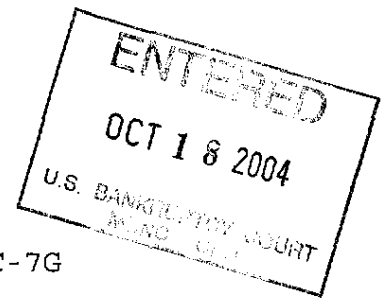


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:

Philip Gene Hogan,
Debtor.

Case No. 04-12336C-7G

ORDER

This case came before the court on October 5, 2004, for hearing upon a motion by John W. Houchin and Brenda Houchin seeking relief from the automatic stay in order to permit them to proceed with pending state court litigation involving 300 acres of real estate located in Isabel, Oklahoma. Everett B. Saslow, Jr. appeared on behalf of John W. Houchin and Brenda Houchin ("the Houchins") and William P. Miller, the Chapter 7 Trustee in this case, appeared in opposition to the motion. Having considered the motion, the response filed by the Trustee, the documents attached to the motion and the response and the other matters of record in this case, the court has concluded that the motion should be denied based upon the following findings and conclusions.

FACTS

The property referred to in the motion is listed in the schedules as an asset of the Debtor and is shown as having a value of \$400,000.00. According to the schedules, the property has equity of \$290,000.00 in excess of the indebtedness secured by the two deeds of trust on the property. The litigation referred to in the motion is pending in state court in Oklahoma and seeks specific

performance of a contract allegedly obligating the defendants in the litigation to sell the property to the Houchins. The litigation is still in the pleadings stage and no discovery has been conducted. The Trustee denies that the Houchins are entitled to specific performance and has instituted an adversary proceeding against the Houchins in this court seeking a determination that the Debtor had clear title to the property when this case was filed and that the Trustee is entitled to possession of the property.

ANALYSIS

Under § 362(a)(1) of the Bankruptcy Code the filing of a bankruptcy case operates as a stay of the commencement or continuation of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case. Under § 362(a)(3), the stay also applies to 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. Pursuant to these provisions, pending suits, hearings, and other proceedings everywhere are stopped, in place, insofar as the debtor or property of the estate is concerned. In the present case, the Debtor is not a defendant in the Oklahoma litigation; however, the purpose of that litigation apparently is to obtain property from the bankruptcy estate and to exercise control over such property. Consequently, the stay under § 362 is applicable to the Oklahoma litigation and the Houchins may

not proceed with such litigation without obtaining relief from the stay.

Subsection (d) of § 362 sets forth the procedure and criteria for the lifting or modification of the stay provided under § 362. Under this provision, the court may grant relief from the automatic stay by terminating, annulling, modifying or conditioning the stay "for cause." Deciding whether "cause" exists for the modification of the stay is a matter within the discretion of the bankruptcy court, depends upon the particular facts of each case and, therefore, must be decided on a case-by-case basis. See In re Macdonald, 755 F.2d 715, 717 (9th Cir. 1985); In re Davis, 91 B.R. 470 (Bankr. N.D. Ill. 1988).

No definition of "cause" for which modification of the stay is appropriate is provided in the Bankruptcy Code. In the absence of such a definition, the courts have articulated certain factors to be considered in deciding whether there is "cause" to modify or lift the stay with respect to pending lawsuits. These factors have included: (1) whether the relief will result in a partial or complete resolution of the issue; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the foreign proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases; (5) whether the debtor's insurance carrier has assumed full

financial responsibility for defending the litigation; (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) whether litigation in another forum would prejudice the rights of other creditors, the creditors' committee and other interested parties; (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under § 510(c); (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under § 522(f); (10) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (11) whether the foreign proceedings have progressed to the point at which the parties are prepared for trial; and (12) the impact of the stay on the parties and a balancing of the prejudice to the parties which will result from the ruling on the motion for relief from stay. See In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). The Court of Appeals for this Circuit has narrowed the list of factors somewhat, focusing primarily upon (1) whether the issues in the pending litigation involve only state law, so that the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected

properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court. In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992).

Consideration of the factors that are relevant in the present case strongly indicate that relief from the automatic stay should be denied. The Movants rely heavily upon the assertion that the issues in the pending litigation involve only state law, so that the expertise of the bankruptcy court is unnecessary. In some cases, this factor is compelling because of the involvement of issues in which the state court has particular expertise such as divorce, child custody and other matters of family law. This is not the situation in the present case. While the applicable law in the state court litigation is Oklahoma law, the claim is one seeking specific performance of a contract in which it is contended by the Debtor and the Trustee that the contract was not properly recorded and has been breached and hence is not enforceable against the Debtor. The state court in which the Houchins' case is pending is a court of general jurisdiction and not a specialized court. The litigation involves issues of general contract law and remedies rather than a specialized area of the law such as family law. Moreover, it does not follow automatically that relief from the stay must be granted because a claim pending in state court involves state law. The claims of most creditors are based upon state law. Clearly, if creditors could automatically obtain relief

from the stay to pursue their claims against debtors in other forums, rather than in the bankruptcy claims process, much of the purpose for bankruptcy filings, featuring a summary process for resolving claims, would be undermined and lost. See In re Micro Design, Inc., 120 B.R. 363, 369 (Bankr. E.D. Pa. 1990); In re BKW Sys., Inc., 66 B.R. 546 (Bankr. D.N.H. 1986). Accordingly, this factor, standing alone, does not weigh heavily in favor of granting the motion for relief from stay. Nor does it appear that judicial economy will be promoted by granting the requested relief from the automatic stay. This is not a case in which the state court litigation has proceed to the point in which it is ready for trial. Rather, the state court litigation in the present case is at an early stage in which no discovery has been conducted and is far from being ready for trial. Moreover, since the Debtor is not named as a defendant in the state court proceeding, a judgment in that proceeding would not result in a complete resolution of the issue regarding the Debtor's interest in the property and whether his ownership interests are subject to any rights possessed by the Houchins under their contract. Under the circumstances of the present case, the court is satisfied that judicial economy will be promoted by leaving the stay in place while the Trustee's adversary proceeding is litigated in this court. The trial of the adversary proceeding can be accomplished expeditiously and economically in this court and will result in a complete resolution of whether the

property is owned by the Debtor free and clear of any claims under the contract relied upon by the Houchins. Additionally, the inconvenience and potential prejudice to the Trustee and to the bankruptcy estate from having the Oklahoma litigation go forward outweigh any inconvenience and potential prejudice to the Houchins from having to litigate their claim in the bankruptcy court in North Carolina. Finally, under 28 U.S.C. § 1334(e), this court has exclusive jurisdiction of all of the property, wherever located, of the Debtor as of the commencement of this case. It is undisputed that the Debtor was the record owner of the Oklahoma property when this case was filed. The property is the principal asset of the bankruptcy estate. Whether the property is held subject to a right on the part of the Houchins to purchase the property under a contract with prior owners of the property is a matter that has a close connection to and is vitally important to the bankruptcy estate in this case. The Oklahoma litigation does not involve mere quantification of a monetary claim in which the estate can be protected by simply requiring that the plaintiff return to the bankruptcy court in order to seek payment of the claim sought to be established in state court litigation. Rather, the Oklahoma litigation seeks to deprive the Debtor and the bankruptcy estate of the ownership of the property and, in effect, to remove the Debtor's primary asset from the estate. The validity of such claims against property of the bankruptcy estate are matters which

can and should be determined by the bankruptcy court. See In re Ackerman, 194 B.R. 404 (Bankr. D.S.C. 1996); In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984).

Considering the foregoing factors and circumstances, the court concludes that the motion for relief from the automatic stay filed on behalf of the Houchins should be denied.

IT IS SO ORDERED.

This 18th day of October, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge