1), (2)(A); (g)(1). See also, In re Szymanski, 344 B.R. 891, 897 (Bankr. N.D. Ind.

2006). Once that has been done, the burden shifts to the debtor to prove that cause does not exist and that the property in question is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2). Thus, to justify from the automatic stay the initial burden is upon the movant to come forward with the necessary information – evidence to be presented at trial. Szymanski, 344 B.R. at 897-98. Without it, the motion should be denied. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court