

In the United States Bankruptcy Court

for the Northern District of Iowa

SCOTT ALLAN GARRISON
Debtor(s).

Bankruptcy No. 97-03688-W
Chapter 7
Contested No. 3080

ORDER REGARDING STAY

This matter came before the Court on March 13, 1998 for a preliminary hearing on the Motion for Relief from the Automatic Stay filed by Bank One Wisconsin. No resistance to the motion for relief from stay having been filed by Debtor or any party in interest, no hearing was held. It is the Court's practice to grant such a motion when no resistance has been filed. In this instance, however, the Court wishes to address the Bank's request for an award of "the costs of this action" as part of its relief.

As a rule, creditors are not entitled to attorney's fees in bankruptcy unless a specific provision of the Code so allows. In re Ryan's Subs., Inc., 165 B.R. 465, 467 (Bankr. W.D. Mo. 1994) (considering request for fees under §365(b)(1)(B)). Further, courts have held that a creditor is not entitled to attorney's fees incurred in connection with the litigation of bankruptcy law issues. Id. at 469; In re Fobian, 951 F.2d 1149, 1153 (9th Cir. 1991) (denying creditor fees and costs relating to objection to Chapter 12 confirmation). The rationale is that litigation involving solely issues of federal bankruptcy law is not a traditional "action on the contract." Fobian, 951 F.2d at 1153. In the absence of a Code provision allowing fees and costs, the creditor cannot rely on its contract provisions allowing fees and costs in these situations. Id.

This view holds true in automatic stay litigation. In re Johnson, 756 F.2d 738, 741 (9th Cir. 1985). In Johnson, the court refused to allow attorney fees incurred in debtor's opposition to relief from stay. Id. "Because federal law governs the disposition of this relief from stay action, it should also govern disposition of the attorney's fee issue in this case." Id. Federal courts follow the "American Rule," under which attorney fees are not recoverable by the prevailing litigant. Id.

In a case which continues to be cited by commentators on this issue, the court announced "a rule that costs will generally not be taxed in a relief from stay proceeding." In re Peterman, 5 B.R. 686, 687 (Bankr. M.D. Fla. 1980). The court stated:

The automatic stay imposed by . . . §362 of the Code is in the nature of a temporary injunction. Because liens generally survive bankruptcy, [] secured creditor[s are] not required to dissolve the injunction; [they are] free to wait until the stay expires of its own accord. If [creditors choose] to seek immediate relief from the stay, it can hardly be deemed unfair to require [them] to bear [their] own costs. In addition, it would be inappropriate to require the unsecured creditors to pay for releasing the collateral of secured creditors from the estate.

Id.; cited in Solomon's Resurgence: Current Developments Regarding the Automatic Stay and Adequate Protection, 602 PLI/Comm 7, 161 (1992).

Creditor Bank One Wisconsin, as part of its request for relief from stay, moves the Court for "the costs of this action." This is a no-asset case. Discharge was entered on March 12, 1998, the day before the preliminary hearing date. The copy of the contract attached to the motion does not appear to provide for payment of costs on default. The Court concludes that, although there is no filed objection to the Motion for Relief from the Automatic Stay, the Bank is not entitled to a grant of costs as part of its relief.

WHEREFORE, Bank One Wisconsin's Motion for Relief from the Automatic Stay is GRANTED in part.

FURTHER, the Bank's request in its Motion for the costs of this action is DENIED.

SO ORDERED this 16th day of March, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge