IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE	: CHAPTER 13
	:
VINCENT JONES,	:
DEBTOR	: BANKRUPTCY NO. 02-17125 SR

OPINION

By: STEPHEN RASLAVICH, UNITED STATES BANKRUPTCY JUDGE.

Introduction.

This matter comes before the court on a Motion to Lift the Automatic Stay filed by Leonidas Good,[1] who seeks relief from the stay to continue the prosecution of a pre-petition state court action to quiet title. The quiet title action relates to premises located at 3027 Fontain Street, Philadelphia, PA. *See Civil Action Complaint - Quiet Title, No. 3655, September Term, 2001, Court of Common Pleas*. A hearing on the matter was held in this court June 26, 2002. At that time, Good asserted that the debtor, Vincent Jones, forged his signature on a deed that purportedly transferred the property in question from Good to Jones, as a transfer between father and son, for the consideration $1. Good claims that he never signed such a deed, although at present record ownership of the property rests with Jones. Good filed the above State Court action against Jones and a number of individual and institutional judgment creditors of Jones, seeking to have himself declared the true owner of the property, free from any claims on the part

[1] The court has jurisdiction over this core proceeding under . *28 U.S.C. § 1334(b); 28 U.S.C. § 157(b)(G)*.

of Jones and/or his creditors.[2]

Jones disputes the entirety of Good's story. He claims that he offered to purchase the property from Good after Good asked him to clean the basement. He insists that Good agreed to sell the property to him for $3,000, which he paid, and that the parties agreed to recite in the deed that the transfer was between father and son, for nominal consideration, so to avoid having to pay City and State realty transfer taxes. In support of his version of events, Jones offered his own testimony, and he produced the notary public who witnessed Good's signature on the deed and the tender of a portion of the consideration. Jones also offered testimony from the notary's girlfriend, who was residing with the Notary and who also observed the transaction.

Upon consideration of the evidence presented the Court concludes that Good has failed to established cause for modification of the automatic stay and his Motion must therefore be denied.

Discussion.

Section 362(a)(1) bars "the commencement or continuation . . . of a judicial . . . proceeding against the debtor that was . . . commenced before the commencement of the case under this title . . .." *11 U.S.C. § 362(a)(1)*. Section 362(d)(1) provides for relief from the stay, in part:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

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[2] Good had apparently obtained judgment by default against all defendants in the State court action except Jones. A Motion for Default against Jones was pending, but it was stayed by the commencement of this Bankruptcy case.

11 U.S.C. § 362(d)(1).

As a preliminary matter, the Court notes that while Good may not be a creditor, he nevertheless has standing as a party in interest herein. Section 101 defines creditor as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." *11 U.S.C. § 101(10)(A)*. A claim for the purposes of the Bankruptcy Code is a "right to payment . . . or [a] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment . . .." *11 U.S.C. § 101(5)*. Good's quiet title action requests equitable relief, without an alternative of payment. Thus, he is not a creditor under the Bankruptcy Code.

Good may be a party in interest though. A noted treatise advises "[a]lthough some cases have unduly limited the availability of stay relief, the better approach is to recognize that any party affected by the stay should be entitled to relief. This avoids the anomalous situation in which a party is subject to the automatic stay but is unable to seek relief even if damage may result from its continuance." *3 Collier on Bankruptcy*, ¶ 362.07[2] (Matthew Bender 15th Ed. Revised) (citations omitted); *see also 11 U.S.C. § 1109*. This court agrees. Moreover, the debtor did not raise the issue of standing. In any case, as will be shown below, regardless of Good's standing, as a "party in interest," he did not establish a prima facie case entitling him to relief.

Whether to terminate, modify, condition, or annul the bankruptcy stay under section 362(d) is within the discretion of the bankruptcy court. *See Matter of Holtkamp*, 669 F.2d 505 (7th Cir. 1982); *In re Shariyf*, 68 B.R. 604 (E.D. Pa. 1986); *In re Colonial Ctr.*, 156 B.R. 452, 459 (Bankr. E.D. Pa. 1993). This determination is to be made by examining the totality of the circumstances. *Local 144 Hospital Welfare Fund v. Baptist Medical Center of New York, Inc.,* 52

B.R. 417, 425 (E.D.N.Y. 1985), *aff'd*, 781 F.2d 973 (2d Cir. 1986); *see also In re Wilson*, 85 B.R. 722, 728 (Bankr. E.D. Pa. 1988) (case-by-case basis).

To be entitled to relief from the automatic stay, the movant has the initial burden to establish a prima facie case for relief. *In re Ward,* 837 F.2d 124, 128 (3d Cir. 1988); *In re Causa*, 93 B.R. 409, 410-411 (Bankr. E.D. Pa. 1988); *In re Ziets*, 79 B.R. 222, 224 (Bankr. E.D. Pa. 1987)*; In re Stranahan Gear Co.*, 67 B.R. 834, 836-37 (Bankr. E.D. Pa. 1986). The burden then shifts to the debtor opposing the relief to establish the absence of "cause." *11 U.S.C. § 362(g)*; *Stranahan Gear Co.*, 67 B.R. at 836-37; *Martin v. Martin (In re Krank)*, 84 B.R. 372, 375 (Bankr. E.D. Pa. 1988).

"There is no rigid test for determining when an unsecured creditor . . . has established cause to warrant relief from the automatic stay." *Hohol v. Essex Industries, Inc. (In re Hohol)*, 141 B.R. 293, 297 (M.D. Pa. 1992). Some cases start with the proposition that the movant must establish that the 'balance of hardships' tips in his favor." *Causa*, 93 B.R. at 411, *citing In re Ziets*, 79 B.R. 222 (Bankr. E.D. Pa. 1987); *In re Ronald Perlstein Enterprises, Inc.*, 70 B.R. 1005 (Bankr. E.D. Pa. 1987); *Stranahan Gear Co.*, 67 B.R. 834; *see In re U.S. Physicians Inc.*, 236 B.R. 593, 605 (Bankr. E.D. Pa. 1999) (unsecured creditors can obtain relief *only* by making a strong showing that the balance of hardships tips in their favor). Others look to the legislative history to section 362 suggesting consideration of whether the bankruptcy estate would be prejudiced and whether the granting of relief would interfere with or be inconsistent with the bankruptcy proceeding.

> The lack of adequate protection of an interest in property of the party requesting relief from the stay is one cause for relief, but is not the only cause. ... [A] a desire to permit an action to proceed to completion in another tribunal may provide another cause. Other

> causes might include the lack of any connection with or interference with the pending bankruptcy case. For example, a divorce or child custody proceeding involving the debtor may bear no relation to the Bankruptcy case. In that case, it should not be stayed. A probate proceeding in which the debtor is the executor or administrator of another's estate usually will not be related to the bankruptcy case, and should not be stayed. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is debtor protection from his creditors. The facts of each request will determine whether relief is appropriate under the circumstances.

H.R. Rep. No. 95-595, 95th Cong., 1s Sess., 343-44 (1977) (emphasis added).

See Krank, 84 B.R. at 374; *In re Borbridge*, 81 B.R. 332, 335 (Bankr. E.D. Pa. 1988). Thus, courts have lifted the stay when continuation of a state court action bears no significant connection to the bankruptcy, and would cause no great prejudice to the estate or the debtor, and where the hardship caused by continuing the stay considerably outweighs the hardship caused by modification of the stay. *Krank*, 84 B.R. at 374. The stay might also be lifted when a bankruptcy petition was filed on the eve of the resolution of pending prepetition litigation. *In re Wilson*, 85 B.R. 722, 728 (Bankr. E.D. Pa. 1988), *citing Matter of Holtkamp*, 669 F.2d 505 (7th Cir. 1982). Another test grants relief from the stay to unsecured creditors where: (1) the debtor has engaged in some morally culpable conduct which the moving party seeks to undo in a court action; and (2) the creditor does not seek to pursue assets of the estate or is prohibited from doing so. *U.S. Physicians*, 236 B.R. at 605; *Stranahan Gear Co.*, 67 B.R. at 838. A movant need not demonstrate a probability of success on the merits, but rather ". . .all that is required is that the movant make more than a 'vague initial showing' that he can establish a prima facie case." *Peterson v. Cundy (In re Peterson*), 116 B.R. 247, 249-250 (D. Colo. 1990).

Although the Court's decision herein is by no means a final determination on the merits of Good's claims, the Court is constrained to observe that Good has not made even a vague

initial showing of a *prima facie* case as to the merits of his state court lawsuit. His case consists of no more than his own unsupported allegations. *N.T. 6*; *See In re Tursi*, 9 B.R. 450, 453 (Bankr. E.D. Pa. 1981) (mere general allegation in complaint, denied by the debtor, not enough to require debtor to shoulder burden of proof). In particular, he did not introduce into evidence any signature samples that would suggest that his signature on the deed was forged. Meanwhile, Jones produced not one, but two disinterested witnesses, each of whom contradicted Good's assertion that the transaction never took place. Jones also credibly explained that the "father/son" designation on the deed, while illegal and inexcusable, was a contrivance agreed to by the parties to avoid transfer taxes. *N.T. 17, 20, 22, 28-29*.

With respect to his request to compel Jones to return to State Court and defend the action, Good has not demonstrated to this court what hardship he would suffer if he is not granted relief. *U.S. Physicians*, 236 B.R. at 605 (movants failed to establish balance of hardships tipped in their favor ". . . merely by asserting their perceived entitlement to specific performance of the Option, as opposed to proving actual hardships which they will suffer if relief is denied."); *In re Ronald Perlstein Enterps.*, 70 B.R. 1005 (Bankr. E.D. Pa. 1987) (obvious hardship to debtor in defending against litigation brought by unsecured creditor in any other forum can be offset only by a showing of substantial hardship to the creditor).

That the case is pending in state court does not necessarily implicate principles of judicial economy. *See Causa*, 93 B.R. at 411 n.2 (no evidence shown that petition filed on eve of state court's resolution of the proceeding). Good did not allege that the trial in state court was interrupted by the bankruptcy filing, but rather that there was a default judgment pending against Jones. *N.T. 4*. "One intended purpose of the automatic stay is to afford the debtor a respite from

the time and expense of litigating with creditors." *In re Quad Systems Corporation*, 2001 WL 1843379, *6 (Bankr. E.D. Pa. Mar. 20, 2001) (slip opinion). All the other codefendants in the case being creditors, the allegations against them sufficiently differed from those against Jones, such that even if those claims had been litigated, judicial economy would not be served by continuing the case against Jones in the same forum. *But see Peterson*, 116 B.R. 247 (allowed malpractice case to go forward against debtor/lawyer to determine extent of liability covered by non-estate assets). Neither is this a case where the state court could assist with the bankruptcy court's claims liquidation process by determining the amount of the claim, as Good is not a secured creditor in this case. *Quad Systems*, 2001 WL 1843379, *6 (no valid purpose in requiring debtor or trustee to spend time and money in litigating merits of dischargeable, unsecured claim in a non-bankruptcy forum). Certainly the subject matter, which ultimately was based on the credibility of the witnesses, is not beyond this court's expertise. *In re Ziets*, 79 B.R. 222, 227 (Bankr. E.D. Pa. 1987) (marital property settlement involved no unique legal issues and no state interest in resolving the dispute). Good simply did not produce enough evidence to establish a prima facie case. *But see In re Pemberton*, 148 B.R. 415 (Bankr. E.D. Pa. 1992) (movant ex-spouse's claim weak, but not fair to prevent her from asserting claims as defense to debtor/plaintiff's support action).

Good, moreover, is not without a remedy. He could remove his State Court action to this court, *28 U.S.C. § 1452*, or commence an adversary proceeding here. He has chosen to do neither, preferring instead to return and pick up matters in the Common Pleas Court. Good's desires in this respect, however, are not determinative.

To recapitulate, because Good never established a prima facie case of cause with respect

to his Motion for Relief, the burden of proof never shifted to the debtor to demonstrate otherwise. Despite this, Jones, conversely, has introduced affirmative evidence which reveals Good's case, at least on this record, to be without any merit whatsoever. Under the circumstances, therefore, Good's request for relief from the Bankruptcy stay so as to continue the State Court litigation against Jones will be denied.

An appropriate Order follows.

By the Court:

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Stephen Raslavich
United States Bankruptcy Judge

Dated: September 27, 2002

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VINCENT JONES,	:
DEBTOR	: BANKRUPTCY NO. 02-17125 SR

ORDER

AND NOW, upon consideration of the Motion for Relief from the Automatic Stay filed by Leonidas Good, the Answer of Debtor thereto, and after hearing thereon June 26, 2002, it is hereby:

ORDERED, that for the reasons stated in the accompanying Opinion, the Motion shall be and hereby is DENIED.

BY THE COURT:

STEPHEN RASLAVICH
UNITED STATES BANKRUPTCY JUDGE

DATED: September 27, 2002

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