UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

James A. Heyden,	Case No. 13-29991-GMH
Debtor.	Chapter 13

ORDER DENYING VILLAGE OF MENOMONEE FALLS' MOTION TO SHORTEN NOTICE OF ITS MOTION FOR RELIEF FROM THE AUTOMATIC STAY

On August 2, 2013, the Village of Menomonee Falls moved for relief from the automatic stay to allow a Wisconsin circuit court to render a $14.8 million judgment against the debtor. On the same day, the Village asked me to shorten to five days the 14-day notice period in which the debtor may oppose the motion for stay relief.

Federal Rule of Bankruptcy Procedure 9006(c)(1) requires a party seeking to shorten notice to explain why the motion must be decided quickly: "when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court *for cause shown* may in its discretion . . . order the period reduced." Fed. R. Bankr. P. 9006(c)(1) (emphasis added). Cf. *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 171 (3d Cir. 2012) (explaining that Rule 9006(c)'s "for cause shown" standard requires weighing "prejudice to parties entitled to notice . . . against the reasons for hearing the motion on an expedited basis"). The Village does not explain why it needs expedited relief from the stay. It reports that the circuit court judge orally awarded it summary judgment, but the judge has not reduced his ruling to writing. The Village nowhere explains why further action by the state court cannot await the process due under the bankruptcy rules. It makes no mention of what it hopes to gain by having the state court immediately render judgment against the debtor. As a result, the Village has not shown "cause" to expedite the matter.

Rather than show "cause" as Rule 9006 uses that term, that is, a need to act with dispatch, the Village argues that cause exists to shorten notice because it believes it is entitled to prevail on the underlying motion for stay relief. It argues, "Cause exists to shorten the notice on the Stay Motion because the relief sought by the Village in the Stay Motion is a ministerial act that should not be barred by the automatic stay. Therefore, the Village respectfully states that a five (5) day notice period is sufficient to provide the Debtor notice of the Stay Motion, because the relief sought by the Village is a ministerial act that is not barred by the automatic stay." CM-ECF No. 14, at 3. This is an argument in the form, "I am right; therefore the other side should not get much time to respond." If that were a correct understanding of Rule 9006(c)'s "cause" requirement, every optimistic litigant—of which there is no shortage—would file motions to shorten notice with every motion for relief.

In all events, the Village is wrong in its contention that relief from the stay to allow the state court to render judgment is either obvious or unnecessary. Section 362(a)(1) of Title 11 stays the "continuation . . . of a judicial . . . action or proceeding against the debtor that was . . . commenced before the commencement of the case under this title". 11 U.S.C. §362(a)(1). The Village wants to submit an order for judgment to the state court judge to have him reduce his oral judgment to writing. This plainly seems to contemplate continuation of a judicial action that was pending before the debtor filed his bankruptcy case.

The Village argues that stay relief is obvious or unnecessary because the contemplated conduct is a "ministerial act" and "'[s]ection 362(a) has been interpreted so as not to bar certain "ministerial" acts, which are essentially clerical in nature.'" CM-ECF No. 14, at 2 (quoting *Bass v. Fillion (In re Fillion)*, 181 F.3d 859, 861 n.2 (7th Cir. 1999)). The act the Village seeks, however, is not ministerial. As *Fillion* explains, "ministerial" acts "are essentially clerical in nature." *Fillion*, 181 F.3d at 861 n.2. The Village seeks to have the state court *judge* sign an order reducing his oral judgment to writing, that is, to "render" the judgment. See Wis. Stat. §§806.06(1)(a) & 807.11(1). Under Wisconsin law, only after the judge renders the judgment can it be entered by the clerk. Wis. Stat. §806.06(2). And only after the rendered judgment is entered is it a final, appealable order, Wis. Stat. §808.03(1), and enforceable against the debtor's property, see Wis. Stat. §806.15; see also *Interlaken Serv. Corp. v. Interlaken Condo. Ass'n, Inc.*, 588 N.W.2d 262, 266–67 (Wis. Ct. App. 1998). Therefore, even if ministerial acts are

excepted from §362(a)(1), a Wisconsin judge's act of signing an order of judgment is not a ministerial act to which that exception would apply. *Fillion* makes the point: "'the state court's actions in ordering a default *and directing the entry of a judgment* possess a distinctly judicial, rather than a ministerial, character.'" 181 F.3d at 861, n.2 (emphasis added) (quoting *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997)).

Accordingly,

IT IS ORDERED that the Motion by Village of Menomonee Falls to Shorten Notice of the Motion by Village of Menomonee Falls Seeking Order Modifying the Automatic Stay to Permit the Entry of the Order for Judgment in the State Court Proceeding is **DENIED**.

SO ORDERED.

August 2, 2013

G. Michael Halfenger
United States Bankruptcy Judge