

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)	
)	Chapter 11 Case
ROSEN'S MARINE, INC.)	
)	Number <u>01-41132</u>
<i>Debtor</i>)	

MEMORANDUM AND ORDER ON MOTION FOR RELIEF FROM STAY

This matter involves a corporation in Chapter 11 which, together with an individual who is a corporate officer, equity holder, and salaried employee, is jointly and severally liable for a judgment debt. The judgment creditor (1) moves the Court for relief from the automatic stay in 11 U.S.C. § 362 in order to pursue state court remedies necessary to garnish funds paid by the debtor to the debtor's principal and (2) requests that the Court order the debtor to answer continuing garnishments.

This is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. § 157(a) and (b). After hearing oral argument and testimony and considering available persuasive authority as applied to the facts, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Rosen's Marine, Inc. ("Debtor") filed its Chapter 11 petition on April 19, 2001, and listed Mallof, Abruzino & Nash Marketing, Inc. d/b/a/MAN Marketing ("Movant") as a garnishment creditor on its Statement of Financial Affairs. A few weeks prior to the filing, on March 26, 2001, Movant had obtained a default judgment in the State Court of Chatham County against Debtor and Frederic L. Rosen ("Rosen"), President and sole shareholder of Debtor, jointly and severally in the amount of \$357,873.04, Civ. No. I-010362-F. Pursuant to a FIFA from the state court, Debtor began garnishing Debtor's bank accounts at SunTrust Bank ("the account") to satisfy the judgment. Upon Debtor's Chapter 11 filing, the §362 automatic stay operated to preclude Movant from continuing to garnish Debtor's account and from filing garnishment actions in state court against Rosen.

Debtor is a retail business with four stores open seven days a week. Rosen is an employee of Debtor. He works on the sales floor and attends to the administrative duties related to the business operation. Since filing, Debtor has continued to pay Rosen a salary.

The SunTrust Bank ("SunTrust") holds a security interest in all of Debtor's assets, including its accounts. Since its filing, Debtor has been operating under cash collateral orders consented to by Debtor and SunTrust pursuant to conditions set out in the orders. One provision approves paying Rosen's salary, limited in amount to \$131,000.00. Other provisions require Debtor to pay to SunTrust all principal and interest payments as they become due and to cure any shortfalls that may result.

Rosen's gross weekly pay is approximately \$2,500.00. After taxes, health insurance for himself and all his children, and 2% 401K contribution are subtracted, his net weekly pay is between \$1,400.00 and \$1,500.00. From this amount, he pays \$1,038.46 weekly in child support for his five children. The amount to be garnished is one-fourth of his net weekly pay, which amounts to \$350 - \$375. Rosen also receives monthly bonuses from the manufacturer, the amount of which varies, but which he testifies approximates \$900.00. His monthly mortgage payment is \$1,600.00. He estimates that he has approximately \$1,000.00 "to live on" each month. Rosen personally owns a one-half undivided interest in a residence with substantial equity and two warehouses which are income-producing.

Movant believes that making the salary payments to Rosen depletes the bankruptcy estate and should not be permitted to continue. Accordingly, Movant filed the instant motion, thereby seeking this Court's permission to resume its attempts in state court to garnish Debtor's accounts in the amount of Rosen's salary. Debtor opposes the motion.

Rosen asserts that, due to the nature and extent of his responsibilities to his family, if his salary is garnished, he would be forced to ignore Debtor's business to a great extent in order find and work at another job to generate income, which would threaten the prospects of a successful reorganization. SunTrust expresses concern that if Rosen cannot apply his full energies to Debtor's business, reorganization will be seriously impaired and that a great portion of cash collateral would be received by a creditor which has no interest

in Debtor's accounts.

Several courts have addressed a question akin to that presently before this Court - whether the court should enjoin prosecution of a suit against an individual who is an officer of a corporate debtor under Chapter 11 protection. A necessary inquiry in such cases is whether allowing the action to proceed would seriously impair the debtor's ability to reorganize, and answers to that inquiry depend upon the facts and circumstances. *See, e.g., TRS, Inc. v. Peterson Grain & Brokerage Co. (In re TRS, Inc.)*, 76 B.R. 805, 808-09 (Bankr. D. Kan. 1987) (enjoining execution and levy of judgment against salaried president of debtor, whose only assets available to pay state-court judgment were company stock and company wages, because, faced with garnishment of wages and levy upon stock, he would file personal bankruptcy, lose stock and salary in debtor, thus rendering his efforts to reorganize debtor personally fruitless), *and Otero Mills, Inc. v. Sec. Bank & Trust (In re Otero Mills, Inc.)*, 25 B.R. 1018, 1021-22 (D.N.M. 1982) (affirming finding of likelihood of significant and irreparable harm to debtor where no evidence disputing irreparable harm was presented).

Harm to the debtor is not the only consideration, however. *See, e.g., Apollo Molded Prods., Inc. v. Kleinman (In re Apollo Molded Prods., Inc.)*, 83 B.R. 189, 193 (Bankr. D. Mass. 1988) (stating that principal's intent to devote personal assets to reorganization "should [not] necessarily have the talismatic effect of shielding him from suit on his personal obligations"); *Century Mach. Tools, Inc. v. Pan Am. Bank of Dade County (In re Century Mach. Tools, Inc.)*, 33 B.R. 606, 607 (Bankr. S.D. Fla. 1983) (applying

irreparable-harm-to-debtor test and denying injunctive relief in part because debtor's principal could avoid personal consequences that could also affect debtor's reorganization, such as having no place to cash personal check, "by submitting himself and his assets to the bankruptcy court").

Considering whether or not to grant a stay of relief encompasses similar concerns. Although providing a debtor the opportunity to reorganize is, inherently, a primary concern of a bankruptcy court, that opportunity is not without limit; neither must it overshadow every concern of every creditor included within the bankruptcy estate. Assuming without deciding that denying relief from stay is desirable in some circumstances, particularly in the early stages of a case, in order to allow a debtor the necessary breathing spell set in place by Congress, I find that, under the circumstances in this case, that time has passed.

Absent "specific necessity," the benefits of bankruptcy law "do not normally benefit those who have not themselves 'come into' the bankruptcy court with their liabilities *and* all their assets." Apollo, 83 B.R. at 194 (quoting Venture Props., Inc. v. Norwood Group, Inc. (In re Venture Props., Inc.), 37 B.R. 175, 177 (Bankr. D.N.H. 1984) (emphasis in original)). In this case, Rosen has not subjected himself personally to the jurisdiction of this Court. Further, so long as Movant does not garnish the funds in Debtor's corporate accounts, no direct harm to Debtor has been proven. Garnishing the salary that Rosen receives from Debtor, however, may or may not indirectly affect Debtor's reorganization.

Rosen's testimony revealed that, in addition to his income, he has personal assets, including warehouses, rental income and substantial equity in the house he owns with his wife. In light of these assets, I am unable to conclude that granting the Motion would inevitably harm the corporate Chapter 11 reorganization. If Rosen desires the Court's protection, a personal filing is available in which he would have a duty to disclose all his assets. Those assets and his income combined could then be utilized to maintain his support and retire his debts.

The case was filed more than one year ago. No disclosure statement has been filed, and presentation and acceptance of a plan does not appear to be imminent. The Court must consider the needs of the estate, which includes Movant as a judgment creditor. Although the stay continues in effect to protect Debtor from actions to collect the judgment debt from its corporate funds, Movant should be able to pursue available avenues to collect its debt against Rosen. One such avenue is Rosen's salary.

ORDER

Pursuant to the above, IT IS THE ORDER OF THIS COURT that the Motion for Relief from Stay by Mallof, Abruzino & Nash Marketing, Inc. with respect to the judgment debt obtained against Frederic L. Rosen IS GRANTED so as to permit collection efforts against Frederic L. Rosen individually.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of May, 2002