

In the United States Bankruptcy Court

for the Northern District of Iowa

ERNEST LEE HIGGINS

Bankruptcy No. 97-10108-C

PATRICIA MARIE HIGGINS

Debtor(s).

Chapter 13

Contested No. 2225

ORDER RE DEBTORS' MOTION TO REIMPOSE AUTOMATIC STAY

This matter is before the undersigned on Debtors' Motion to Reimpose Automatic Stay, filed September 29, 1997. On August 19, 1997, the Court entered an Order granting Linn Area Credit Union's Motion for Relief from Stay. Debtors and the Credit Union had filed a stipulation regarding the relief from stay. They stipulated that the Credit Union could proceed against Debtors in two actions pending in the Linn County District Court if Debtors had failed to complete refinancing of their home by August 15, 1997.

Debtor's current Motion states they mistakenly believed the stipulation dealt only with a mortgage foreclosure action, and not with a separate action to collect on credit card debt in which the Credit Union had received a judgment. They request the Court reinstitute the automatic stay regarding the judgment on the credit card debt, Case No. LACV029274 in Linn County District Court. The Credit Union filed a Consent to the reimposition of the automatic stay as it relates to that action. Debtors' Plan, confirmed April 17, 1997, provides for payment to the Credit Union for its judgment on the credit card debt.

Once the automatic stay is lifted, the Bankruptcy Court does not have the authority to reinstate or reimpose the stay under §362. In re Gearhart, No. 93-10494LC, slip op. at 2 (Bankr. N.D. Iowa Aug. 18, 1993); see In re Stacy, 167 B.R. 243, 248 (N.D. Ala. 1994). The Court may use its injunctive powers pursuant to §105(a) to impose an injunction or restraining order after the automatic stay has lifted or lapsed. In re Wedgewood Realty Group, Ltd., 878 F.2d 693, 700 (3d Cir. 1989). This is an extraordinary remedy requiring strict compliance with procedural rules. Gearhart, slip op. at 2; Wedgewood Realty, 878 F.2d at 701. An adversary proceeding is necessary and the debtor has the burden to demonstrate substantial likelihood of success on the merits, irreparable harm to the movant which outweighs the harm to the nonmoving party and the relief sought would not violate public interest. Id.

In the alternative, courts have allowed debtors to request relief from an order lifting the automatic stay by utilizing Fed. R. Civ. P. 60(b). In re Gledhill, 76 F.3d 1070, 1078 (10th Cir. 1996); In re Ramirez, 188 B.R. 413, 416 (B.A.P. 9th Cir. 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under [Rule 60(b)]."); In re AL & LP Realty Co., 164 B.R. 231, 233 (Bankr. S.D.N.Y. 1994) (stating Rule 60(b) should be broadly construed to do "substantial justice, yet final judgment should not "be lightly reopened"). Bankruptcy Rule 9024 incorporates Rule 60(b) in

bankruptcy cases. Rule 60(b) authorizes relief from a final judgment or order, by motion as a contested matter, for mistake, inadvertence, surprise and excusable neglect, among other reasons. Gledhill, 76 F.3d at 1078).

Debtors' Motion and proposed Order request that the stay be "reimposed" as to the credit card debt action. This Court has no authority to reimpose the automatic stay. In their Motion, Debtors raise the equitable powers of §105(a) as authority for the Court to stay that portion of the order lifting the automatic stay. Injunctive relief under §105(a) may not be sought by motion, but requires an adversary proceeding.

Although Debtors' Motion does not refer to Bankruptcy Rule 9024 or Rule 60(b), it is within the purview of those Rules in seeking relief from an order for mistake or inadvertence by motion. Debtors state the Stipulation was entered "under the mistaken impression that the motion for relief from stay only dealt with the mortgage foreclosure action." They further state they were "not aware of the motion for relief from stay seeking to lift the stay on the judgment for the credit card." In these circumstances, and because the Credit Union has consented to reimposition of the automatic stay as it relates to the judgment on the credit card debt, the Court concludes that good cause exists under Rule 60(b) to relieve Debtors from the Order Granting Motion for Relief from Stay to the extent it encompasses Linn Area Credit Union's judgment on the credit card debt in Case No. LACV029274.

WHEREFORE, Debtors' Motion to Reimpose Automatic Stay is treated as a Motion for Relief from Judgment or Order under Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60(b).

FURTHER, good cause exists under Rule 60(b)(1) to grant Debtors their requested relief from the Order Granting Motion for Relief from Stay filed August 19, 1997.

FURTHER, the Court rescinds the relief from automatic stay as it relates to the judgment entered in favor of Linn Area Credit Union against Debtors in case No. LACV029274 in the Iowa District Court for Linn County.

SO ORDERED this 7th day of October, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge