

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re:

QUINCY HEARTWELL and KRISSA
HEARTWELL,

Debtors.

Case No. A07-00465-DMD
Chapter 13

**Filed On
4/2/08**

MEMORANDUM REGARDING ANNULMENT OF STAY

The debtors have had an erratic history in their bankruptcy cases before this court. They first filed for Chapter 13 relief on June 12, 2007. That case was dismissed July 30, 2007 for a failure to pay the filing fee. A second case was filed September 14, 2007. It was initially dismissed on October 9, 2007, again for failure to pay a filing fee. A motion to reconsider this dismissal was filed October 18, 2007. The court granted the motion on October 19, 2007. Creditor Carrington Mortgage Services held a trustee's sale on October 25, 2007. A second order dismissing the debtors' second case was entered November 19, 2007 for failure to file a Chapter 13 plan. That order was vacated by a March 17, 2008 order vacating the dismissal. During the debtors' prolonged stay in this court, from June 12, 2007 to the present, virtually no payments have been made to the trustee or Carrington Mortgage Services. The sole exception has been the sum of \$294.00 which was used to pay the debtors' filing fees in the second case.

The debtors' counsel argues that the automatic stay applied to the October 25, 2007 sale. Under 11 U.S.C. § 362(c)(3)(A) the automatic stay "shall terminate with respect to the debtor on the 30th day after the filing of the later case." There is authority for differentiation between relief from stay against the debtor and relief from stay as to the

estate.¹ This argument misses the point, however. The debtors have enjoyed a prolonged vacation from their creditors without making any payments to the trustee or their major secured creditor. They are apparently incapable of presenting a feasible, workable plan in a timely manner. Such actions are cause for annulling the stay in accordance with 11 U.S.C. § 362(d). The motion to annul the stay and validate the sale will be granted.

DATED: April 2, 2008.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: C. Johansen, Esq.
J. Castleton, Esq.
L. Compton, Trustee
U. S. Trustee

04/02/08

¹3 COLLIER ON BANKRUPTCY ¶ 362.06[3] (15th ed.).