SO ORDERED,

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: August 24, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE: JOHN L. ULRICH and TRACY L ULRICH

DEBTORS

CASE NO. 15-51408-KMS

CHAPTER 13

ORDER GRANTING MOTION FOR RELIEF FROM AUTOMATIC STAY

Before the Court is the Motion for Relief from Stay (Dkt. No. 52) filed by Creditor Bridget Logan Ulrich ("Bridget"), the Response (Dkt. No. 64) filed by Debtors John L. Ulrich ("John") and Tracy L. Ulrich ("Tracy"). The Court held a hearing on the motion on April 7, 2016, and provided the parties an opportunity to submit additional briefing. Dkt. Nos. 67, 70. Thereafter, John and Tracy filed a Brief in Support of Debtors' Position (Dkt. No. 74), and Bridget filed a brief in Support of Motion for Relief from Stay (Dkt. No. 76). Having considered the argument and evidence in this matter, the Court finds that the motion for relief from the stay should be granted.

I. Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), & (O).[1]

II. Findings of Fact

After twenty years of marriage, Bridget and John were divorced by the Harrison County Chancery Court on June 18, 2003. Dkt. No. 66 at 1-3. At the time of the divorce, Bridget and John had two minor children and one adult child. The divorce decree incorporated a separate agreement related to child custody and property settlement. Dkt. No. 66 at 4-12. Relevant to this motion, Bridget and John each agreed to pay (1) half of the minor children's medical expenses, (2) half of their college expenses "based upon reasonable cost associated with a state institution in the State of Mississippi," and (3) half of the children's "car notes, repairs and general maintenance." Dkt. No. 66 at 7, 8, 10. John also agreed to pay monthly child support in the amount of $700.00 for one minor child and $300.00 for the other minor child until the later of the child reaching the age of majority or completing college, including any graduate school. Dkt. No. 66 at 7-8.

The terms of the agreement "ha[ve] been litigated several times concerning contempt and modification issues." Dkt. No. 66 at 16. Most recently, Bridget filed a "Complaint for Citation of Contempt" on January 27, 2015. Dkt. No. 52 at 2. A partial hearing was held in July of 2015 and scheduled to resume on January 25, 2016. Dkt No. 52 at 2. However, on September 3, 2015, John and Tracy filed for Chapter 13 relief. Dkt. No. 1. Bridget asserts that she received no notice of the bankruptcy until the eve of trial and that the chancellor declined to resume the proceedings because of the bankruptcy. Dkt. No. 52 at 2. However, at this Court's hearing, Bridget's counsel

[1] Pursuant to Federal Rule of Civil Procedure 52, made applicable here by Federal Rules of Bankruptcy Procedure 9014(c) and 7052, the following constitutes the findings of fact and conclusions of law of the Court.

stated that they were aware of the stay "in late September of [20]15." Dkt. No. 73 at 5. On March 3, 2016, Bridget filed the motion for relief from stay. Dkt. No. 52. On March 31, 2016, John and Tracy responded. Dkt. No. 64. On April 7, 2016, the Court held a hearing on the motion and heard the arguments of counsel in addition to testimony from John and Tracy. *See* Dkt. No. 67. Bridget did not testify but her counsel submitted into evidence several state court pleadings including: (1) the divorce decree, (2) the child custody and property settlement agreement, (3) the joinder of one of the children in the pending state court contempt action, and (4) an order amending the state court pleadings to conform with the evidence prior to trial. *See* Dkt. No. 66. After the hearing, John and Tracy submitted their additional briefing on June 1, 2016. Dkt. No. 74. And Bridget responded on June 24, 2016. Dkt. No. 76.

III. Conclusions of Law

Bridget seeks to terminate the stay to allow the chancery court to complete the contempt action against John. Bridget also argues that the stay does not apply to the pending action because it relates to a domestic support obligation ("DSO").[2] John and Tracy argue that the Court may, using its equitable authority, determine whether the expenses requested are reasonable under the divorce decree and child custody and property settlement agreement. First, the Court will examine whether the automatic stay applies to the pending state court action. Second, if the Court finds that it does, the Court will consider whether the stay should be terminated "for cause." *See* 11 U.S.C. § 362(d)(1) (2010).

