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Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NORTHWEST EARTHMOVERS,  
INC., an Oregon corporation,  
  
Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as Receiver for The  
Bank of Clark County,  
  
Defendant.

Case No. C09-5795-RBL

STIPULATED MOTION TO ALLOW  
AMENDMENT AND TO STAY CASE

**NOTE ON MOTION CALENDAR:  
Wednesday, April 7, 2010**

**I. STIPULATION AND MOTION**

The parties, through their undersigned counsel, hereby stipulate as follows:

1. Defendant Federal Deposit Insurance Corporation in its capacity as Receiver for the Bank of Clark County ("FDIC") has moved to dismiss the complaint of plaintiff Northwest Earthmovers, Inc. ("NEI") for lack of subject matter jurisdiction and/or abstention. Dkt. No. 9. That motion is currently noted for consideration on April 23, 2010, and the Court has abrogated the case schedule while that motion is pending. Dkt. No. 11.

1                   2.       The parties have discussed how to resolve this matter most  
2 efficiently, and agree as follows.

3                   3.       The FDIC hereby withdraws its pending Motion to Dismiss [Dkt.  
4 No. 9], without prejudice to refile that motion or a similar motion if necessary. NEI  
5 agrees not to object to such new filing if it becomes necessary as discussed below.

6                   4.       On or before April 19, 2010, plaintiff shall file an amended  
7 complaint. The FDIC agrees not to object to or oppose the filing of such amended  
8 complaint.

9                   5.       Upon the filing of that amended complaint, the parties jointly  
10 request that this action be stayed in its entirety, but not dismissed, to allow plaintiff to  
11 continue to pursue its remedies in the pending state law construction lien foreclosure in  
12 Clackamas County (Oregon) Circuit Court entitled *Northwest Earthmovers, Inc. v.*  
13 *M.B. Custom Homes and Development, et al.*, Case No. CV09040306 (the  
14 "Foreclosure Action").

15                   6.       The FDIC believes that the resolution of the Foreclosure Action  
16 will render this action moot. Plaintiff NEI agrees that may be the outcome, but is not  
17 certain of that yet, and so wants the Court to stay, but not dismiss, the case at this  
18 juncture.

19                   7.       The parties agree to file with the Court regular status reports  
20 regarding the status of Foreclosure Action, and the remaining need for this action. The  
21 parties propose that the first such status report be filed in one year, and subsequent  
22 reports be filed every six months thereafter or as the Court may otherwise order.

23                   8.       Upon thirty (30) days written notice to the opposing party, either  
24 party may move to have the stay lifted

25                   9.       Except as otherwise noted, this stipulation is without prejudice to  
26 the rights, claims or defenses of either party.

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So Stipulated this 7<sup>th</sup> day of April, 2010.

DUNN CARNEY HIGGINS &  
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Attorneys for Plaintiff Northwest  
Earthmovers, Inc.

Attorneys for Defendant Federal Deposit  
Insurance Corporation, as Receiver for The  
Bank of Clark County

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**II. ORDER**

Based upon the above stipulation, IT IS SO ORDERED that (1) the FDIC's motion to dismiss [Dkt. No. 9] is hereby taken off the docket; (2) plaintiff NEI may file an amended complaint on or before April 19, 2010; and (3) thereafter, this matter will be stayed, but not dismissed.

It is further ORDERED that the parties shall submit a joint status report on or before April 19, 2011, which report shall inform the Court regarding the status of the Foreclosure Action and the continued need for this action. The parties shall submit similar status reports every six (6) months thereafter. If at any time, the resolution of the Foreclosure Action has rendered this action moot or unnecessary, the parties shall so inform the Court as soon as possible so that this action may be dismissed.

Either party may move to resume this action; however, the moving party shall provide written notice to the opposing party of its intent to so move at least thirty (30) days prior to filing and serving any such motion.

SO ORDERED this 8<sup>th</sup> day of April, 2010.

  
RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE