

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

In the matter of:)	
)	Chapter 7 Case
BILLY POPPELL)	
)	Number <u>04-21791</u>
<i>Debtor</i>)	
)	
PAMELA ASPINWALL, LUCILLE S.)	
BENNETT, GERALDINE BETHUNE,)	
R.E. BETHUNE, CAROLYN C. DART,)	
WALTER W. DART, HOWARD)	
FLOWERS, STEVEN S. HARLEN,)	
PEGGY A. HARLEN, SHEILA E. HIRES,)	
BETTY L. HOLT, FLOYD M. HOLT,)	
JACK E. JORDAN, MARY ANN)	
JORDAN, EDGAR JORDAN, LARRY)	
KNIGHT, SHEEEA KNIGHT, TOMMY)	
KNIGHT, TRENT KNIGHT,)	
CATHERINE O'QUINN, WALDO)	
O'QUINN, JR., TOM OGDEN, VELMA)	
W. OGDEN, MAGGIE PHEIL, FRANCES)	
L. RIGDON, GENE RIGDON,)	
CONNIE LYNN STRICKLAND,)	
IVA LEE THOMPSON, CATHERINE T.)	
WATERS, LEE L. WATERS,)	
and J.D. WILLIAMSON,)	
)	
<i>Movants</i>)	
)	
v.)	
)	
BILLY POPPELL)	
)	
<i>Respondent</i>)	

MEMORANDUM AND ORDER ON MOTION FOR RELIEF FROM STAY

Billy Poppell (“Debtor”) filed a petition for relief under Chapter 7 of the Bankruptcy Code on November 5, 2004. Movants filed a Motion for Relief from Stay on November 29, 2004. The motion seeks permission to proceed with a suit against Debtor in the Superior Court of Wayne County, Georgia (Civil Action No. 151-CV-03-0375). A hearing was held on the motion on January 12, 2005. This Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Based on the evidence presented at the hearing, the documents in the file, and the applicable authorities, the Court enters the following Findings of Fact and Conclusions of Law in conformance with Federal Rule of Bankruptcy Procedure 7052(a).

FINDINGS OF FACT

Prior to Debtor filing for relief, Movants filed suit against Debtor and others in the Superior Court of Wayne County, Georgia. In the action, Movants allege, *inter alia*, that they purchased various certificates of deposit from Debtor which they were unable to redeem. The suit is based upon fraud, breach of fiduciary duty, as well as state RICO and securities laws. Counsel for Movants represents that before Debtor filed for relief the state court action had been set for jury selection on November 8, 2004, and that it was to be tried the same week.

Movants argue that their claim for damages should be decided in Wayne County. First, Debtor is being sued along with three other codefendants in the state court action. If that action is not allowed to proceed, then multiple plaintiffs are faced with the prospect of prosecuting two trials, one against Debtor in this Court, and one against the

codefendants in state court. Second, Movants allege that this Court may not have jurisdiction over some of the claims that they are pursuing in the state court action. Movants concede, however, that once the state court action is decided this Court can, if necessary, determine the dischargeability of the state court judgment. To that end, Movants filed adversary proceeding number 04-02276 on November 19, 2004, to determine the dischargeability of the violations alleged in the state court complaint. Finally, Movants have noted that the state court action can be rescheduled to be heard on March 14, 2005.

CONCLUSIONS OF LAW

Relief from Stay to Pursue State Court Action

The Bankruptcy Code provides that the bankruptcy court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). Section 362(d)(1) does not define "cause," leaving courts to consider what constitutes cause based on the totality of the circumstances in each particular case. *See, e.g. Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3rd Cir. 1997) (holding cause existed to lift automatic stay to permit potential judgment creditor to proceed with appeal). In *Alston v. Classic Auto Painting & Bodyworks, Inc. (In re Classic Auto Painting & Bodyworks Inc.)*, No. 93-40730, 1993 WL 13005113, *1-2 (Bankr. S.D. Ga. Dec. 15, 1993), I adopted a framework to be applied when ruling on whether relief from stay should be granted to allow a movant to proceed to judgment in a state court. The following factors were enumerated:

- 1) Whether any "great prejudice" to either the estate or debtor

will result from continuation of the civil suit;

2) Whether the hardship to movant resulting from maintaining the stay considerably outweighs the hardship of the debtor; and

3) Whether the movant has a probability of prevailing on the merits of its case.

Having applied the factors from Classic Auto Painting, Movants' motion for relief is granted.

1. "Great Prejudice" to the Estate

Debtor has not indicated any "great prejudice" that will result from granting Movants' motion. Instead, Debtor merely contends that Movants' action can be resolved in this Court. However, there is no reason to believe that the suit could be tried any more expediently in this court than in Wayne County. Further, in Classic Auto Painting I recognized that several courts have held that when a suit is ready for trial in state court, it is appropriate to lift the stay and allow the suit to proceed to judgment. Id., at * 2.

2. Hardship to Movants in Maintaining the Stay

The hardship to Movants by maintenance of the stay considerably outweighs the hardship to Debtor if the stay is modified to permit Movants to proceed in the state court action. Movants are suing Debtor along with three other codefendants in the state court action. Further, Movants contend that this Court may be unable to

entertain certain claims that are pending in the state court action.¹ Without addressing the accuracy of Movants' position, conducting a trial of Debtor in this Court would necessarily require a duplication of effort, and the suit against Debtor can be more appropriately and expeditiously resolved in state court.

3. Movants' Likelihood of Success on the Merits

Not having heard the merits of Movants' case, this Court is not in a position to make a determination of Movants' likelihood of success. However, there has been no suggestion that Movants' claims are frivolous or otherwise without merit.

4. Conclusion

This Court's decision to grant Movants' relief from stay is supported by the legislative history of § 362(d)(1), which states in pertinent part:

[I]t 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 many duties that may be handled elsewhere.

S.Rep. No. 95-989 at 50 (1978), reprinted in 1978 U.S.C.C.A.N 5787, 5836.

There is no great prejudice to the bankruptcy estate in granting relief from the stay. Further, the automatic stay was never intended to preclude a determination of tort liability

¹Movants specifically argue that this Court may not be authorized to award treble damages pursuant to the Georgia R.I.C.O. statute.

and the attendant damages. Instead, it was merely intended to prevent a prejudicial dissipation of a debtor's assets. *See, e.g. In re Bock Laundry Mach. Co.*, 37 B.R. 564, 567 (Bankr. N.D. Ohio 1984) (holding that creditors are entitled to limited relief from stay to pursue products liability actions in state court). Here, allowing Movants to proceed in state court will undoubtedly effectuate judicial economy as the state court is better equipped to handle the civil trial. *See Shaw v. Ehrlich*, 294 B.R. 260, 272 (W.D. Va. 2003) (listing judicial economy as factor to be considered on motion for relief). Further, Movants have indicated that they desire to have their case decided by a jury, and this Court has no authority to conduct a jury trial.² Thus, I hold that the stay is lifted so that Movants can establish the amount of their claim against the estate. In the event Movants do obtain a money judgment against Debtor, this Court can then determine if such judgment is nondischargeable.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the stay pursuant to 11 U.S.C. § 362 be modified to the extent necessary to enable Movants to pursue Civil Action No. 151-CV-03-0375 in the Superior Court of Wayne County, Georgia. However, if Movants are successful with

² 28 U.S.C. § 157(e) was created by the Bankruptcy Reform Act of 1994 and states:

If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

Thus, all parties must consent and the District Court must grant this Court special authority before I may conduct a jury trial. However, no Order exists that gives this Court the general power to conduct jury trials.

the State Court action, they may not attempt to enforce any judgment against the Debtor until this Court determines whether such judgment is dischargeable

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of March, 2005.