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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Spirit Master Funding III LLC, Plaintiff, vs. J Philip Cornett and James E Cornett, III, Defendants.	No. CV 12-02270-PHX-FJM **ORDER**

The court has before it a Notice of Bankruptcy filing by defendant J. Philip Cornett (doc. 28). A review of the docket indicates that co-defendant James E. Cornett filed for bankruptcy twice, and we have scheduled his case for dismissal on January 24, 2014 unless plaintiff gets the stay lifted. Order of Jul. 26, 2013 (doc. 23). On October 9, 2013, we granted J. Philip Cornett's Motion for extension of time within which to file a Response to plaintiff's motion for summary judgment to October 23, 2013. Order of Oct. 9, 2013 (doc. 27). Instead of filing a Response, he filed a Notice of filing a bankruptcy.

Discovery has closed and the dispositive motion deadline has passed. Scheduling Order of Feb. 8, 2013 (doc. 15). Plaintiff's motion for summary judgment is pending, and defendant's time to respond expired on the day defendant J. Philip Cornett filed his Notice of filing bankruptcy. Thus, there will be no response.

The automatic stay now operates with respect to both defendants. All that remains

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is the resolution of the motion for summary judgment, the filing of a proposed pretrial order on February 21, 2014, the final pretrial conference on February 26, 2014, and the firm trial date of March 11, 2014. Order of Feb. 8, 2013 (doc. 15).

While we had earlier given plaintiff until January 24, 2014 to get the stay lifted as to co-defendant James E. Cornett, it now makes sense to consolidate the dismissal date for both defendants. Accordingly, we amend our prior order of Jul. 26, 2013 (doc. 23) as follows: It is ORDERED that the claims against both defendants, J. Philip Cornett and James E. Cornett II, will be dismissed without prejudice without further notice on December 30, 2013, unless the court is advised that the bankruptcy stay has been lifted, or a request for a lifting of the stay has not yet been ruled upon by the bankruptcy court. This gives the parties the opportunity to decide if they want to litigate these claims here or in the bankruptcy court. If plaintiff decides it wants to litigate here, it should move as soon as possible to get the stays lifted. We will not allow this case to languish on the docket during bankruptcy proceedings.

DATED this 29th day of October, 2013.

Frederick J. Martone

Frederick J. Martone
Senior United States District Judge