

---

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

In the matter of: )  
)  
CHRISTINE MICHELLE LOCKHART ) Chapter 13 Case  
)  
) Number 96-21159  
Debtor )

**ORDER ON DEBTOR'S REQUEST FOR RELIEF FROM STAY**

Debtor filed a Request for Relief from Stay on February 18, 1997, which was scheduled for a hearing on March 5, 1997. After considering the presentations of counsel and subsequent briefs filed I conclude that Debtor's Motion should be granted.

Briefly, on October 2, 1996, Anthony Tippins obtained judgment against the Debtor, Christine Michelle Lockhart, in the Magistrate Court of Glynn County, Georgia, in the amount of \$1,792.17. On October 15, 1996, Debtor filed a Chapter 13 bankruptcy case. Thereafter, on October 30, 1996, a Notice of Appeal of the Magistrate Court judgment was filed by counsel for Ms. Lockhart apparently employed by her automobile liability insurer.

While not initially so inclined, I agree with creditor's counsel that the

filing of the case resulted in an automatic stay not only against creditor actions, but against the Debtor filing a notice of appeal. *See Farley v. Hinson*, 2 F.3d 273 (8th Cir. 1993) and cases cited therein. Accordingly, the notice of appeal filed by Debtor's counsel is void. I do not, however, agree with the creditor's additional contention that stay relief should be denied. Debtor's counsel has demonstrated that there is no potential adverse impact on the Debtor's estate by allowing this litigation to proceed inasmuch as the insurance fully covers the Debtor against the amount of the judgment which was obtained and any judgment which could have been rendered pursuant to the Magistrate Court's jurisdictional limit of \$5,000.00.

Pursuant to 11 U.S.C. Section 108(c) I find that the Debtor's right to appeal this judgment was tolled until thirty (30) days after termination of the automatic stay which will occur upon entry of this Order. While the creditor argues that judicial economy suggests that this Court take over jurisdiction of the personal injury claim against Ms. Lockhart by Anthony Tippins because of the as yet unfiled personal injury action accruing in favor of Danielle Tippins, that contention is rejected. Whether and in what manner that claim is to be prosecuted is not directly before me. What I do have is a pending state court action in which all the rights can be fully adjudicated and in which in fact there is a judgment from the trial court level ripe for appeal. Under these circumstances, I find that abstention pursuant to 28 U.S.C. Section 1334(c)(1) to permit the state court proceeding to proceed is appropriate, considering that state law issues

predominate, the matter already has commenced in state court. *See In re Ashes*, 128 B.R. 639, 646 (Bankr. N.D. Ill. 1991). Accordingly, the automatic stay of Section 362 shall be lifted for the Debtor to proceed with her appeal.

IT IS THEREFORE ORDERED that the automatic stay of Section 362 is lifted and Debtor is free to timely pursue her appeal of the judgment which is the subject of this controversy.

---

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of April, 1997.