



**IT IS ORDERED as set forth below:**

**Date: May 24, 2010**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
<b>LARRID NEIL HENDERSON,</b>	:	<b>10-65398-MGD</b>
	:	
Debtor.	:	CHAPTER 7
	:	
<b>JEAN-MARC JACQUES,</b>	:	
	:	
Movant,	:	
v.	:	Contested Matter
	:	
<b>LARRID NEIL HENDERSON and M. DENISE DOTSON, CHAPTER 7 TRUSTEE,</b>	:	
	:	
Respondents	:	

**ORDER DENYING MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Before the Court is Jean-Marc Jacques' ("Movant") Motion for Relief from the Automatic Stay ("Motion") filed May 5, 2010. (Docket No. 14). The matter came on for hearing May 20, 2010. Present at the hearing were Zach Nelson of Arnall Golden Gregory LLP, representing Movant, and

*pro se* Debtor, Larrid Neil Henderson.

Movant seeks relief from the automatic stay to continue prosecuting the Connecticut state court litigation that is pending between the parties. The state court litigation was filed August 31, 2009 and includes claims against Debtor for breach of contract, breach of fiduciary duty, larceny, embezzlement and/or conversion, civil conspiracy, and unjust enrichment. Debtor's Chapter 7 bankruptcy petition was filed February 25, 2010 and Debtor's schedules include the debt owed to Movant. Debtor's Chapter 7 filing stayed the state court action.

At the hearing, Movant represented that the Motion was filed to continue with the state court litigation to judgment. It would then be Movant's intention to file a nondischargeability complaint, initiating an adversary proceeding, in this Court. Movant planned to rely upon the state court's findings and use the doctrine of issue preclusion to expedite the nondischargeability action. Movant explained that discovery had been served on Debtor and that a pretrial conference had been scheduled for March 3, 2010 prior to Debtor's Chapter 7 filing. Movant argued that the progress in the state court litigation, efficiency, and convenience to Movant supported the Motion. Debtor countered that he only filed an answer in the pending litigation and was financially unable to defend the state court litigation.

The Court is not persuaded that continuing with the state court litigation is more efficient or convenient. Although the case had been scheduled for a pretrial conference, judgments based on default often present complications when the doctrine of issue preclusion is asserted. Additionally, the use of issue preclusion is only an option when the elements of the state court claims align with the elements of the asserted nondischargeability claim under the Bankruptcy Code. There is ample case law that explains the limitations of issue preclusion. *E.g., In re St. Laurent*, 991F.2d 672, 675

(11th Cir. 1993) (“[I]f the judgment fails to distinguish as to which of two or more independently adequate grounds is the one relied upon, it is impossible to determine with certainty what issues were in fact adjudicated, and the judgment has no preclusive effect.”). Second, here, Movant is a resident of Quebec, Canada. The personal convenience of Movant to Hartford, Connecticut as compared to Atlanta, Georgia is also an insufficient basis to grant relief from the automatic stay. Additionally, Movant must file a nondischargeability action in this Court to collect a judgment regardless of which court adjudicates the matter. Based on these reasons, there is not sufficient cause under § 362(d)(1) to warrant modification of the automatic stay. Accordingly, it is

**ORDERED** that Debtor’s Motion for Relief from the Automatic Stay is hereby **DENIED**.

Nothing in this Order shall preclude Movant from timely filing a nondischargeability complaint against Debtor or whatever other action it deems appropriate.

The Clerk shall serve a copy of this Order upon Debtor, Movant, Movant’s counsel, and the Chapter 7 Trustee.

**END OF DOCUMENT**