

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Elizabeth E. Brown

In re:)	
)	
JACKIE R. HADLEY,)	Bankruptcy Case No. 99-18712 EEB
SSN xxx-xx-7830)	Chapter 13
Debtor.)	
)	
WELLS FARGO HOME MORTGAGE,)	
)	
Movant,)	
vs.)	
)	
JACKIE R. HADLEY, ESQ.,)	
SALLY ZEMAN, Chapter 13 Trustee,)	
)	
Respondents.)	

ORDER

THIS MATTER comes before the Court on the Debtor’s “Objection and Response to Verified Motion for Entry of Order for Relief from Stay Pursuant to Stipulation,” (the “Objection”), and the Court being otherwise advised in the premises, hereby

FINDS that the Debtor and Wells Fargo Home Mortgage (formerly Norwest Mortgage, Inc.) entered into an agreement, which was filed with the Court on March 15, 2000 (the “Stipulation”), resolving the creditor’s pending Motion to Dismiss. The terms of the Stipulation included a provision that if the Debtor failed to timely cure any default in the agreed payment schedule, the creditor would be entitled to obtain ex parte relief from stay. It did not provide that the Debtor would be entitled to a hearing on whether it was in “substantial” compliance. The provision entitling the creditor to ex parte relief is commonly referred to as a “drop dead” provision. Agreements, such as the Stipulation, commonly utilize a drop dead provision in order to grant the Debtor *one* more opportunity to cure defaults, to avoid litigation on either a motion to dismiss or a motion for relief from stay, and to give the creditor certainty as to its relief in the event that the debtor fails to perform. To give the debtor another opportunity to cure, but to deny the creditor its entitlement to ex parte relief from stay, deprives the creditor of the benefit of its bargain with the debtor. Accordingly, the only dispute requiring a hearing on such a stipulation should be if the debtor disputes the creditor’s claim that it has not fully performed the terms of the stipulation. For example, if the creditor asserts that it did not receive a payment and the debtor seeks to prove that the creditor did in fact receive timely payment.

FURTHER FINDS that on February 7, 2002, the creditor filed a Verified Motion for Entry of Order for Relief from Stay Pursuant to Stipulation, alleging the Debtor had failed to cure certain defaults under the terms of the Stipulation. This Court entered an Order granting ex parte relief to this creditor on February 11, 2002. On February 14, 2002, the Debtor filed the Objection. The Court treats the Objection as a Motion to Reconsider.

FURTHER FINDS that the Objection states that the Debtor “believes that he is substantially in compliance with the Stipulation....[and] submits that this creditor is and will be adequately protected under the Chapter 13 plan....” Whether the creditor should be satisfied with its treatment under the proposed plan is irrelevant to this inquiry. If the creditor consents to a modification of the Stipulation, through a plan or otherwise, such consent would be relevant. The Debtor has not indicated that the creditor has agreed to any modification of the Stipulation. In addition, the Debtor has not indicated that he is in compliance with the Stipulation, only that he is in “substantial” compliance. For the reasons stated above, this Debtor is not entitled to a hearing on whether partial performance and a good faith plan will adequately protect this creditor. He is bound by the terms of the bargain that he struck. Accordingly, it is hereby

ORDERED that the Objection is DENIED. The Court’s prior Order of February 11, 2002, granting ex parte relief to Wells Fargo Home Mortgage remains in effect.

DATED this ____ day of March, 2002.

BY THE COURT:

Elizabeth E. Brown
United States Bankruptcy Judge

Meinhold, Stawiariski, Shapiro & Codilis
9200 E. Mineral, #350
Englewood, CO 80112
(303) 799-0083
Counsel for Wells Fargo Home Mortgage

Conrad R. Kindsfather
5613 Olde Wadsworth Boulevard
Arvada, CO 80002
(303) 423-6695
Counsel for Debtors