

IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:  
Brent A. Hanson  
11 Wickersham Drive  
Durham NC 27713  
SSN: xxx-xx-xxxx  
Debtor

CASE NO: 05-82419  
CHAPTER 13

**MOTION FOR MODIFICATION OF THE AUTOMATIC STAY**

NOW COMES GLENN HAGELE (hereinafter “movant”), a claimant or potential claimant and party in interest, entitled to proceed in its own name herein, by and through undersigned counsel, and moves the Court for an Order allowing modification of the automatic stay against the Debtor, Brent A. Hanson, pursuant to the provisions of 11 U.S.C. § 362, BR 4001 (a) (3) and BR 9014, and in support thereof, shows unto the Court the following. *Movant's counsel requests any Response hereto be dispatched to him solely by electronic means. Duplicate service via USPS is unnecessary.*

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1. Movant is the plaintiff in a civil defamation action filed on 3/2/06, currently pending in the Superior Court of Sacramento County, CA, in which action the debtor is the defendant. A copy of the filed Complaint in that action is attached as Ex. “A”.

2. As detailed in that Complaint, movant has asserted one or more claims in tort against the debtor which arose in or relate to events occurring in California both pre-petition and post-petition. In that action, movant has sought both monetary damages and injunctive relief.

3. Movant was not named as a creditor in the debtor’s petition, but movant asserts that he presently has an unliquidated claim against the debtor, in such amount as should be determined in the forum detailed in the attached Complaint.

4. Having learned of the debtor’s bankruptcy and the significance of the resultant stay imposed by 11 USC §362, movant’s California counsel have suspended further advancement of that defamation action, but movant now seeks modification of that stay so that he may return to the Sacramento County Superior Court for three purposes:

A. So that movant may seek the award of liquidated damages against the debtor as defendant therein for acts and events occurring pre-petition, such that movant can then seek to file a liquidated claim for any such award in this bankruptcy; and

B. So that movant may seek immediate injunctive remedies against the debtor as defendant in that civil action, so that the injuries caused by defamation do not continue; and

C. So movant may seek award and payment of liquidated damages against the debtor as

defendant for any injury or loss tort suffered by the movant for the debtor's post-petition acts or omissions.

5. Movant submits that continuation of the California civil action before a Superior Court of that State seeking redress under the laws of that State against the debtor as defendant is the most proper and efficient method of resolving the status and extent of movant's claims and entitlements to injunctive relief. Movant's remedies exist according to that State's laws, and the Courts of that State are the most appropriate forum for the application thereof.

6. Movant does not hereby seek any right actually to collect any sums or assets from the debtor's estate for any claim arising pre-petition, but only to adjudicate their extent and amount in the California courts.

7. Movant submits the above facts and circumstances constitute "cause" within the prescribes of 11 U.S.C. §362 (d) (1), entitling movant to seek modification of the §362 stay, so that he may obtain a judgment for a liquidated amount against the debtor, divided into pre-petition and post-petition amounts and so that he may seek injunctive relief against the debtor's ongoing tort of defamation..

8. To whatever extent may be appropriate, movant seeks such modification *nunc pro tunc* back to the date of the filing of its California civil action. .

Wherefore, movant respectfully requests:

1. That the Court grant it immediate modification of the automatic stay pursuant to 11 U.S.C. §362 *nunc pro tunc* if appropriate, so that movant may obtain adjudication of his California state law tort claim and for whatever injunctive relief may be appropriate for that Court to award him; and
2. For such other and further relief as the Court deems appropriate.

This the 28<sup>th</sup> day of April, 2006.

/s/ Franklin Drake  
Franklin Drake  
State Bar No. 8732  
SMITH DEBNAM NARRON WYCHE  
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**CERTIFICATE OF SERVICE**

I, Geena L. Brangers, a paralegal with Smith Debnam Narron Wyche Saintsing & Myers, L.L.P., state under penalty of perjury:

That I am, and at all times hereinafter-mentioned was, more than eighteen (18) years of age; and

That on the 28<sup>th</sup> day of April, 2006 I served copies of the foregoing Motion for Relief from Stay upon the following by mailing a copy thereof, postage prepaid:

Brent A. Hanson, Debtor  
11 Wickersham Drive  
Durham NC 27713

Neil O'Toole  
Attorney at Law  
PO Box 1109  
Durham, NC 27702

Richard M. Hutson, II, Trustee  
PO Box 3613  
Durham, NC 27702

/s/ Geena L. Brangers  
Geena L. Brangers, Paralegal

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