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Re: Anson R. Burlingame
Case No. 96-61268 Chapter 11

LETTER DECISION AND ORDER

After several consensual adjournments of the evidentiary hearing scheduled on the motion filed pursuant to 11 U.S.C. § 362(d) on behalf of Anna Thornton, the Court received a facsimile transmission from Attorney James Selbach, Debtor's counsel, dated December 9, 1996, indicating that on behalf of the Debtor, he has agreed to the movant's valuation of the subject real property at \$43,000. Additionally, the Court received a facsimile transmission from the parties dated December 10, 1996, stipulating that the present balance due Anna Thornton on her secured claim is \$47,847.38 and that adequate protection payments will commence on January 1, 1997 in the amount of \$660.70. Attorney Selbach indicates that there will be no need to proceed with the evidentiary hearing scheduled for December 10, 1996.

From the motion papers filed by the parties herein, the Court finds that Thornton's claim is secured by a valid first mortgage on Debtor's real property located in the Town of Fairfield, County

of Herkimer, State of New York. Based upon the Stipulation, the Court further finds that Thornton has met her burden of proof pursuant to 11 U.S.C. § 362(g)(1).

The Court further concludes that Debtor has failed to meet his burden of proof on any other issue pursuant to 11 U.S.C. § 362(g)(2). The Court is unable to discern from the Stipulation or the motion papers whether or not the sum of \$660.70 constitutes adequate protection and whether or not the Debtor has any present ability to make such payments.

In light of the Court's conclusions of fact and law, the Court finds a basis under 11 U.S.C. § 362(d)(1), and (d)(2), to vacate the automatic stay effective January 3, 1997, and permit Anna Thornton to proceed with the foreclosure action previously commenced in New York State Supreme Court.

IT IS SO ORDERED.

Dated at Utica, New York

this day of December 1996

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge