

DAVID E. RAYBORN  
Rayborn Law Office  
P. O. Box 1  
Pocatello, ID 83204-0001  
(208) 233-3914  
Idaho State Bar #3308

U.S. COURTS  
03 NOV -5 PM 2:35  
RECEIVED  
CLERK OF COURT

Attorney for Debtor

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re: )  
)  
JOHN L. MERZLOCK, ) Case No. 03-41775-13  
)  
) MOTION TO REMOVE  
\_\_\_\_\_  
Debtor. ) AUTOMATIC STAY

COMES NOW the debtor, by and through his attorney of record, David E. Rayborn, pursuant to 11 U.S.C. 362(d)(1), and moves the Court to grant creditor Citizens Community Bank relief from the automatic stay provided by 11 U.S.C. 362(a), to allow said creditor to present its defense to the debtor's Motion to Set Aside Default and Judgment in a state court action namely, *Citizens Community Bank vs. Roger K. McAtee, et al.*, Bannock County, Idaho docket number CV-2003-1198B.

The grounds for this motion are as follows:

1. Creditor Citizens Community Bank has brought a motion to dismiss the debtor's chapter 13 case, arguing the debtor does not qualify for relief under chapter 13 of the bankruptcy code by virtue of debt limitations provided by 11 U.S.C. 109(e).

2. A default judgment has been entered against the debtor in the state court action *Citizens Community Bank vs. Roger K. McAtee, et al.*, Bannock County, Idaho docket number CV-

2003-1198B, in the sum of \$206,246.14.

3. Should the debtor be allowed to pursue his motion to set aside default and judgment entered in the state court action, a determination can be made on the merits as to the true and correct liability of the debtor in that case.

4. The debtor's eligibility for relief under chapter 13 of the bankruptcy code may depend on the outcome of his motion to set aside default and judgment in the state court action.

5. The automatic stay provided by 11 U.S.C. 362(a) precludes Citizens Community Bank from defending the debtor's motion to set aside default and judgment absent relief from the stay pursuant to 11 U.S.C. 362(d).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of November, 2003, I served a true and

correct copy of this document upon the following, by the method indicated:

L. D. Fitzgerald, Trustee  
P. O. Box 6199  
Pocatello, ID 83205-6199

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Courthouse Mail Box

U. S. Trustee  
304 North Eighth Street, Room 347  
Boise, ID 83702

- U. S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Courthouse Mail Box