UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

JAMES I. WYNN, SR., **CASE NO. 94-22611**

Debtor(s). **DECISION & ORDER**

BACKGROUND

On December 5, 1994, James I. Wynn, Sr. (the "Debtor") filed a petition initiating a Chapter 13 case. On his Schedule A of Real Property the Debtor showed that: (1) he owned eight investment properties in the City of Rochester, including a two-family income property at 183 Wellington Avenue ("Wellington Avenue"), two vacant lots in a suburban township, and a residence at 7 Kencrest Circle, Rochester, New York ("Kencrest"); and (2) he believed that these parcels of real property had an aggregate value of $760,000.00 and were subject to unpaid mortgages and real estate taxes with an aggregate balance of approximately $520,000.00.

Along with his petition, the Debtor filed a Chapter 13 Plan (the "Plan") in which the Debtor proposed to: (1) pay the Trustee $50.00 per month from his disposable income of approximately $75.00 per month (the Debtor's income is primarily pension and rental income); and (2) sell within two years (by January 30, 1997) various of his investment properties and use the proceeds to pay in full his unpaid mortgage arrearages, mortgages on sold properties, real estate taxes, unsecured creditors, estimated at approximately $8,500.00, administrative expenses and Trustee commissions.

At a confirmation hearing conducted on January 30, 1995, the Court confirmed the Plan conditioned upon: (1) the Debtor using all income generated from each individual investment

property for the expenses of that property until the property was sold or the Plan completed; (2) unsecured creditors, who were to receive payment in full plus a 9% value added factor because of the estimated non-exempt equity in the Debtor's assets, were to be paid first out of any unsecured proceeds of individual property sales before secured creditors with liens on other properties; and (3) the Debtor was to provide proof of insurance on all of the properties before an order of confirmation would be entered. On May 18, 1995, an Order Confirming the Plan was entered.

On May 18, 1995, the Chapter 13 Trustee ("Trustee") filed a motion (the "Modification Motion"), pursuant to Section 1329[1], to increase the Debtor's plan payments by the proceeds of the settlement of a discrimination action (the "Discrimination Suit") brought by the Debtor against his former employer, A.C. Delco Systems ("Delco"), then pending in the United States District Court for the Western District of New York (the "District Court"). The Motion indicated that: (1) the

---

[1] Section 1329 (a) provides:

> At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to–
>
> (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;
>
> (2) extend or reduce the time for such payments; or
>
> (3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

Debtor was the plaintiff in the pending Discrimination Suit; (2) with the approval of the District Court the Suit had been settled for $54,000.00 with the approval of the District Court; (3) the settlement was being held in escrow by the attorneys for Delco; (4) the Debtor had not disclosed the Discrimination Suit or the settlement in his schedules or at his Section 341 Meeting of Creditors; (5) the Debtor's attorney in the Discrimination Suit was not his bankruptcy attorney, and in late March, 1995 his bankruptcy attorney had been suspended from the practice of law; (6) the Debtor had appealed to the United States Court of Appeals for the Second Circuit (the "Second Circuit") the denial of his request to the District Court that it vacate the settlement; (7) the Debtor's attorney in the Discrimination Suit had a claim to a contingent fee based upon the settlement; (8) the net proceeds of the settlement of the Discrimination Suit would allow the general and priority unsecured creditors to be paid immediately in full with a value added factor and also allow a substantial payment to be made towards the secured claims to be paid under the Plan. Therefore, the Trustee requested that the Plan be modified to provide for the payment to the Trustee of the proceeds of the settlement of the Discrimination Suit, after the deduction for attorney's fees and expenses in prosecuting the Suit. On June 14, 1995, the Debtor, who since his bankruptcy attorney was suspended from the practice of law has been prosecuting his Chapter 13 case "pro se", interposed a Response to the Modification Motion which indicated that: (1) he believed from his former bankruptcy attorney that the Court was aware of the settlement and that the settlement funds were being held in escrow by the attorneys for Delco; (2) he had appealed the denial by the District Court of his request to vacate the Court approved settlement because he no longer agreed with the

settlement; and (3) he did not wish the Bankruptcy Court to modify the Plan as proposed by the Trustee.

At the return date of the Modification Motion on June 19, 1995, the Court granted the Motion, contingent on the Debtor's appeal to the Second Circuit being denied or dismissed. On August 28, 1995, after the Debtor's appeal to the Second Circuit had been denied, the Court entered an Order modifying the Plan (the "Modification Order"). The Order directed that the net proceeds of the settlement of the Discrimination Suit be turned over to the Trustee for distribution first to pay general unsecured claims, which were to be paid in full plus a value-added factor of 9%, next

to pay priority claims in full plus a value-added factor of 9% and then to pay all or a portion of the secured claims to be paid under the Modified Plan.

By motion (the "Turnover Motion"), made returnable on September 6, 1995, the Trustee requested that the Court enter an Order: (1) directing that the settlement proceeds of the Discrimination Suit being held in escrow by the attorneys for Delco be paid over to him, as Trustee; (2) authorizing him, as Trustee, to pay $14,000.00 from the proceeds to the Debtor's attorney in the Suit, which was the balance of her contingent fee; and (3) directing the Trustee to distribute the remaining proceeds pursuant to the terms of the Modified Plan. By letter dated September 1, 1995, the Debtor advised the Court in response to the Turnover Motion that he had applied for a rehearing before the Second Circuit and requested that the net proceeds of the settlement of the Discrimination Suit, if they were paid over to the Trustee, be distributed to him to pay his current bills, including

various mortgage arrearages, rather than to unsecured creditors as required by the Modified Plan. On the return date of the Turnover Motion the Court granted the Motion but directed that the turnover of the settlement proceeds would be contingent upon the denial of the Debtor's application to the Second Circuit for a rehearing or the Second Circuit once again affirming the settlement if a rehearing was granted. An order was entered on September 26, 1995 (the "Turnover Order").

On October 19, 1995, Delco filed a motion (the "Delco Motion") which requested that the Turnover Order be amended. The Motion alleged that on or about September 1, 1995, in violation of the terms of the District Court approved settlement in the Discrimination Suit, the Debtor commenced a discrimination action in New York State Supreme Court. Thereafter, Delco filed a motion in the District Court which requested that the Court enforce the Court approved settlement. Delco requested that its attorneys not be required to turn over the settlement proceeds until a final order was entered by the District Court enforcing the settlement. On the November 1, 1995 return date of the Delco Motion, the attorneys for Delco also indicated that as part of the enforcement proceeding the District Court might award some of the settlement proceeds to Delco as damages. The Court granted the Delco Motion in part. It directed that there immediately be paid over to the Trustee so much of the settlement proceeds as he would require to pay the Debtor's attorney in the Discrimination Suit the balance due on her contingent fee and all general and priority unsecured creditors in full, as provided for under the Modified Plan. The Court determined in connection with its ruling that a sufficient amount would remain in escrow with the attorneys for Delco to cover any reasonable damages the District Court might award Delco. On December 14, 1995, an order was

entered in connection with the Delco Motion (the "Amended Turnover Order").

On November 1, 1995, the Debtor filed a Notice of Appeal from the Court's August 28, 1995 Modification Order and September 26, 1995 Turnover Order. The appeal was dismissed on November 9, 1995 because of the failure of the Debtor to pay the required filing fee.

On December 28, 1995, the Debtor appealed the Amended Turnover Order to the District Court. No stay pending appeal was requested. Thereafter, the Trustee, pursuant to the Turnover and Amended Turnover Orders, received enough of the settlement proceeds so that in January, 1996 he was able to pay the general and priority unsecured creditors provided for under the Plan and the Modified Plan in full with a value added factor of 9%. On August 7, 1996, the appeal of the Amended Turnover Order was dismissed by the District Court.

From the date of the filing of the Debtor's Petition on December 5, 1994, through May 1, 1996, there were seven (7) motions to modify the stay provided by Section 362 filed by secured creditors with liens against one or more of the parcels of real property owned by the Debtor. These motions resulted in various orders being entered. However, no motions have been filed by the Debtor or the Trustee to approve the sale of any of the Debtor's parcels of real property.

On May 6, 1996, the Debtor filed a copy of his May 3, 1996 letter to the Trustee (the "Jackson Letter") wherein he attached a copy of a January 31, 1996 judgment in favor of Trenton J. and Pamela M. Jackson of 177 Wellington Avenue, Rochester, New York (the "Jacksons"), entered against him in the Rochester City Court (the "Jackson Judgment"). The Jackson Judgment was for the total amount of $7,372.73 and was signed by the Honorable Ann E. Pfeiffer ("Judge

Pfeiffer"). The Jackson Letter indicated that: (1) on November 12, 1992, some bricks fell from the chimney of the Debtor's 183 Wellington Avenue property and damaged the Jackson's adjoining property on Wellington Avenue; (2) the Debtor thought the matter was being resolved by his insurance company and the Jackson's insurance company, but then he was sued by the Jackson's attorney for a sum that was far in excess of what his insurance company had indicated to him the repairs would cost; and (3) executions on the Jackson Judgment had resulted in monies from the Debtor's checking account and rent checks from the Department of Social Services being paid over to Nationwide Insurance ("Nationwide") the then holder of the Jackson Judgment.

Thereafter, the Trustee filed a copy of his May 9, 1996 letter to the Debtor regarding the Jackson Letter and the Jackson Judgment which indicated that before executing against property of the estate, including monies in the Debtor's checking account and rent payments, the holder of the Jackson Judgment should have requested an order of the Bankruptcy Court granting it relief from the stay. In his letter, the Trustee acknowledged, however, that it appeared that the holder of the Jackson Judgment had not been made aware of the Debtor's bankruptcy before the initial enforcement proceedings had been undertaken.

On May 24, 1996, the Debtor filed a copy of his May 23, 1996 letter to Judge Pfeiffer in response to an Order which she had entered denying the Debtor's motions requesting relief from the restraining notices, garnishments and executions in connection with the Jackson Judgment.

On June 12, 1996, the Debtor filed a motion entitled "Violation of Debtor Chapter 13 Rights, Illegal Garnishee of Debtor Funds, Reimburse Debtor $4,912.00 Taken As a Result of Garnishee

Plus Expenses and 50% Interest Monthly Starting March 12, 1996" (the "Enforcement Motion"). The Supporting Affidavit of the Debtor indicated that: (1) the Debtor had initially been served in the City Court action (the "Jackson Action") on March 7, 1995; (2) on July 26, 1995 Arbitrator Robert Michel[2] ("Arbitrator Michel"), after an arbitration proceeding in which the Debtor appeared and participated, made an award (the "Arbitration Award") to the Jacksons of $5,578.00 plus interest from July 26, 1995; (3) on August 28, 1995, the Debtor had demanded a trial *de novo* in City Court; (4) on January 5, 1996, Judge Pfeiffer conducted a trial, on January 17, 1996 issued a written decision and on January 31, 1996 signed the Jackson Judgment for $7,372.72; (5) prior to the entry of the Jackson Judgment on January 31, 1996, the Debtor had not indicated to the Jacksons, their attorney, Arbitrator Michel or Judge Pfeiffer that he was involved in a pending Chapter 13 case that had been filed on December 5, 1994; (6) on February 6, 1996, the Debtor appealed Judge Pfeiffer's Decision and the Jackson Judgment, but did not apply for a stay pending appeal; and (7) $4,912.00 had been obtained from the Debtor on executions which he requested be returned to him, along with $850.00, the out-of-pocket expenses he alleges that he incurred in connection with this matter.

