

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

IN RE:) **Case No.: 00-82245 C 13**
 DONNA KAYE COTTEN)
)
)

ORDER DENYING MOTION FOR RELIEF FROM STAY

This matter came on for hearing before the undersigned Bankruptcy Judge on February 8, 2001, in Durham, North Carolina, after due and proper notice, upon the Motion for Relief from the § 362 Automatic Stay filed by Oakwood Acceptance Corporation (the "Creditor"). Appearing before the court were Franklin Drake on behalf of the Creditor, Richard M. Hutson, on behalf of the Chapter 13 Trustee, and A. B. Harrington, on behalf of the Debtor.

This court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a) and the General Order of Reference entered by the United States District Court for the Middle District of North Carolina on August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A),(G), and (O) which this court may hear and determine.

After reviewing the file and considering the arguments of counsel, this court makes the following:

FINDINGS OF FACT

1. On or about August 31, 2000, the Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code.

2. On or about February 20, 1997, the Debtor entered into a retail installment agreement with the Creditor for the purchase of a 1997 Oakwood double-wide mobile home (the "collateral"). The Debtor gave the Creditor a security interest in the mobile home which was duly perfected by notation on the Certificate of Title.

3. On September 12, 2000, the Creditor filed a secured proof of claim in this case in the amount of \$40,079.79.

4. The Order Confirming Plan was entered in this case on November 17, 2000 and provided for the Creditor to receive payments from the Chapter 13 Trustee through the plan.

5. When the Creditor filed this motion, the Creditor was informed that the Debtor was going to be evicted from the mobile home park where the collateral is located by Mr. and Mrs. David Bell, Jr. (the "Landlords") for failure to pay rent. The Creditor is informed that the Landlords have taken some steps towards eviction of the Debtor in conjunction with the Lee County Sheriff.

6. The Debtor does not have a written lease with the Landlords and is occupying the mobile home park under a month to month lease.

7. There is significant cost and difficulty involved in disassembling and removing a double-wide mobile home. The Creditor is concerned that if the mobile home is disassembled and removed by the Debtor or the Landlords, or by agents for either of them, the collateral may be damaged.

8. The Creditor filed this motion seeking relief from the automatic stay to foreclose its security interest in the collateral and to ensure that the collateral is properly removed from the mobile home park.

9. The Landlords are not listed in the Debtor's schedules nor are they included on the

mailing matrix for this case.

10. Notice of the bankruptcy case was given to the Landlord and the Lee County Sheriff's Department by the Chapter 13 Trustee's office on January 3, 2001.

11. On February 2, 2001, Debtor's counsel wrote to the Landlords requesting information as to the status of the relationship between the Landlords and the Debtor. Counsel stated in the letter "... I would suggest that you may need to employ an attorney to represent you in a motion to lift the protection of the restraining order now in effect from the Federal Bankruptcy Court. Enclosed is a copy of that restraining order."

12. To date, the Landlords have not sought to have the automatic stay lifted in order to proceed with eviction.

13. Payments to the Creditor through the plan are current.

DISCUSSION

When a bankruptcy petition is filed under Chapter 13 of the United States Bankruptcy Code, a stay automatically goes into effect enjoining all collection efforts, foreclosure actions, and harassment by creditors. 11 U.S.C. § 362. Subject to a number of exceptions not relevant here, Section 362 provides in part as follows:

(a) . . . a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C. § 362 (a).

In this case, the Creditor seeks relief from the automatic stay pursuant to Section 362 (a)(1) in order to foreclose on the property before the property is moved and damaged either by the Debtor or the Debtor's Landlords. Relief may be granted to a party in interest pursuant to section 362 (a)(1) "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362 (a)(1).

The court finds that cause does not exist to grant the Creditor's motion. The payments to the Creditor are current. No information has been provided to the court indicating that the Debtor has any intention of moving the collateral on her own initiative. Furthermore, with the automatic stay in place, the Landlords cannot lawfully proceed with an eviction action or seek to have the Debtor's property removed from its current location without seeking authorization of this court. If the Landlords proceed with eviction and/or removal of the collateral without seeking relief from the stay, such action may constitute a willful violation of the stay pursuant to

section 362 (h) for which the court may award actual damages, including costs and attorneys' fees, and possibly punitive damages.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the Creditor's Motion for Relief from Stay is hereby denied. It is further ordered that no action may be taken by any party, including the Landlords, to move the collateral from its current location without further orders of this court.

This the 20 day of February, 2001.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge