

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

IN RE: ) CASE NO. 89-30035  
)  
HERMAN POEPPPEL, ) CHAPTER 12  
)  
) ORDER  
Debtor. )

The above reference debtor filed his bankruptcy petition April 17, 1989.

First Bank of South Dakota, N.A., filed with this Court April 26, 1989, a motion for voluntary abstention and relief from stay. First Bank commenced an action in South Dakota Circuit Court on or about February 23, 1987 for collection of indebtedness and foreclosure of personal property liens against the above referenced debtor. The debtor counterclaimed on various lender liability theories based upon state law. Debtor requested a jury trial. Substantial discovery, motions, associated hearings, and briefing has occurred in the state court suit. The debtor's state court counterclaim raises issues "related" to the debtor's bankruptcy case over which this Court would exercise only non-core jurisdiction in the absence of the parties' consent to this Court's entry of a binding final order.

Accordingly, IT IS HEREBY ORDERED pursuant to 28 U.S.C. § 1334 (c) (1) that First Bank's motion for voluntary abstention is granted insofar as it applies to the issues raised by the debtor's counterclaim in the state court suit;

IT IS FURTHER ORDERED that the automatic stay of 11 U.S.C. Section 362 is hereby modified to the extent necessary to allow First Bank and debtor to fully litigate the state court counterclaim issues to a full and final state court judgment;

IT IS FURTHER ORDERED that First Bank's motions for voluntary abstention and relief from stay to prosecute in state court First Bank's complaint for judgment on indebtedness and foreclosure of its security interest against the debtor is denied, so that the debtor may have an opportunity to use the property secured by First Bank's liens in a bankruptcy reorganization effort.

Dated this 10th day of May, 1989.

BY THE COURT:

Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)