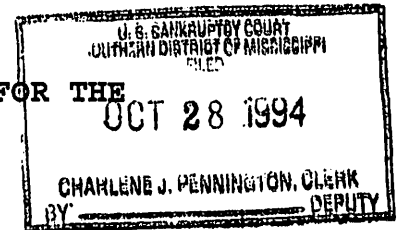


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI



IN RE:

AUSTIN DEVELOPMENT CO.

CASE NO. 9100018 MC

Hon. J. C. Bell
P. O. Box 566
Hattiesburg, MS 39401

Chapter 11 Trustee

Hon. Thomas E. Schwartz
P. O. Box 16057
Hattiesburg, MS 39404-6057

Atty. for Trustee

Hon. Thomas L. Webb
P. O. Box 2009
Meridian, MS 39302-2009

Atty. for Sowashee
Venture

Hon. Pat Scanlon
P. O. Box 23059
Jackson, MS 39225-3059

Atty. for EB, Inc.

Mr. Austin D. Check
P. O. Box 3271
Meridian, MS 39303

Pro Se

Edward Ellington, Judge

OPINION AND ORDER

Before the Court for consideration are two pleadings filed by Austin D. Check, *pro se*. The pleadings are entitled *Objection to Opinion on Objection and Motion for Rehearing and Motion for Stay*, which was filed on September 12, 1994, and *Motion for Stay and Request for Authority from the Court to Abandon Claim*,

which was filed on October 13, 1994. While the exact nature of these pleadings is not evident to the Court, the Court will attempt to delineate the relationship of these pleadings to other pleadings filed and orders entered in this case.

On July 29, 1994, the Court held a trial on the following matters:

- (1) *Eastover Bank's Motion to Lift Stay and for Other Relief* filed by EB, Inc., formally named Eastover Bank for Savings (M940992).
- (2) *Response to EB's Motion to Lift Stay and for Other Relief* filed by Sowashee Venture.
- (3) *Response to Sowashee Venture Response to Eastover Bank's Motion to Lift Stay and for Other Relief* filed by Austin D. Check.
- (4) *Response to EB's Motion to Lift Stay and for Other Relief* filed by Austin D. Check.
- (5) *Motion for Stay* filed by Austin D. Check.
- (6) *Objection and Motion for Re-hearing on Agreed Order* filed by Austin D. Check.

The pleadings numbered one through four all clearly relate to pleading number one, EB, Inc.'s (EB) motion to lift the automatic stay.

As to pleading number five, the *Motion for Stay*, the Court overruled Check's motion to the extent that he was seeking a stay of the proceedings which were set for trial at that time. The Court accepted the remaining portion of Check's *Motion for Stay* as an additional response or objection by him to EB's motion to lift the stay. The parties then submitted testimony and evidence on their respective positions regarding EB's motion to lift the stay.

In its motion to lift the stay, EB was seeking to have the stay lifted in order to foreclose its deed of trust on the Debtor's leasehold interest in a long-term ground lease. In addition, EB was seeking to have the stay lifted in order to simultaneously foreclose an assignment it had been granted from the Debtor on a theater sublease and the theater's income stream.

Pleading number six, *Objection and Motion for Re-hearing on Agreed Order*, was an objection filed by Check to an order which was entered on June 16, 1994. The Trustee did not join in Check's objection.

At the conclusion of the trial, the Court rendered a bench opinion granting EB's motion to lift stay and denying Check's objection to an order entered on June 16, 1994. On August 5, 1994, orders were signed in accordance with the Court's bench opinion rendered on July 29, 1994.

On August 15, 1994, Check filed a pleading entitled *Objection and Motion for Rehearing and Motion for Stay*. The Court treated this pleading as a motion to alter or amend a judgment pursuant to Fed R Civ P Rule 59(e), which is made applicable in bankruptcy contested matters by Federal Rule of Bankruptcy Procedure 9023.

On September 2, 1994, the Court entered an opinion and order denying the aforesaid pleading of Check, with one exception. On August 5, 1994, the Court entered an order denying a motion for a Rule 2004 examination filed by Check. The Court did not intend to deny the motion but instead intended to hold the motion in

abeyance. This was corrected by a new order entered on September 2, 1994.

Following entry of the opinion and order denying the *Objection and Motion for Rehearing and Motion for Stay*, Mr. Check has now filed two additional pleadings entitled *Objection to Opinion on Objection and Motion for Rehearing and Motion for Stay*, filed on September 12, 1994, and *Motion for Stay and Request for Authority from the Court to Abandon Claim*, filed on October 13, 1994.

The Court has reviewed these two pleadings filed by Mr. Check. The Court does not believe that these pleadings relate to the orders entered by the Court on August 5, 1994 regarding EB's motion to lift stay, or the opinion and order entered on September 2, 1994 denying Check's *Objection and Motion for Rehearing and Motion for Stay*. However, if the Court is incorrect in its interpretation, and the two pleadings are in the nature of motions that may be filed pursuant to Federal Rules of Civil Procedure 59 or 60, then the motions are not well taken and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that to the extent the two aforesaid pleadings filed by Austin D. Check on September 12 and October 13, 1994 are motions under Federal Rules of Civil Procedure 59 or 60, they should be, and hereby are, denied.

IT IS FURTHER ORDERED AND ADJUDGED that to the extent the two aforesaid pleadings are not motions under Federal Rules of Civil Procedure 59 or 60, the Court makes no findings of fact or conclusions of law regarding other issues, if any, that may be

contained in the pleadings, and such other issues may be brought on for hearing at a later date.

SO ORDERED this the 28th day of October, 1994.

Edward Ellington
UNITED STATES BANKRUPTCY JUDGE