

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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In re:

CHESTER STOCKWELL and  
ALICE STOCKWELL,  
Debtors.

Chapter 13 Case  
# 95-10830

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*Appearances:*

*Rebecca A. Rice, Esq.*  
*Rutland, VT*  
*Debtor's Counsel*

*Andre D. Bouffard, Esq.*  
*Burlington, VT*  
*Creditor's Counsel*

*Richard A. Scholes, Esq.*  
*Montpelier, VT*  
*Chapter 13 Trustee*

MEMORANDUM OF DECISION DENYING RELIEF FROM STAY

CAPX Realty LLC, successor to Capital Crossing Bank f/k/a Atlantic Bank & Trust Company (“Creditor”) has moved for relief from stay pursuant to 11 U.S.C. sec 362(d)(1) and Bankruptcy Rule 9014; and further requests that the Court grant relief from stay *nunc pro tunc* to October 8, 1999. The Debtor opposes the lift stay motion and the request for retroactive relief and asserts that the motion must be denied because the Creditor failed to served the Debtors with notice of the motion for lift stay relief.

The Certificate of Service filed by the Creditor on January 10, 2001 indeed shows that the only parties served with the motion for lift stay were the debtors’ attorney, Rebecca Rice, Esq., and the Chapter 13 Trustee, Jan Sensenich, Esq. Pursuant to Bankruptcy Rule 4001(a), a motion for relief from stay must be made in accordance with Bankruptcy Rule 9014. Under that rule, “the party against whom relief is sought” must be served “in the manner provided for service of a summons and complaint by Rule 7004....”

As pointed out by Collier on Bankruptcy, 15<sup>th</sup> Edition Revised, “At a minimum, it had always been

assumed that such a [section 362] motion should be served upon the parties against whom relief was sought, i.e., the debtor or debtor in possession, and the trustee, if one has been appointed, as well as his or her counsel.”<sup>9</sup> Collier, at p. 4001-10; para. 4001.02[3]. The Creditor has failed to satisfy the service requirement.

Since the Creditor has failed to properly serve the motion, the relief sought is denied without prejudice to the Creditor re-filing the motion and properly serving it. *Cf. Coggin v. Coggin (In re Coggin)*, 30 F.3d 1443, 1447 (11<sup>th</sup> Cir. 1994); In re Vincze, 230 F.3d 297, 299 (7<sup>th</sup> Cir. 2000); In re Goforth, 183 B.R. 560, 562 (Bankr. W.D.Ark. 1995).

So Ordered.

February 15, 2001

/s/ Colleen A. Brown  
Colleen A. Brown  
U.S. Bankruptcy Judge