

STATE OF VERMONT

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SUPERIOR COURT
Rutland Unit

CIVIL DIVISION
Docket No. 465-7-11 Rdev

PETER RUBINO, et al.,
Appellants

v.

JAMES T. FOWLER,
Appellees

ORIGINAL PAPER
VERMONT SUPERIOR COURT

DEC 30 2011

RUTLAND

ORDER

A hearing was held in Small Claims Court in Docket 198-3-11 Rdsc on June 1, 2011. The Court issued Judgment for James T. Fowler, Appellee. Appellants Peter N. and Patricia Rubino appealed on the grounds that they were in bankruptcy at the time of the hearing and permission had not been obtained from the Bankruptcy Court to pursue the claim against them. This Court issued an Entry Order on July 22, 2011, staying the proceedings and giving Mr. Fowler an opportunity to show that permission had been granted by the Bankruptcy Court to proceed with the case in Small Claims Court.

Mr. Fowler has not filed anything showing such permission. The undersigned has listened to the full record of the hearing held on June 1, 2011. The undisputed evidence was that the Rubinos had an open bankruptcy case, and they argued that the case against them was prohibited by the bankruptcy stay. The Small Claims Judge acknowledged that bankruptcy stays "everything," but nonetheless issued judgment.

The automatic stay precludes proceeding with cases against persons who have filed for bankruptcy. 11 U.S.C.A. § 362. When a state court issues an order in violation of the stay, that order is invalid, absent the Bankruptcy Court's retroactive approval of the order. See *In re Soares*, 107 F. 3d 969 (1st Cir. 1997); see also *Dudley v. Dudley*, 2011 WL 6117922 (Ala. Civ. App. Dec. 9, 2011)(vacating divorce judgment issued in violation of automatic stay).

The Small Claims Court Judgment of June 1, 2011 must be vacated, and the case dismissed. This case is remanded to the Small Claims Court for entries showing the judgment is vacated and the case dismissed due to the bankruptcy stay.

Dated at Rutland this 29th day of December, 2011.

Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Judge