A. The Automatic Stay and DSOs

The stay provided in Section 362 of the Bankruptcy Code is automatic but not absolute. Subsection (b) lists all of the actions that are not stayed by the filing of a petition. In particular,

[2] John and Tracy do not argue that the obligations are not DSOs but rather argue that the specific expenses requested by Bridget are unreasonable in light of the terms of the divorce decree and accompanying agreement. *See* 11 U.S.C. § 101(14A) (defining DSO).

"the commencement or continuation of a civil action or proceeding . . . for the establishment or modification of an order for domestic support obligations" is not stayed. § 362(b)(2)(A)(ii). Neither is an action for "the collection of a domestic support obligation from property that is not property of the estate" stayed. § 362(b)(2)(B). So the Court must determine whether the state court contempt action is either a modification of a DSO or an attempt to collect a DSO from property of the debtor, rather than property of the estate. The Court does not have a copy of the pending state court complaint, and Bridget did not testify as to nature of the current proceeding at the Court's hearing. However, Tracy, on cross examination, agreed that the issues in the pending state court litigation were medical expenses, automobile expenses, and college expenses for one of the children. Dkt. No. 73 at 23. While the majority of the testimony and the discussion in the briefing make it apparent that John and Tracy want to modify what particular expenses John is obligated to pay, there is nothing in the record to show that Bridget is seeking a modification of the support order or that she seeks collection from any property that is not property of the estate.[3]

Therefore, the Court finds that the pending state court action does not meet either statutory exception to the automatic stay. *See Gazzo v. Ruff (In re Gazzo)*, 505 B.R. 28, 40-42 (Bankr. D. Colo. 2014) (holding that state court contempt action did not meet the exception of either Section 362(b)(2)(A)(ii) or 362(b)(2)(B)). The Court next considers whether Bridget has shown cause to justify terminating the stay.

B. "For Cause" Relief from the Stay

[3] "[P]roperty of the estate in a Chapter 13 case includes the property specified in § 541 and any after-acquired property, that is, property acquired after the commencement of the Chapter 13 case." *Lentz v. Myers (In re Myers)*, 486 B.R. 365, 375 (Bankr. S.D. Miss. 2013) (citing 11 U.S.C. § 1306 (1986)). "[T]he scope of § 541 is broad: that section brings into the estate all of the debtor's legal and equitable interests wherever located and by whomever held." *Burgess v. Sikes (In re Burgess)*, 438 F.3d 493, 496 (5th Cir. 2006) (internal quotation marks omitted).

The Court may "[o]n request of a party in interest and after notice and a hearing" grant relief from the automatic stay "for cause." § 362(d)(1). "Such 'cause' includes allowing an action to proceed to completion in another tribunal." *In re Armstrong & Guy Law Office, LLC*, No. 07-02459, 2007 WL 4571152, at *1 (Bankr. S.D. Miss. Dec. 21, 2007) (citing *In re Curtis*, 40 B.R. 795, 799 (Bankr. D. Utah 1984)); *see also* H.R. Rep. No. 95-595, at 341 (1977) ("It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere."). Courts examine twelve factors to determine whether to terminate the stay to allow litigation to proceed in another forum:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether the movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interest of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
12. The impact of the stay on the parties and the balance of the hurt.

In re Armstrong & Guy, 2007 WL 4571152, at *2 (citing *In re Curtis*, 40 B.R. at 799-800). "Not all of the factors will be relevant in every case." *Id.* (citing *United States v. Cook (In re Cook)*,

232 B.R. 554, 557 (Bankr. D. Conn. 1999)). The Court finds that factors 3, 5, 6, 8, and 9 are inapplicable in this case.

1. Resolution of the Issues

The Court finds that a judgment in chancery court on this contempt action would resolve all of the issues in that case, favoring termination of the stay.

2. Interference with the Bankruptcy Case

This factor is neutral. As the *Armstrong & Guy* court stated "interference will occur . . . regardless of whether the trial takes place in the [other forum] or in this Court." *Id.* at *3.

4. Specialized Tribunal

The questions sought to be answered in the chancery court are questions of state domestic relations law. "Regarding family obligations, the Fifth Circuit has emphasized that '[i]n general, bankruptcy courts owe state courts deference in domestic matters.'" *McCloskey v. McCloskey (In re McCloskey)*, Bankr. No. 05-31232-H5-7, Adv. No. 06-3012, 2015 WL 1062102, at *15 (Bankr. S.D. Tex. Mar. 5, 2015) (quoting *Barnes v. Barnes (In re Barnes)*, 279 F. App'x 318, 319 (5th Cir. 2008)). "When requested, such relief [from the automatic stay] should be liberally granted in situations involving alimony, maintenance, or support in order to avoid entangling the federal court in family law matters best left to state court." *Carver v. Carver*, 954 F.2d 1573, 1578 (11th Cir. 1992). The Court finds that the chancellor "is better prepared and equipped to make determinations as to [Mississippi] law than is this Court." *In re Armstrong & Guy*, 2007 WL 4571152, at *3. This factor weighs heavily in favor of terminating the stay.

7. Interests of Other Creditors

No creditors have filed an objection to the motion. *See id.* at *4 n.4. Further, the Court cannot see how the other creditors will be prejudiced by terminating the stay to allow this action to proceed in chancery court. This factor weighs in favor of granting the motion.

10 & 11. Judicial Economy and the Expeditious and Economical Determination of Litigation

Bridget filed her contempt action on January 27, 2015. Dkt. No. 52 at 2. A partial hearing was held in the chancery court in July of 2015. Dkt. No. 52 at 2. However, according to Bridget, the chancellor declined to proceed based on the bankruptcy filing. Dkt. No. 52 at 2. The chancery court proceeding had been ongoing for almost a year with at least one court appearance before John and Tracy filed for bankruptcy relief on September 3, 2015. "The Court finds that given the progressed state of the underlying litigation in [chancery court], it would be manifestly unfair to ask [Bridget] to begin anew in this Court at significant and duplicative expense." *In re Armstrong & Guy*, 2007 WL 4571152, at *4. These factors weigh in favor of terminating the stay.

12. Impact of the Stay

Bridget's "claims need to be tried and [her] damages determined, if any, for [John and Tracy] to propose an effective plan of reorganization. Thus, [John and Tracy's] estates will be affected by a trial of the underlying issues regardless of whether that trial occurs in the [chancery court] or here." *Id.* Maintaining the stay will not prevent the resolution of these issues because John and Tracy urge the Court to determine them under its equitable authority. Therefore, the stay itself has little impact on John's obligations to Bridget. This factor weighs in favor of terminating the stay.

C. Equitable Authority under Section 105

Lastly, the Court addresses its ability to determine the reasonableness of any expenses owed under the divorce decree and accompanying agreement. John and Tracy argue that because bankruptcy courts are courts of equity, the Court should use that equitable authority to prevent "a manifest injustice." Dkt. No. 73 at 7.

A bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a) (2010). But the Supreme Court "ha[s] long held that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of' the Bankruptcy Code." *Law v. Siegel*, 134 S. Ct. 1188, 1194 (2014) (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). It is already established in this jurisdiction "that a federal bankruptcy court is not the proper forum in which to re-examine the parties' divorce arrangements." *Smith v. Smith (In re Smith)*, 114 B.R. 457, 465 (Bankr. S.D. Miss. 1990) (finding this to be the majority view). Therefore, the Court will not and cannot exercise its equitable authority to determine the reasonableness of any expenses owed in connection with the divorce decree and accompanying agreement.

IT IS HEREBY ORDERED THAT the Motion for Relief from Stay (Dkt. No. 52) is GRANTED.

##END OF ORDER##