

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

In re:	:	CHAPTER 7
	:	
EDWARD J. HAAS,	:	
	:	
Debtor.	:	Bankruptcy No. 02-17553 (KJC)

M E M O R A N D U M

BY: KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE.

On May 21, 2002, Edward J. Haas (the “Debtor”) filed a chapter 13 bankruptcy petition commencing the above-captioned case. On June 18, 2002, the Debtor filed the “Motion To Enforce Automatic Bankruptcy Stay To Obtain Debtor’s Release From Prison” (the “Stay Motion”).¹ On July 1, 2002, Dolores J. Ingram (“Ingram”) filed a response opposing the Stay Motion. At the Debtor’s request, an expedited hearing to consider the Stay Motion was held on July 1, 2002. A second hearing was also held on July 8, 2002. For the reasons set forth herein, the Debtor’s Stay Motion will be denied.

BACKGROUND²

On October 23, 1996, Ingram filed a complaint in the Court of Common Pleas, Bucks County, Pennsylvania, docket no. 96-07807, against the Debtor to collect a debt (the “State Court

¹The Stay Motion seeks, in part, a declaration regarding the effect of the automatic stay. Fed.R.Bankr.P. 7001(9) requires requests for declaratory relief to be brought as an adversary proceeding. However, because there was no objection to the form of the Stay Motion and the parties have had adequate opportunity to respond and be heard, I will decide it in its present form. See *In re Friedman*, 184 B.R. 883, 887 (Bankr.N.D.N.Y. 1994).

²This Memorandum constitutes the findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(1) and (b)(2)(A).

Action”). On March 23, 1998, after a bench trial of the State Court Action before the Honorable Ward F. Clark, a judgment was entered in favor of Ingram and against the Debtor in the amount of \$168,804.26 plus costs and legal interest (the “State Court Judgment”). The Debtor’s post-verdict motions regarding the State Court Judgment were denied on June 1, 1998. The State Court Judgment was affirmed by the Pennsylvania Superior Court on March 23, 1999.

Ingram initiated execution proceedings against the Debtor and, on June 10, 1998, the Bucks County Sheriff’s Office placed a levy upon a Case 580K backhoe. After the levy, but prior to the sheriff’s sale set for July 10, 1998, the Debtor removed the backhoe from under the levy and off of his property.³ Upon Ingram’s filing of a contempt petition, the Debtor was ordered by Judge Clark to return the backhoe.⁴ When the backhoe was not returned as ordered, a hearing was held on November 4, 1998 to consider Ingram’s request for sanctions against the Debtor.⁵ At the conclusion of the November 4, 1998 hearing, the Court entered an oral order granting the Debtor a power of attorney to sell the Debtor’s real property in the United States Virgin Islands.⁶ The oral order was reduced to a written order on November 17, 1998, and contained a restraining order against the Debtor, prohibiting him from interfering in any manner with the sale of the Virgin Islands real property.⁷

On July 19, 1999, Ingram sold the Debtor’s Virgin Island real property. On March 5,

³See Opinion and Order Pursuant to Pa. Rule of Appellate Procedure 1925 by the Honorable Ward F. Clark, Senior Judge dated February 21, 2001, entered in the State Court Action, at ¶3, p. 2.

⁴*Id.* at ¶4, p.2.

⁵*Id.* at ¶¶5-6, p. 2.

⁶*Id.* at ¶7, p.2.

⁷*Id.* at ¶¶8-9, p.2.

2000, the Debtor sued Ingram and the buyer in the Territorial Court of the Virgin Islands, seeking to set aside the sale.

On January 17, 2001, Judge Clark entered an order finding the Debtor to be in contempt of previous court orders dated March 23, 1998 and November 17, 1998, and ordering the Debtor to take the following action within ten (10) days: (i) return the Case backhoe which was removed from a sheriff's levy of his property at 238 Dark Hollow Road Pipersville, PA for sale by the Bucks County Sheriff; (ii) discontinue with prejudice the litigation initiated by the Debtor against Ingram and others in the Territorial Court of the Virgin Islands, Cause No. C-47/2000; and (iii) pay the sum of \$20,449.16 to Ingram's attorney within ten days of the date of the order (the "January 17, 2001 Contempt Order"). On February 21, 2001, Judge Clark entered an "Opinion And Order Pursuant To Pa. Rule of Appellate Procedure 1925" which sets forth findings of fact and a discussion that further explains the basis of the January 17, 2001 Contempt Order.

On March 12, 2001, another hearing was held before Judge Clark finding the Debtor in contempt and ordering his imprisonment for a period of up to six months pending the posting of a bond in the amount of \$42,949.16 on or before March 23, 2001.⁸ No action was taken on the state court's contempt orders due to the Debtor's filing of two previous chapter 7 bankruptcy petitions.⁹

⁸The parties did not move into evidence any documents regarding the March 12, 2001 contempt hearing. However, the March 12, 2001 hearing is referenced in the transcript of the April 19, 2002 contempt hearing before Judge Clark, at p. 12.

⁹The Debtor filed bankruptcy case no. 01-14267 on March 23, 2001, which was dismissed on July 30, 2001. The Debtor also filed bankruptcy case no. 01-33015 on September 13, 2001, which was dismissed on January 18, 2002. The dockets show that both cases were dismissed based upon the Debtor's failure to attend or explain his absence from the §341 creditors' meeting. This Court may take judicial notice of docket entries since "Federal Rule of Evidence 201 authorizes a court to take judicial notice of an adjudicative fact 'not subject to reasonable dispute'...[and] so long as it is not unfair to a

Upon Ingram's request, another contempt hearing was held on April 19, 2002. At the conclusion of the April 19, 2002 hearing, Judge Clark found the Debtor in contempt of his previous orders and sentenced the Debtor to six months imprisonment.¹⁰ The Debtor was taken into custody on that date and remains incarcerated in Bucks County Prison.

DISCUSSION

The Debtor argues that the automatic stay of 11 U.S.C. §362 applies to enforcement of the state court contempt orders, compelling his release from prison. While the automatic stay has been applied generally to civil contempt proceedings, the exception of §362(b)(1) places criminal contempt proceedings outside of the reach of the stay. *In re Lincoln*, 264 B.R. 370, 373 (Bankr.E.D.Pa. 2001). The distinction between civil and criminal contempt in Pennsylvania has been described as follows

The distinction between criminal and civil contempt is ... a distinction between two permissible responses to contumacious behavior. These judicial responses are classified according to the dominant purpose of the court. If the dominant purpose is to prospectively coerce the contemnor to comply with an order of the court, the adjudication is civil. If, however, the dominant purpose is to punish the contemnor for disobedience of the court's order or some other contemptuous act, the adjudication of contempt is criminal.

[The] dominant purpose of coercion or punishment is expressed in the sanction imposed. A civil adjudication of contempt coerces with a conditional or indeterminate sentence of which the contemnor may relieve himself by obeying the court's order, while a criminal adjudication of contempt punishes with a certain term of imprisonment or a fine which the contemnor is powerless to

party to do so and does not undermine the trial court's fact finding authority." *In re Indian Palms Assoc.*, 61 F.3d 197, 205 (3d Cir. 1995).

¹⁰At the conclusion of the hearing, Judge Clark imposed the contempt sanction by stating the following: "Mr. Haas, I find you in contempt. I sentence you to the Bucks County prison for 6 months. You can purge yourself of contempt by complying with past court orders. You are remanded to the custody of the sheriff." Tr. April 19, 2002 at p. 64-65.

escape by compliance.

Garr v. Peters, 2001 WL 345840 (Pa.Super. 2001) quoting *Diamond v. Diamond*, 715 A.2d 1190, 1194 (Pa.Super. 1998).

The state court's current contempt sanction exhibits characteristics of both criminal and civil contempt. There have been more than three contempt hearings in the state court case that resulted in contempt orders which appear to have been intended to coerce the Debtor to take certain actions, thereby falling within the "civil contempt" category. Yet, the Debtor continuously failed to comply with those orders. In issuing contempt sanctions at the conclusion of the April 19, 2002 hearing, Judge Clark sentenced the Debtor to prison for a set term of six months, but stated that the Debtor could purge the contempt by "complying with past court orders."¹¹

Recognizing the difficulty in labeling contempt as "civil" or "criminal," some bankruptcy courts, instead, examine the facts and circumstances surrounding the issuance of the contempt order to distinguish between contempt proceedings intended to effectuate collection of a

¹¹Other statements by Judge Clark at the April 19, 2002 hearing further suggest that the contempt sanctions were imposed to punish the Debtor and uphold the dignity of the Court. The following is a colloquy between Judge Clark and Mr. Haas' counsel:

The Court: Why shouldn't your client obey court orders?

