

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
:
ABC REPAIRS & SERVICES, INC., : Case No. 89-1819-D H
:
Debtor. : Chapter 7
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ORDER--MOTION FOR ORDER ENFORCING AUTOMATIC STAY

On January 18, 1990, a hearing was held on Debtor's motion for order enforcing automatic stay. The following attorneys appeared on behalf of their respective clients: Steven S. Hoth and Craig Miller for Debtor ABC Repairs and Services (hereinafter "ABC"); James W. Miller for Farmers Savings Bank of Wever, Iowa, (hereinafter "Bank"); and Burton H. Fagan as Trustee. At the conclusion of said hearing, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Court, upon review of the pleadings, arguments of counsel, and evidence admitted, now enters its findings of fact and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On August 21, 1989, ABC filed a voluntary Chapter 7 petition.
2. On November 23, 1988, the Bank filed a petition in Iowa District Court against ABC concerning certain debts that were created by ABC, including one for forgery of a third-party signature on a check.
3. On November 23, 1988, Iowa District Court Judge Harlan

Bainter issued a temporary injunction against ABC, restraining ABC from executing, cashing, negotiating, signing, endorsing for payment, etc. a check which had been received by ABC pursuant to a contract between ABC and the United States Army Engineering District of Rock Island. ABC had assigned the proceeds from said contract to the Bank, and a check had been issued to ABC despite the assignment. The Bank therefore was concerned that ABC would proceed to cash said check.

4. It is alleged ABC violated the injunction by proceeding to cash the check despite the injunction and that ABC acted by and through its sole stockholder, employee, and officer, Richard L. Douglas.

5. On June 12, 1989, a judgment was rendered for the Bank and against ABC on the November 23, 1988 Iowa District Court petition.

6. On or about July 31, 1989, the Bank filed an application for citation of contempt in the Iowa District Court against ABC and Richard L. Douglas for violation of the temporary injunction. The application for citation of contempt prayed that the Iowa District Court order Richard L. Douglas be incarcerated if the contempt were not purged by the Debtor turning over funds sufficient to satisfy the judgment of June 12, 1989.

7. A hearing on the application for contempt was set in Iowa District Court on August 21, 1989, at 1:45 p.m.

8. On August 21, 1989, ABC filed its voluntary Chapter 7 petition and filed a motion to stay the contempt proceedings in Iowa

District Court.

9. On September 5, 1989, oral arguments were presented to the Iowa District Court concerning the effect of the automatic stay on the contempt application.

10. On November 8, 1989, the Iowa District Court entered an order concluding that 11 U.S.C. §362 does not operate to stay the contempt proceedings brought against ABC and Richard L. Douglas and the hearing was rescheduled for January 2, 1990.

11. On December 19, 1989, ABC filed in this court a motion for order enforcing automatic stay pursuant to 11 U.S.C. §105 and §362.

12. On December 27, 1989, counsel for the Bank received a motion to continue hearing of the state court action, and an order for hearing on this motion. On December 27, 1989, counsel for the Bank called counsel for ABC and informed counsel for ABC that the Bank would voluntarily agree to a continuance of the hearing on the Bank's application for contempt.

13. The Bank has categorically stated that it is not now attempting to utilize the contempt proceeding in an effort to collect the pre-petition debt or to harass the Debtor. Although at one time the Bank held some hope of collecting the Debt, it now realizes that this is a zero asset case and that, therefore, the sole effect of pursuit of contempt action would be punitive in nature.

DISCUSSION

This matter came before this Court on a motion by Debtors to enforce the automatic stay pursuant to 11 U.S.C. §§105 and 362. This

motion was resisted by the Bank on the grounds that the automatic stay does not apply to this contempt proceeding as it is not intended to collect the pre-petition debt nor to harass the Debtor.

Section 362(a) provides that a petition filed under Title 11 operates as a stay of:

(1)the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this Title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

The state court action which the Debtors argue is stayed by the provisions of §362 is a motion for citation of contempt filed by the Bank against Debtor and against Richard Douglas individually. Richard Douglas is not a debtor in this case nor is he a co-debtor or guarantor on the debt to the Bank. Therefore, the Court rules summarily that the provisions of 362 do not operate as to actions against Richard Douglas individually.

Iowa Code Chapter 665 comprehensively regulates the contempt power and supplants the common law to that extent. Skinner v. Ruigh, 351 N.W.2d 182, 184 (Iowa 1984). This contempt statute makes no distinction between civil and criminal contempt. As such, the Iowa courts have held that "distinctions between civil and criminal contempt are of no consequence in this jurisdiction." McNabb v. Osmundson, 315 N.W.2d 9, 11 (Iowa 1982). The Fourteenth Amendment

right to counsel applies to a contempt action in which the result may be a loss of physical liberty. Id. The standard of proof for contempt actions which may result in a loss of physical liberty is beyond a reasonable doubt. Phillips v. Iowa District Court for Johnson County, 380 N.W.2d 706 (Iowa 1986). Contempt proceedings are quasi-criminal in nature and are treated as criminal in nature even though they arise in civil actions. Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980); Wilson v. Fenton, 312 N.W.2d 524, 528 (Iowa 1981).

Essentially, a contempt is an offense against the authority of the court. The power of the court to impose sanctions for such an offense is inherent in that court and is essential to the efficiency of judicial functions. Lutz, 297 N.W. at 352, and see Gibb v. Hansen, 286 N.W.2d 180, 184 (Iowa 1979).

The automatic stay applies if a governmental unit is trying to enforce a money judgment against the debtor. However, §362(b)(4) states that the automatic stay does not operate "to stay ... the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental units police or regulatory power."

There are several lines of cases addressing various ways in which the bankruptcy court can approach the question of whether the automatic stay applies to contempt proceedings. This Court adopts the position that the court must examine all of the circumstances surrounding the issuance of the order of contempt to determine

whether the intent of the Court or the creditor seeking the order of contempt was to satisfy a judgment or simply to punish. See International Distribution Centers, Inc. v. Walsh Trucking Co., Inc., 62 B.R. 723, 729 (Bankr. S.D.N.Y. 1986).

In viewing all of the circumstances surrounding this case, the Court finds that the contempt citation is sought for the purpose of punishing the Debtor for violating a court order and not for the purpose of collecting a money judgment or harassing the Debtor. This Court further adopts the position taken by the District Court for Kansas, which has stated:

It is within a court's inherent power to take whatever steps necessary to ensure those persons within its power comply with its order. The court cannot conceive that Congress intended to strip the court of this power, and instead permit a party to blatantly violate direct orders of the court and then seek shelter from a bankruptcy judge. If this were so, the court's orders could be rendered almost meaningless. The court must retain the ability to compel compliance with its orders; a party seeking relief from his creditors is not free to run rampant in flagrant disregard of the powers of the court. A civil contempt judgment is one effective method of coerce and compliance and "upholding the dignity of the court."

U.S. Sprint Communications Company v. Buscher, 89 B.R. 154, 156 (D. Kan. 1988).

The purposes for providing an automatic stay in liquidations under Chapter 7 include preventing harassment and financial pressures of indebtedness and avoiding the dissipation of assets and the interference with the orderly administration of the estate. These

purposes would not be served by preventing the state court from proceeding to hear the contempt action in this case.

IT IS ACCORDINGLY ORDERED that ABC's motion for order enforcing automatic stay is denied. The proceedings on Bank's application for contempt may proceed; however, the outcome of the contempt proceeding must not interfere with the assets of ABC's bankruptcy estate.

Dated this 8th day of March, 1990.

/s/ _____
Russell J. Hill
U.S. Bankruptcy Judge