

SEP - 2 2008

STATE OF VERMONT
RUTLAND COUNTY

LHR, INC.

v.

JOANN LARSON

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Rutland Superior Court
Docket No. 316-4-08 Rdcv

Request for Judgment, filed May 22, 2008

This is a collection action in which Plaintiff LHR, Inc. seeks to recover amounts due on a credit account. Defendant Joann Larson filed an answer acknowledging the debt but disputing the amount due, and seeking agreement to a payment plan. On May 22, 2008, LHR filed a proposed judgment order based on a Stipulation to Judgment signed by the parties.

The court does not approve the Stipulation to Judgment or the proposed judgment order for the following reasons. First, ¶ 4 of the stipulation appears to permit LHR to unilaterally increase the amount of payment without judicial oversight, and thereby change the material terms of the stipulation. In other words, Ms. Larson's ability to stay execution by paying \$100 per month under the stipulation is illusory because LHR has unchecked discretion to increase the payment amount after six months, and then proceed to execution even if Ms. Larson continues to pay \$100 per month. This would amount to a change in the terms of the court order without the issuance of a modified order, and the court cannot approve a term that could lead to such a result. See *Ford Motor Credit v. Parker*, No. 761-12-06 Wncv (Teachout, J., Apr. 23, 2007) (attached).

Second, the proposed judgment order contains the following language when setting forth the terms of the stay of execution: "Execution *may* be stayed so long as the payments as described in the underlying Stipulation are made in accordance with the agreement." If the parties intend for the court to order a stay of execution so long as scheduled payments are met, the court requires that the order be set forth in mandatory language: "Execution *shall* be stayed so long as . . ."

ORDER

For the foregoing reasons, the request for judgment is denied. If the parties submit a revised stipulation to judgment without ¶ 4, the court will approve the stipulation and enter judgment in the form proposed by Plaintiff, except that the word "may" will be changed to the word "shall." If no such stipulation is filed by October 1, 2008, the court will schedule a hearing.

Dated at Rutland, Vermont this 29th day of August, 2008.

Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Court Judge