

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

JOHN L. FREEMAN and
JANIE FREEMAN

Case No. 97-18048 K

Debtors

The Debtors have by Application sought an Order to Show Cause under Rule 9024 (incorporating Rule 60, F.R.Civ.P.) to direct Fairbanks Capital Corp. to cease a foreclosure proceeding against Debtors' home.

The Application is Denied for two reasons:

(1) The Debtors admit that they defaulted on the terms of a stipulated order with Fairbanks, but seek to impose a change in the terms of that order. This Court does not grant relief from a stipulated order other than for fraud or collusion. That the stipulated terms turned out to be improvident for the Debtors is not a grounds for relief. The ability of this Court to function is due in no small part to the willingness of mortgage lenders to agree to such orders, and that willingness depends on the Court's enforcing them uniformly and not permitting the lender to be dragged back in after the initial stipulation is reached and approved.

(2) The Debtors propose to compel Fairbanks to accept the full amount of the redemption price over the duration of the Chapter 13 Plan. The Court does not believe that there is any clear right to do so, in view of 11 U.S.C. § 1322(b)(2), and in light of (1) above.

Only the request for an Order to Show Cause is Denied. The Debtors are free to

make any Motion they think appropriate under law.

The Debtors' request shall be docketed, as well as this Order. The Debtors' counsel shall immediately serve a copy of each on Fairbanks Capital's counsel.

SO ORDERED.

Dated: Buffalo, New York
November 3, 1998

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.