Mr. Russell: My client should obey court orders.

The Court: Why hasn't he?

Mr. Russell: It depends which orders you are talking about.

The Court: Every order I entered.

Mr. Russell: The backhoe order, my client indicated both to me and this Court that he has the inability to comply with that, that he does not have any idea where the backhoe is. Your Honor has a different opinion of that. The question is whether you are going to jail Mr. Haas because of that belief, one.

The second is was the Virgin Islands - -

The Court: Well, if he gets jailed it's because there's a court order outstanding and he hasn't obeyed it.

Tr. April 19, 2002 at p. 59-60.

judgment and those intended to punish the contemnor and uphold the dignity of the court. *In re Lincoln*, 264 B.R. at 374; *Rook v. Rook (In re Rook)*, 102 B.R. 490, 494 (Bankr.E.D.Va. 1989).

If the contempt is an indirect method of collecting a claim that is otherwise dischargeable in the bankruptcy case, then enforcement of the contempt order is stayed by virtue of 11 U.S.C.

§362(a). *Guariglia v. Community Nat'l Bankr & Trust Co.*, 382 F.Supp. 758, 761 (E.D.N.Y. 1974).

In reviewing the particular circumstances in this case, I conclude that the automatic stay of §362(a) applies to only two of the three bases of the contempt orders, as follows:

- (1) Failure to pay Ingrams' attorney fees in the amount of \$20,449.15. Because the underlying purpose of this part of the contempt order is to require payment of attorney fees that arose prepetition, and are presumably dischargeable, the automatic stay of §362(a)(1) stays any further proceedings to enforce this payment. *See Rook*, 102 B.R. at 494 (Court held that the stay would apply to prevent "coerced dilution of the estate" that would result from further enforcement of a contempt order that allowed the Debtor to purge the contempt by payment.)
- (2) Failure of the Debtor to dismiss the Virgin Islands lawsuit. This part of the contempt order does not seek to coerce payment of a prepetition debt, but the action it requires no longer rests within the Debtor's control. Pursuant to Bankruptcy Code §541, to the extent the Debtor has any right to pursue the Virgin Islands litigation, such right is now property of the chapter 7 bankruptcy estate. The chapter 7 trustee has succeeded to the Debtor's interest in the litigation and has the exclusive right to act on behalf of the estate. 11 U.S.C. §704; *In re*

Reardon, 265 B.R. 533 (E.D.Pa. 2001). The Debtor, absent abandonment of this interest by the chapter 7 trustee or bankruptcy court order, is now without authority to act in such litigation. Section 362(a)(3) stays enforcement of the contempt order to the extent that it requires the Debtor to exercise control over property of the estate.

- (3) Return of the Case backhoe. At the hearing on April 19, 2002 and at previous hearings, it was established that the Case backhoe belongs to a corporation and is not property of the Debtor. (Tr. April 19, 2002 at p. 45.) This part of the contempt order does not require payment by the Debtor or any other act against the Debtor that would affect property of the estate. Therefore, the automatic stay is not implicated. Even if, arguably, some bankruptcy-related interest of the Debtor or of the estate were implicated by this part of the contempt order, the sanctions imposed by Judge Clark were for failure to comply with his previous orders regarding the return of the backhoe, despite the Debtor's testimony that he could not do so.¹² This part of the contempt order appears to have been issued to uphold the dignity of the court's prior orders and/or to punish the Debtor for his failure to comply with such orders, and, therefore, its enforcement is not stayed by §362.

¹²It is apparent from a review of the April 19, 2002 transcript that the state court judge simply did not believe the Debtor's protestations that he knew not of the whereabouts of the backhoe and that he was powerless to cause its return. Even had I the authority to undo the state court's determination in this respect, I am highly disinclined to do so. On this issue, the Debtor has had his day in court.

For the foregoing reasons, the Debtor's Stay Motion will be denied. An appropriate order follows.

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Dated: August 14, 2002

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	:	CHAPTER 7
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EDWARD J. HAAS,	:	
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Debtor.	:	Bankruptcy No. 02-17553 (KJC)

ORDER

AND NOW, this 14th day of August, 2002, upon consideration of the debtor's Motion To Enforce Automatic Bankruptcy Stay To Obtain Debtor's Release From Prison (the "Stay Motion"), and the reply by Dolores J. Ingram, and for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** and **DECREED** that the Debtor's Stay Motion is **DENIED**.

BY THE COURT:

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

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