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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of: )  
)  
JAMES GREGORY MORRIS ) Chapter 7 Case  
)  
) Number 97-21071  
*Debtor* )  
)  
)  
)  
NORWEST MORTGAGE, INC. )  
)  
*Movant* )  
)  
)  
v. )  
)  
JAMES GREGORY MORRIS )  
and )  
R. MICHAEL SOUTHER, TRUSTEE )  
)  
*Respondents* )

**ORDER ON MOTION FOR RELIEF FROM STAY**

This case was filed on August 27, 1997. A creditors' meeting was scheduled for October 6. On October 31, 1977, Norwest Mortgage, Inc., through counsel, McCalla, Raymer, Padrick, Cobb, Nichols & Clark, of Atlanta, filed a Motion for Relief from Stay seeking to foreclose on Debtor's residence in Brunswick. The Motion was scheduled for hearing on December 11, 1997, at 9:30 a.m. McCalla, Raymer, however,

failed to serve notice of the hearing pursuant to a Court Order entered November 4, 1997, and failed to appear on December 11. The Motion was continued to January 8, 1998.

On December 29 McCalla, Raymer served notice of the January hearing on Debtor, Debtor's counsel, the Trustee, the United States Trustee, and Robert M. Cunningham, a Brunswick attorney who was not a party to the case nor counsel of record for a party. McCalla, Raymer never sought a continuance or leave of court to excuse its appearance nor had a formal substitution of counsel filed as required by this District's General Order 1995-5. On January 8, 1998, Flay Cabiness, an associate in Mr. Cunningham's office, "stood in" for McCalla, Raymer, to represent Movant. Mr. Cunningham's office had been requested by letter dated December 29 from McCalla, Raymer, to appear in its stead. However, McCalla Raymer did not provide Mr. Cunningham's office with any substantive file material or documentary evidence, including an affidavit of default or evidence of value to introduce in support of its Motion. Mr. Cabiness was able to present written consent of Debtor's counsel to the Motion, but not that of the Trustee.

McCalla, Raymer apparently believed that the Trustee would not oppose the Motion, but did not provide Mr. Cunningham's office any abandonment by the Trustee or any express consent to the relief sought. Thus Mr. Cabiness, despite his best efforts, was unable to present a *prima facie* case in support of Norwest's motion. This

failure was the direct result of McCalla, Raymer, the only counsel of record in the case to provide its “stand-in” counsel with even minimal resources with which to prosecute the case. This cast local counsel, undeservedly, in an embarrassing and unflattering position and prevented the Court from conducting a hearing despite the fact that notice had been twice issued by the Clerk and that time had been reserved on the Court’s calendar for that purpose, in accordance with this Court’s duty to expeditiously hear and dispose of motions for relief from stay. *See* 11 U.S.C. § 362(e).

O R D E R

For the foregoing reasons, the Motion for Relief from Stay is dismissed for lack of prosecution. McCalla, Raymer, Padrick, Cobb, Nichols & Clark is barred from refiling this Motion on behalf of Movant.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of January, 1998.