

In the United States Bankruptcy Court

for the Northern District of Iowa

TERRY L. GEARHART

Bankruptcy No. 93-10494LC

Debtor(s).

Chapter 7

Contested No. 3520

RULING ON MOTION TO REINSTATE AUTOMATIC STAY

On August 16, 1993, the above-captioned matter came on for hearing on a Motion to Reinstate Automatic Stay. This Motion was filed July 28, 1993. Hearing on the Motion to Reinstate was heard by telephone conference call. Debtor appeared by Attorney John Stitely. The Motion to Reinstate was resisted by Rhonda Gearhart who appeared by Attorney Stephen Jackson. Oral arguments were presented after which the Court took the matter under advisement.

Debtor filed the pending Chapter 7 Bankruptcy on March 23, 1993. On May 20, 1993, a Motion for Relief from Automatic Stay was filed by creditor, Rhonda Gearhart, through her attorney, Stephen Jackson. The Motion for Relief from Automatic Stay states that the creditor and Debtor were previously married. A decree of dissolution was entered in Delaware County District Court on October 9, 1992. The Motion for Relief from Automatic Stay asked the Court to allow creditor, Rhonda Gearhart, to pursue State remedies to enforce the dissolution decree for child support, medical expenses, counseling and dental expenses for the children, as well as other matters relating to the dissolution decree.

Notice of the Motion to Lift Stay was sent. Hearing was scheduled for June 10, 1993 at 8:45 a.m. The Notice provided that an answer must be filed at least five days prior to the time set for hearing pursuant to Local Bankruptcy Rule 23. If an answer was not filed and served upon the moving party, the hearing would not proceed and the stay would be lifted without further notice. At the time scheduled for hearing, there was no resistance filed, no telephone conference occurred, and on the same date, the Motion for Relief from Stay was granted and the Automatic Stay was lifted. Debtor obtained new counsel and the present Motion was filed by Debtor on July 28, 1993. Debtor specifically asks that the Automatic Stay, under 11 U.S.C. §362(a) be reinstated until such time as the adversary action and administration of the bankruptcy is concluded. Creditor, Rhonda Gearhart, filed a resistance to this Motion on August 12, 1993. Hearing was scheduled for and held on August 16, 1993.

The Debtor asks the Court to reinstate the automatic stay which was imposed under 11 U.S.C. §362 at the time of the filing of the Bankruptcy Petition. The stay has been lifted pursuant to Court Order for failure to comply with Local Bankruptcy Rule 23.

The threshold issue is whether this Court has authority under §362 to reinstate an automatic stay which has been lifted. Debtor argues that the Court has general equitable powers under the Bankruptcy Code to reinstate a stay. The overwhelming authority on this issue concludes that there is no authority under the Bankruptcy Code to reimpose a stay once it has been lifted as to a certain creditor. In re Hale, 128 B.R. 310, 312 (Bankr. N.D. Fla. 1991). The Court notes that the decision in Hale is very similar factually to the present case and that an automatic stay was lifted for failure to comply with Local Rules. The Court in Hale determined that the Code does not authorize the reinstatement or reimposition of a stay once it has been lifted. The 5th Circuit Court of Appeals has determined that once a stay is lifted, the stay, granted until §362, cannot be reimposed or reinstated. Browning v. Navarro, 743 F.2d 1069, 1084 (5th Cir. 1984).

It does not appear that the 8th Circuit Court of Appeals has directly addressed this issue. The Circuit Court decided a

case in which this issue was raised. However, the decision was based on other grounds. The Court stated: "We need not reach the procedural issues in this case, such as . . . argument that even if the bankruptcy court should not have lifted the stay, it did not have the power to vacate its order lifting the stay . . ." In re Wreseler, 934 F.2d 965, 968 n.1 (8th Cir. 1991).

In summary, there is broad and almost unanimous case support for the proposition that once an automatic stay is lifted, the Bankruptcy Court does not have the authority to reinstate or reimpose the automatic stay against a creditor under the provisions of §362 of the Bankruptcy Code.

There is frequently discussion of the availability of injunctive relief under §105 of the Code. However, if this relief is sought, it must be sought specifically under §105 as injunctive relief. And if sought, the party seeking relief must come into strict compliance with the procedural rules relating to this extraordinary remedy under 11 U.S.C. §105, Federal Rule of Civil Procedure 65, and Bankruptcy Rule of Procedure 7065. An evidentiary hearing must be held and the Court must make specific findings prior to the granting of injunctive relief. The Court must find that the moving party stands a substantial likelihood of success in the underlying dispute, that there is irreparable harm to the movant, that the harm to the moving party outweighs the potential harm to the non-moving party, and that there is no violation of public interest by the granting of such relief. There also may exist the requirement that a bond be posted by the moving party under the appropriate procedural rules.

Here, the Court is presented with a request for specific relief. The movant asks for reinstatement of the automatic stay under 11 U.S.C. §362. There is no statutory authorization for the reinstatement of an automatic stay.

WHEREFORE, for the reasons set forth herein, the movant's Application for Reinstatement of the Automatic Stay filed July 28, 1993 is DENIED.

SO ORDERED this 18th day of August, 1993.

Paul J. Kilburg
U.S. Bankruptcy Judge