

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Wanda Jo Rogers,) Case No. 08-10426C-13G
)
Debtor.)
)

ORDER

This case came before the court on June 16, 2009, for hearing on a motion by CMH Homes, Inc. for relief from the automatic stay. Jay B. Green appeared on behalf of CMH Homes, Inc. ("CMH"), Steven K. Taylor appeared on behalf of the Debtor and Anita Jo Kinlaw Troxler appeared as Chapter 13 Trustee. Having considered the motion, the Debtor's objection to the motion, the other matters of record in this case and the arguments of counsel, the court has concluded that the motion should be denied.

The motion pertains to a 1999 Norris mobile home that is in the possession of the Debtor who claims to be the owner of the mobile home. In the motion, CMH asserts that it is the owner of the mobile home and seeks relief from the automatic stay in order to initiate proceedings against the Debtor in state court to establish its ownership of the mobile home.

Subsection (d) of section 362 of the Bankruptcy Code sets forth the procedure and criteria for the lifting or modification of the stay provided under section 362. Under this provision, the court may grant relief from the automatic stay by terminating, annulling, modifying or conditioning the stay "for cause." 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 various factors to be considered in deciding whether there is "cause" to modify or lift the stay with respect to lawsuits instituted in forums other than the bankruptcy court. The Court of Appeals for the Fourth Circuit has focused 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 would provide judicial economy; (3) 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 (4) whether the estate could be protected properly by the requirement that creditors seek enforcement of any judgment through the bankruptcy court. See In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992).

Consideration of these factors in the present case strongly indicate that relief from the automatic stay should be denied. The issues that would be involved in the proposed litigation would involve state law. 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. The likely claims in the proposed litigation involve whether

there was an agreement to transfer the mobile home, whether such a transfer of ownership occurred and, possibly, whether any contract between the parties should be reformed. The issues between the parties thus involve the general law of contracts 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 the involvement of state law meant that creditors could automatically obtain relief from the stay to pursue their claims in other forums, rather than through 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, in the present case, 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 would be promoted by granting the requested relief from the automatic stay. This is not a case in which state court litigation has proceeded to the point in which it is ready for trial. Rather, the proposed state court litigation has not even been commenced. Under the circumstances of the present case, the court is satisfied that judicial economy will

be promoted by leaving the stay in place and allowing the litigation against the Debtor to be adjudicated in this court. The trial of the proposed litigation 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 of CMH or any of the other parties involved in the transactions involving the mobile home. Additionally, the inconvenience and potential prejudice to the Trustee and to the bankruptcy estate from allowing the proposed litigation outweigh any inconvenience and potential prejudice to CMH from having to litigate its claim in the bankruptcy court.

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. The Debtor was in possession of the mobile home when this case was filed and claims ownership of the mobile home. The mobile home is the principal asset of the bankruptcy estate. Whether the property is subject to the claims of CMH is a matter that has a close connection to and is vitally important to the bankruptcy estate in this case. The proposed 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 proposed litigation seeks to

deprive the Debtor and the bankruptcy estate of the ownership of the property and, in effect, to remove the 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 should be denied.

IT IS SO ORDERED.

This 17th day of June, 2009.



WILLIAM L. STOCKS
United States Bankruptcy Judge