On June 14, 1996, Nationwide interposed opposition to the Enforcement Motion. The Affidavit of Nationwide's attorney indicated that: (1) there was an appeal of the Pfeiffer Decision and the Jackson Judgment pending in State Court; (2) under New York Civil Practice Law and Rules (the "CPLR") Section 3211, by failing to include any discharge in bankruptcy as an affirmative

---

[2] Robert Michel is an attorney and a several term elected Town Justice in the Town of Pittsford, New York.

defense, the Debtor had waived that defense[3]; (3) prior to May 6, 1996, the Debtor had never advised the parties in the Jackson Action of his pending bankruptcy proceeding; (4) had the other parties in the Jackson Action known of the Debtor's bankruptcy, they would have moved in Bankruptcy Court to be allowed to proceed in City Court; (5) Nationwide would be severely prejudiced if the expenses they had incurred in the various stages of litigation, including pleadings, discovery, arbitration, trial, enforcement, post-trial motions and the appeal, were invalidated because the Debtor purposefully failed to advise them of his bankruptcy; (6) the Court should equitably annul the automatic stay, either to the extent of the Judgment Creditor's actions taken to date, or until such time as the

---

[3] CPLR Section 3211 provides in pertinent part:

(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds.

(e) Number, time and waiver of objections; motion to please over. At any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in subdivision (a), and no more that one such motion shall be permitted. Any objection or defense based upon a ground set forth in paragraphs one, three, four, five and six of subdivision (a) is waived unless raised either by such motion or in the responsive pleading.

Jackson Judgment has been paid in full[4]; and (7) any violation of the stay by Nationwide or the Jacksons was not wilful, so that no award should be made pursuant to Section 362(h).

At the June 19, 1996 return date of the Enforcement Motion: (1) the Court learned for the first time that the Debtor had transferred title to at least three of his investment properties to his son in an attempt to avoid their being the subject of property executions in connection with the enforcement of the Jackson Judgment; (2) the Debtor advised the Court that he did not list the Jacksons as creditors on his bankruptcy schedules because between November, 1992, when the damages occurred, and March, 1995, when he was served in the Jackson Action, he believed that the matter was being taken care of by his insurance company; (3) the Debtor failed to ever satisfactorily explain why between March, 1995, when he was served in the Jackson Action, and April, 1996, when he alleges he first advised Judge Pfeiffer of his bankruptcy proceedings, he did not advise the Jacksons, their attorney, Arbitrator Michel, Judge Pfeiffer or the attorneys for Nationwide of his pending bankruptcy which has been a very time consuming matter for the Debtor; and (4) the Debtor failed to ever satisfactorily explain why between March, 1995 and May, 1996 he did not advise the Trustee or the Bankruptcy Court of the Jackson Action, especially between September, 1995, which was after the Arbitration Award, and January, 1996 in connection with the Turnover and Delco Motions, when the Debtor knew that all of his unsecured creditors like the Jacksons were going to be paid in full by the Trustee from the settlement proceeds of the Discrimination Suit. The Court

---

[4] The Court has considered the Nationwide opposition to also be a cross-motion for relief from the stay under Section 362(d) (the "Stay Motion").

expressed to the Debtor its concern that the Jackson Judgment would have been paid in full along with the Debtor's other unsecured claims in January, 1996 if he had advised the Trustee and the Court of the Judgment, and adjourned the Enforcement Motion to July 17, 1996 in order to afford the Debtor the opportunity to negotiate with the attorneys for Nationwide to see if a satisfactory agreement could be entered into for the Debtor to pay of the balance due on the Jackson Judgment.

On the July 17, 1996 adjourned date of the Enforcement Motion, the Court was advised that no agreement had been reached for the payment of the balance due on the Jackson Judgment. The Court heard final arguments and allowed the parties until August 24, 1996 to file any optional submissions with the Court.

DISCUSSION

Section 362(a)[5] provides for a stay, applicable to all entities, upon the filing of a bankruptcy

---

[5] Section 362(a) provides **in part** that:

> Except as provided in subsection (b) of this section, a petition filed under Section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of–
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that

petition. However, Section 362(d)[6] provides that the Court, on request of a party in interest and after notice and a hearing, can grant relief from the stay provided under subsection (a), such as by terminating, annulling, modifying or conditioning such stay.

This Court believes that by reason of Section 105(a)[7] and Section 362(d), which provides that

---

> arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate; [and]
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title.

[6] Section 362(d) provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay.

[7] Section 105(a) provides that:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a

in an appropriate case the Court can annul the Stay, it has the power in its discretion, on the facts and circumstances of this case, to: (1) annul the Stay as it applies to the Jackson Action and the enforcement proceedings which have been taken in connection with the Jackson Judgment through the date of this Decision & Order; and (2) also modify and condition the Stay going forward as it relates to the continued enforcement and collection of the Jackson Judgment.

Numerous courts have exercised their power and discretion under Section 362(d) and Section 105 to grant a party retroactive relief from the provisions of the Stay provided by Section 362. Courts generally have held that to grant retroactive relief such as annulling the stay, a creditor must show that it was unaware of the bankruptcy case and demonstrate either some substantial prejudice or bad faith on the part of the debtor. Elements of bad faith which courts have often recognized are that the debtor has unreasonably withheld notice of the stay or attempted to use the stay unfairly.[8]

The Court makes the following findings to support its belief that it should exercise its power and discretion to annul the stay in part and modify and condition it in part in connection with the Jackson Action and the Jackson Judgment and its enforcement:

> party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

[8] *See In re Pulley*, 196 B.R. 502 (Bankr. W.D.Ark. 1996) and the cases cited therein, including *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992); *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905 (6th Cir. 1993); and *In re Smith Corset Shops*, 696 F.2d 971 (1st Cir. 1982).

(1) The Debtor, apparently believing that he would be successful in his defense of the Jackson Action, fully participated in the Action at arbitration, at a trial de novo, in post-judgment motions and an appeal without ever advising or seeking the protection of the Bankruptcy Court until all of his efforts were unsuccessful and enforcement proceedings resulted in his loss of funds. It was only then that he sought the protection of the Bankruptcy Court.

(2) The Debtor failed to advise the Trustee and the Court of the Jackson Action at the time of the Turnover and Delco Motions, when it was or should have been clear to him that if he had advised the Trustee and Court of the Arbitration Award, the Trustee would have paid it in full, along with his other unsecured creditors from the proceeds of the Discrimination Suit, or at least set aside sufficient proceeds to pay it pending the outcome of the trial de novo and any appeals.

(3) Nationwide would be severely prejudiced if the actions taken to date in the Jackson Action, including the enforcement of the Jackson Judgment, were determined to be void because they were found to be in violation of the Stay. Nationwide would be prejudiced because: (a) it has expended substantial sums in prosecuting the Action; (b) it would have been paid in full, or have its payment provided for if the Debtor had advised the Trustee and the Court of the Action before January, 1996; and (c) the Debtor has not yet sold any of the real estate he owns, raising a substantial doubt as to whether the Modified Plan will be completed and all remaining creditors paid by January 30, 1996.

(4) The actions of the Jacksons, Nationwide and their respective attorneys prior to the bringing of the Enforcement Motion were not wilful violations of the stay, since they did not know of the Debtor's bankruptcy case, but were technical violations only.

(5) The Court's experience with the Debtor is that he is quite sophisticated and knowledgeable about his rights and remedies in bankruptcy.

(6) I believe the Debtor purposely failed to advise the parties to the Jackson Judgment of his bankruptcy and the Bankruptcy Court of the Jackson Action because he believed he would be successful in his defense of the Action and didn't want to deal with the Action in his bankruptcy case. It was only when he was unsuccessful in his defense, and his cash flow was affected, that he resorted, in bad faith given his prior actions, to the Bankruptcy Court.

(7) By his actions, the Debtor has waived the protection of the automatic stay through the time when he formally brought the Jackson Action to the attention of the Court

by the Enforcement Motion.

(8) To allow the Debtor to use the automatic stay to void the actions taken in the Jackson Action through the date of this Decision & Order would be inequitable and would, as often admonished by bankruptcy courts, allow the Debtor to use the automatic stay as a sword rather than shield and to have played the game of "heads I win and tails you lose".[9]

(9) The Debtor has further exhibited bad faith by transferring title to several of his properties and by withholding information as to the Discrimination Suit.

In addition to annulling the stay as to the Jackson Action through the date of this Decision & Order, the Court believes that it must also modify and condition the stay in such a way as to insure, to the extent possible, that the balance due on the Jackson Judgment, unless vacated on appeal, will be paid in full, while at the same time enforcing the stay going forward and affording the Debtor the opportunity to complete the Modified Plan as proposed and confirmed on January 30, 1995, which would result in the pay off of the balance due on the Jackson Judgment, if not otherwise paid as provided for herein.

CONCLUSION

The Enforcement Motion and the Stay Motion are each granted in part and denied in part.

The stay is annulled as to the Jackson Action and the enforcement of the Jackson Judgment through the date of this Decision & Order, and Nationwide may retain the amounts collected to date and apply them to the Jackson Judgment in accordance with New York State Law.

The Court directs the following: (1) the stay will terminate as to the enforcement of the

---

[9] *See In re Weisberg*, 193 B.R. 916, 926 (9th Cir. BAP 1996).

Jackson Judgment unless within ten (10) business days from the date of the entry of this Decision & Order, the Debtor provides the Trustee and the attorney for Nationwide with documentary proof that all of the parcels of real property owned by him at the time of the filing of the petition, unless a parcel has been foreclosed upon and a referee's deed of foreclosure recorded, are still owned and titled to the Debtor; (2) if it has not already properly transcripted the Jackson Judgment to the Monroe County Clerk's Office so that it has become a lien on all of the Debtor's real property, the stay is modified to allow Nationwide to do so, and the lien of the Jackson Judgment shall remain as a lien on all real property now owned or hereinafter acquired by the Debtor, including Kencrest and 3840 Lake Avenue ("Lake Avenue"), until the balance due on the Jackson Judgment is paid in full, unless such lien is otherwise foreclosed on any particular parcel of property in a State Court mortgage foreclosure proceeding or removed by this Bankruptcy Court; (3) the balance due on the Jackson Judgment together with continuing interest under New York State Law is found by this Court to be an allowed claim in the Debtor's bankruptcy case, and all monthly payments being made by the Debtor under the Plan, after deduction for commissions of the Trustee, shall be paid to Nationwide until the balance due on the Jackson Judgment plus all accruing interest is paid in full; (4) Nationwide shall take no further steps to enforce the Jackson Judgment until after January 30, 1997, at which time the stay will terminate as to the enforcement of the Judgment, unless it has previously terminated by a further order of this Court, an additional provision of this Decision & Order, or the dismissal of this Chapter 13 case; (5) the stay is or will immediately terminate as to the enforcement of the Jackson Judgment with respect to any parcel of real property owned by the

Debtor where the stay has been or is hereinafter terminated for any mortgage holder on the property or where title to the property is transferred by the Debtor without the permission of this Court; (6) without the consent of Nationwide or any then holder of the Jackson Judgment, no request by the Debtor to further modify the Modified Plan will be granted by this Court unless the balance due on the Jackson Judgment plus all accruing interest has been paid in full; and (7) the stay will immediately terminate as to the enforcement of the Jackson Judgment against Lake Avenue and Kencrest in the event that after October 1, 1996 the Debtor fails to make any monthly mortgage payment or real estate tax payment when due on these properties, and the mortgage holders of these properties and all real estate taxing authorities are authorized to confirm to the holder of the Jackson Judgment if any payment has not been made when due.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: September 20, 1996