

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**CARLOS SOUZA, JAQUELINE
OLIVIERA, JOSE SOARES, JOSE
SOARES SEGUNDO,**

Plaintiffs,

-vs-

Case No. 6:07-cv-1908-Orl-19KRS

**RELIABLE PERSONNEL SERVICES,
INC.; CENTURY 2000 MANAGEMENT &
ADMINISTRATION, INC.; DELTA
DRIVERS SERVICE, INC.; RALPH
JAMES; LOUIS CARMANO; AVIS
BUDGET GROUP, INC.;**

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

The parties have advised the Court that the case has been settled. Doc. No. 89. Because a default judgment was previously entered against Defendants Delta Drivers Service, Inc. and Louis Carmano, Doc. No. 82, a possibility of a double recovery of attorney's fees exists if the settlement is approved without first vacating the default judgment. *See* Doc. Nos. 94, 97.


Because Defendant Carmano has a petition in bankruptcy pending, it appears that the bankruptcy stay prevents the Court from vacating the default judgment as to him. *But see Slay v. Living Centers East, Inc.*, 249 B.R. 807 (S.D. Ala. 2000)(holding that the automatic bankruptcy stay does is not infringed by dismissal of a case against the debtor with prejudice without additional cost

or risk to the bankrupt or its creditors.).¹ The parties have been advised that they should move to lift the stay so that the default judgment against Defendant Carmano may be vacated and, then, the settlement approved. *See* Doc. No. 97.

Accordingly, I respectfully recommend that the Court direct the Clerk of Court to close the case administratively pending the resolution of Defendant Carmano's bankruptcy proceeding or entry of an order lifting the stay for purposes of vacating the default judgment entered against him.

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Recommended in Orlando, Florida on November 2, 2009.



KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy

¹ In the present case, counsel has moved to dismiss the case against Carmano without prejudice. Doc. No. 95. Granting this relief essentially permits plaintiff to reopen the case against Carmano by filing another complaint. As such, it is not akin to the dismissal with prejudice approved in *Slay*.