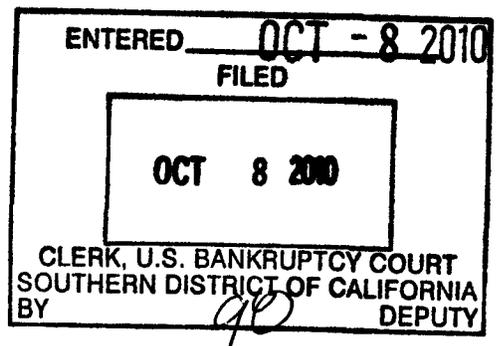


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>In re:</p> <p>JOHN C. NICKLES, JR.,</p> <p style="padding-left: 100px;">Debtor,</p>	<p>)</p>	<p>BANKRUPTCY NO: 10-05033-MM13</p> <p>CHAPTER: 13</p> <p>MEMORANDUM DECISION</p> <p>DATE:</p> <p>TIME:</p> <p>CRTRM: 1</p> <p>JUDGE: Margaret M. Mann</p>
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Debtor John C. Nickles, Jr. ("Debtor") filed a Chapter 13 bankruptcy petition on March 29, 2010. North Island Financial Credit Union ("North Island") filed a Motion for Relief from the Co-Debtor Stay and a hearing was held on August 10, 2010, in order to proceed against the co-obligor on the loan, John C. Nickles, Sr. (the "co-obligor"). North Island filed a proof of claim in this case in the amount of \$20,803.42. The Debtor's plan provides for North Island's claim as an allowed secured claim of \$9,245.00.

1 A hearing was held on the motion on August 10, 2010. North Island filed a supplemental brief
2 on September 3, 2010. No supplemental briefs or responses were filed by the Debtor, nor were any
3 responses filed by the co-obligor.¹

4 The Court took under submission the issue of whether a creditor should be granted relief from
5 stay to proceed against the co-debtor on a secured loan where the Debtors' plan does not provide for
6 payment of the claim in full. The Court concludes that a stay against a co-debtor or guarantor does not
7 apply to the extent the "plan filed by the debtor proposes not to pay such claim." 11 USCS § 1301(c)(2)
8 provides:

9 (c) On request of a party in interest and after notice and a hearing, the court shall grant relief
10 from the stay provided by subsection (a) of this section with respect to a creditor, to the extent
11 that—

12 (2) the plan filed by the debtor proposes not to pay such claim; . . .

13 The Bankruptcy Appellate Panel of this circuit, relying upon the legislative history of 11 U.S.C.
14 § 1301(c)(2) in *In re Jacobsen*, 20 B.R. 648 (9th Cir. BAP 1982), held that the "stay insulating a co-
15 debtor from suit shall be inoperative to the extent that 'the plan filed by the debtor proposes not to pay
16 such claim . . .'" *Id.* at 650. The *Jacobsen* Court reasoned:

17 "(T)here is no limitation on the creditor's right to sue the co-debtor for the amount not provided
18 for by the plan. There is no requirement that suit be deferred while the debtor pays under the
19 plan during a period of years." (citations omitted). . . .

20 It would make little sense to defer such relief when it is known that the creditor will never
21 receive the unprovided-for amount, under the plan, from the debtor. To put it otherwise, the
22 debtor has in effect stated the respective dimensions of his liability and that of the co-maker.
23 Section 1301(a)(2) provides the creditor with freedom to pursue, to the latter extent, its claim
24 against a co-debtor." *Id.*

25 In the instant case, the Debtor's plan does not provide for payment of North Island's entire
26 claim. The plan provides for an allowed secured claim of \$9,245.00 with interest of 6%, and does not

27 ¹ In the Debtor's Opposition to Relief from Stay, the Debtor argues that the co-obligor was not properly served, because
28 the motion was mailed to the co-obligor at the Debtor's address. The Court agrees with North Island that service at that
address was proper as to the co-obligor, because it was the address listed as the co-obligor's address in the loan
application, and was mailed to him in a separate envelope.

1 provide for payment of North Island's unsecured claim in full. The Court grants North Island's Motion
2 for Relief from the Co-Debtor Stay, and waives the 14 day stay imposed in Rule 4001(a)(3).

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Dated: October 8, 2010


MARGARET M. MANN, JUDGE
United States Bankruptcy Court