

STATE OF VERMONT
RUTLAND COUNTY

PORTFOLIO RECOVERY ASSOCS., LLC)
)
v.)
)
VALERIE A. STEWART)

Rutland Superior Court
Docket No. 849-12-07 Rdcv
CONFORMED COPY
RUTLAND SUPERIOR COURT

ENTRY ORDER

SEP - 3 2008

In this collection action, the parties have filed a stipulation which (1) sets forth the amount of the judgment, (2) schedules payments, and (3) provides for a stay of execution so long as scheduled payments are made by Defendant. Along with the stipulation, Plaintiff filed a proposed final judgment order under V.R.C.P. 58(d) which orders judgment in favor of Plaintiff for the stipulated amount, but which does not make any reference to the stay of enforcement. Plaintiff has represented to the court that there is currently no standard or prevailing practice within the state as to whether stipulated stays should be included within the final judgment order itself.

After reviewing available authorities, the court concludes that although there is no rule prescribing exactly what form a final judgment document should take, 10 Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 2652, stipulated stays of execution should be included in the final judgment order, for the following three reasons. First, by definition, a stay is an order of the court. Black's Law Dictionary 1453 (8th ed. 2004). If the stay is to be operative, it should be signed and ordered by the judge as part of final judgment. Second, failure to include the stay provision in the final judgment could be misleading under Vermont procedure, because writs of execution are issued by the clerk "so long as the judgment remains unsatisfied," V.R.C.P. 69, and the clerk may not necessarily become aware of stay provisions contained within a separate stipulation. Finally, since final judgments may be enforced in other jurisdictions, including the stay provision within the final judgment order ensures that the stay will be given effect as a court order, thereby also ensuring that both parties receive the benefit of the bargain. See 30 Am. Jur. 2d Executions § 20 (noting that some states do not give effect to stipulated stays unless ordered by court) (citing, e.g., *Seaporcel Metals, Inc. v. Ciccone*, 166 A.2d 130 (R.I. 1960)).

ORDER

For the foregoing reasons, Plaintiff shall file a revised proposed judgment order including the stipulated stay of execution.

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

Mary Miles Teachout
Hon. Mary Miles Teachout, Presiding Judge