

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

LARRY DEAN SCHAEFER Chapter 7 ELAINE MARIE SCHAEFER

Debtors. Bankruptcy No. 03-04001M

MEMORANDUM DECISION MATTHEWS'S MOTION FOR RELIEF FROM STAY

James S. Matthews, Jr. moves for relief from the automatic stay so that he may continue with litigation in the state of Oklahoma to liquidate his claim against debtors Larry and Elaine Schaefer. A telephonic hearing on the motion was held September 3, 2004. Matthews, who is an attorney, represented himself. Dale L. Putnam appeared as attorney for the Schaefers. Eric W. Lam appeared as attorney for trustee David A. Sergeant. The parties advised the court that an evidentiary hearing was not necessary, and that the court could issue its decision on the strength of the filed papers and the oral statements and arguments made by counsel at the hearing. I will, therefore, treat the telephonic hearing as a final hearing on the motion. This is a core proceeding under 28 U.S.C. § 157(b) (2) (G).

The parties asked the court to withhold ruling on the motion until the court had considered and ruled on a motion to compromise a controversy between the trustee and the Schaefers. The outcome of that motion, according to the parties, might have obviated the need for ruling on Matthews's motion for relief. The trustee has withdrawn his motion to compromise. Matthews's motion is now ripe for decision.

Schaefers filed their joint chapter 7 petition on October 20, 2003. On their original schedule showing creditors holding unsecured nonpriority claims (Schedule F), they listed a debt to Matthews in the amount of \$24,705.32 (docket no. 1). They did not show the debts as contingent, unliquidated, or undisputed. Also, they did not state any opinion as to whether both or only one of the Schaefers was the debtor.

Schaefers amended their Schedule F on January 5, 2004 to submit additional information. As to Matthews, this additional information showed that the debt was

for legal services rendered in the spring of 2000, that the debt was jointly owed, but that it was disputed. Id.) On July 16, 2004, Schaefer's amended their Schedule F a second time to show that the debt to Matthews was owed by Larry Schaefer only.

The claims deadline in the case was set as April 14, 2004 (docket no. 27). Matthews filed a proof of claim on March 31, 2004, claiming that Schaefer's owed him \$25,705.32 for legal services and advancement of costs. He alleged that the claim was unsecured and nonpriority. On August 2, 2004, Elaine Schaefer objected to his claim on the grounds that she had paid her debt to Matthews and was no longer indebted to him, and that even if she were, the claim was excessive and should be disallowed accordingly (docket no. 72). Matthews responded, denying her allegations (docket no. 80). Trustee David A. Sergeant objected to Elaine Schaefer's objection to Matthews's claim on the basis that she had no standing to object. She contends, however, that the assets of her estate exceed in value the amount of her debts. I conclude that she does have standing.

In addition to his proof of claim, Matthews has filed an adversary proceeding against the Schaefer's (No. 04-9054M). He states his complaint in four counts. First, he seeks judgment against Schaefer's for the amount of his claim, and he asks the court to determine that the claim be excepted from debtors' discharges under 11 U.S.C. § 523(a)(2)(A) on the grounds of fraud. Second, Matthews seeks recovery from Schaefer's sounding in intentional tort, and he asks the claim be excepted from discharge under 11 U.S.C. § 523(a)(6), as a wilful and malicious injury. Third, Matthews objects to Schaefer's discharges under 11 U.S.C. § 727(a)(2). Last, he objects to the discharges under 11 U.S.C. § 727(a)(4).

Matthews's motion for relief from stay asks that the automatic stay be modified to permit him to liquidate his claim against each of the Schaefer's in the District Court for Oklahoma in Oklahoma. His amended petition in that court is attached to Matthews's Motion to Strike and Response to Elaine Schaefer's objection to his bankruptcy claim (docket no. 80). It appears that his petition

against the Schaefers was filed in Oklahoma sometime in 2002. His amended petition was filed on December 18, 2002 (id.). The amended petition sought judgment against Schaefers only for the account due.

At the hearing, Matthews asserted that in the state court proceeding, discovery had been completed and that the parties were on the verge of conducting final pretrial when Schaefers filed bankruptcy. He said that his claim could be determined expeditiously in the Oklahoma action, resulting in judicial economy. He points out that the action arises out of circumstances arising in Oklahoma where he represented the Schaefers in matters in that state, and that determination of his claim requires application of Oklahoma state law. He says the expert witnesses supporting his claim are from Oklahoma, and proceeding in the state forum would result in convenience to the greatest number of participants. Last, he says that he does not seek enforcement of any judgment he might obtain, but only liquidation of his claim.

Schaefers resist the motion, contending that debtors should not be required to travel to Oklahoma to litigate the claim outside of the bankruptcy proceedings. They say there is no basis for granting relief.

The trustee resists the motion. He says the estate has very little money, and that as trustee he could not afford to hire counsel in Oklahoma or to travel there to take part in the litigation. Counsel for the trustee stated at the hearing that the trustee likely objects to Matthews's claim only to the extent \$3,500.00. He says that Matthews may have failed to give Schaefers credit for a payment to him in that amount. Matthews admits this may be true. He says he is investigating the matter and would reduce his claim if a payment were made and accounted for. The trustee does not otherwise object to the claim.

The court may grant relief from the automatic stay for cause. 11 U.S.C. § 362(d)(1). It has been held that Congress intended that relief could be granted, "to allow litigation involving the debtor to continue in a non-bankruptcy forum under certain circumstances." Wiley v. Hartzler (In re Wiley), 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003). Often it

might be more appropriate to allow the continuation of the other proceedings. Id.

In making the determination of whether to grant relief from the stay, the court must balance the potential prejudice to the debtor, to the bankruptcy estate, and to the other creditors against the hardship to the moving party if it is not allowed to proceed in state court. The factors used to balance the hardships are: (1) judicial economy; (2) trial readiness; (3) the resolution of preliminary bankruptcy issues; (4) the creditor's chance of success on the merits; (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

Id. citing Blan v. Nachogdoches County Hospital (In re Blan), 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999).

Based on consideration of these factors and the motion papers and statements of counsel, I determine that relief should be granted. There would be some prejudice to Elaine Schaefer by permitting the continuance of litigation in Oklahoma. However, I recognize that Mrs. Schaefer, at least in the past, must have had a presence in Oklahoma sufficient to involve her in litigation in that state. She hired Matthews to represent her. To liquidate the claim, one of the parties must travel. In light of Mrs. Schaefer's hiring Matthews in Oklahoma, I consider that the greater hardship would be to require him to litigate his claim in Iowa, and to bring his witnesses here. The Oklahoma case is nearly ready for trial. Discovery has been completed. The issues involve Oklahoma law, and the reasonableness of attorneys' fees and costs expended there. I need decide no bankruptcy issues before the state court can rule. It is beyond dispute that Schaefer's were involved in litigation in Oklahoma and that Matthews was retained to represent them. Mr. Schaefer does not dispute his claim. Mrs. Schaefer claims that she has fully paid Matthews for his work and that his charges are excessive.

It is difficult to determine the likelihood that Matthews will succeed on the merits in his claim against Elaine Schaefer. However, Matthews appears to have stated a sufficient claim to proceed to the pretrial stage in state court. The merits of his claim are substantial enough to weigh this factor in his favor. Last, I do not consider that there is significant prejudice to the bankruptcy estate or to other creditors. No other creditors are involved in the litigation.

The trustee is concerned only that Matthews may have failed to give Schaefer credit for a \$3,500.00 payment on their account. This is not a significant amount so as to prejudice the trustee by his inability to travel to Oklahoma. Moreover, Mrs. Schaefer has also raised the issue of the amount due, and she can represent the trustee's concerns on the issue.

I find that the balance of hardship favors Matthews. Relief will be granted to permit him to litigate his claim against Schaefer in the pending proceeding in the state court of Oklahoma.

IT IS ORDERED that the motion for relief from stay is granted. The automatic stay is modified to permit James S. Matthews, Jr. to liquidate his claims against Larry Schaefer and Elaine Schaefer in Case No. CJ2002-10186, pending in the District Court of Oklahoma County, State of Oklahoma.

Matthews may obtain judgment for money due, but may not obtain any lien against property of the bankruptcy estate or the debtors absent further order of the bankruptcy court. Also, he may not make any attempt to levy or to execute upon the judgment absent permission of the bankruptcy court. Judgment shall enter accordingly.

DATED & ENTERED: **November 22, 2004**

William L. Edmonds, Bankruptcy Judge