

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF  
IOWA

IN RE: )

) Chapter 7

PAUL JOHN KRAMER and )

JANICE KAY KRAMER, ) Bankruptcy No. 03-02832

)

Debtors. )

**ORDER RE MOTION FOR RELIEF FROM AUTOMATIC STAY**

This matter came before the undersigned on October 21, 2003 on Motion for Relief from Automatic Stay filed by the United States and Joinder filed by Na-Churs Plant Food Co. Debtor Paul John Kramer appeared pro se. Debtor Janice Kay Kramer did not appear. Attorney Joan Stentiford Ulmer represented the United States. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

**STATEMENT OF THE CASE**

The United States seeks relief from the automatic stay to allow a judicial foreclosure sale and related proceedings ordered by the U.S. District Court. Na-Churs Plant Food Co. seeks to join in the relief requested by the United States. Debtors resist.

**FINDINGS OF FACT**

The U.S. District Court for the Northern District of Iowa entered a judgment in Na-Churs Plant Food Co. v. Kramer Crop Serv. Trust et al, No. 01-0170 (N.D. Iowa June 25, 2003), ordering sale of certain real estate in Jones County, Iowa. Debtors were Defendants in that action. The property is titled in the name of Kramer Crop Service Trust, also a Defendant in the District Court action. The Order of Sale was based on summary judgment granted to the United States on April 8, 2003 and a stipulation between the United States and Na-Churs regarding their respective interests in the property. The Order of Sale provides, among other things, that the sale shall be free of any interests of Debtors. It also sets out priorities between interests in the property. Proceeds of the sale are to be distributed to pay the following in the following order: 1) costs of the sale, 2) Jones County property taxes, 3) the contract seller Marian Hirtz, 4) Na-Churs, and 5) the United States.

The United States' claim is based on liens for federal income tax assessments against Debtors for 1989 through 1993, plus associated interest

and penalties, and frivolous return penalties for 1977 through 1981. The total amount of this claim exceeds \$279,000. The total amount of Na-Churs' secured interest in the property exceeds \$34,000. The property has a 2003 assessed value of \$101,800.

After the June 25, 2003 Order for Sale was entered, the U.S. Marshal scheduled the sale for August 28, 2003. The first publication notice of the sale was published on July 24, 2003 in a local newspaper. Debtors filed their Chapter 7 petition the next day on July 25, 2003. Debtor Paul Kramer personally delivered a copy of his bankruptcy petition to the U.S. Marshal's office, stating he knew his bankruptcy filing would halt the sale. The sale date has been postponed in light of the automatic stay under 11 U.S.C. § 362(a).

The United States argues this bankruptcy action was filed in bad faith. It asserts Debtors have a lengthy history of taking actions designed to frustrate its efforts to collect Debtors' rightfully owed federal taxes. The United States asserts Debtors have no equity in the property and did not list the property as an asset in their bankruptcy petition. It argues grounds exist to lift the stay to complete the sale of the real estate. Na-Churs joins in the United States' Motion for relief from stay.

Debtors orally presented arguments against granting relief from the automatic stay. They also filed numerous documents in their bankruptcy case, including affidavits, copies of U.C.C. filings and documents titled "Apostille". The Court has carefully reviewed and considered all of Debtor's filed documents and oral arguments. Among other arguments, Debtors deny the validity of the United States' tax liens and challenge Na-Churs' right to do business in the State of Iowa.

#### CONCLUSIONS OF LAW

The United States and Na-Churs seek relief from the automatic stay pursuant to 11 U.S.C. § 362(d). This section requires the court to grant relief from the automatic stay of "an act against property" if the debtor does not have equity in the property and the property is not necessary to an effective reorganization. In re Anderson, 913 F.2d 530, 532 (8th Cir. 1990); 11 U.S.C. § 362(d)(2). The moving party has the burden to prove that the debtors have no equity in the property. Anderson, 913 F.2d at 532. Where the debtors file a Chapter 7 liquidation case and are not seeking reorganization, the second part of § 362(d)(2) is not in issue. In re Kingsley, 161 B.R. 995, 997 (Bankr. W.D. Mo. 1994).

Alternatively, under § 362(d)(1), the court may grant relief from the automatic stay for cause, including allowing litigation involving the debtor to proceed in another forum under appropriate circumstances. In re Wintroub, 283 B.R. 743, 745 (B.A.P. 8th Cir. 2002). The court balances the potential prejudice to the debtor, the bankruptcy estate, and other creditors against the

hardship to the movant if it is not allowed to proceed in the other forum. Id. Lack of good faith also constitutes "cause" under § 362(d)(1) for lifting the stay to permit foreclosure. In re Ouverson, 79 B.R. 830, 832 (Bankr. N.D. Iowa 1987); In re Laguna Assocs. Ltd. P'ship, 30 F.3d 734, 737-38 (6th Cir. 1994). "If it is obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide efforts to realize upon their securities, good faith does not exist." Ouverson, 79 B.R. at 832 (citations omitted). Whether a bankruptcy filing is made in good faith depends on the debtor's financial condition, motives and financial realities as a whole. In re Holiday Assocs. Ltd. P'ship, 139 B.R. 711, 717 (Bankr. S.D. Iowa 1992).

In oral argument, Debtors raised issues relating to the validity of the judgment in the U.S. District Court and its Order of Sale. It is well settled that a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981). Once a judgment becomes final and is no longer subject to appeal, it may not be collaterally attacked by the parties in subsequent litigation. See In re Kovalchick, 175 B.R. 863, 871 (Bankr. E.D. Pa. 1994). A bankruptcy court will not sit as an appellate court in review of a U.S. District Court's decisions. See In re Tant, 156 B.R. 1018, 1021 (Bankr. W.D. Mo. 1993).

#### **ANALYSIS**

The United States has meet its burden to prove that Debtors have no equity in the real estate which is subject to sale. Debtors' names are not on the title to the real estate. The value of the real estate is much less than the amount of the liens attached to it. Debtors' prospects of reorganization are not in issue in this Chapter 7 case. The automatic stay should be lifted under § 362(d)(2).

Cause to grant relief from the automatic stay also exists under § 362(d)(1). The judgment and Order of Sale of the U.S. District Court are final and not subject to attack in this forum. It is obvious Debtors are attempting to deter the United States and Na-Churs in their bona fide efforts to complete the judicially sanctioned foreclosure sale. The United States has met its burden to show cause exists to lift the automatic stay under § 362(d)(1).

**WHEREFORE**, pursuant to the foregoing, the United States and Na-Churs Plant Food Co. are granted relief from the automatic stay to proceed with the judicial foreclosure sale and related proceedings ordered by the U.S. District Court.

**SO ORDERED** this 10<sup>th</sup> day of November, 2003.

PAUL J. KILBURG

CHIEF BANKRUPTCY JUDGE