

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Dublin Division

IN RE:)	Chapter 7 Case
)	Number <u>89-30196</u>
CLAUDE SNELL)	
)	
Debtor)	
_____))	
)	
CLAUDE SNELL)	FILED
)	at 5 O'clock & 08 min. P.M.
Plaintiff)	Date: 4-5-91
)	
vs.)	Adversary Proceeding
)	Number <u>90-3018</u>
CATHERINE TANNER SNELL)	
)	
Defendant)	

ORDER

Claude Snell, debtor/plaintiff is seeking relief from a lis pendens filed upon debtor's property by Catherine Tanner Snell, defendant. Debtor contends that defendant's filing of the lis pendens violates the automatic stay provisions of 362(a) and therefore, should be voided. Debtor, furthermore seeks an award of damages pursuant to ~362(h).

A trial was scheduled for January 24, 1991. At the call of the case the debtor announced his intention to convert the underlying Chapter 12 case to one under Chapter 7. Trial was continued. On February 4, 1991 debtor converted his case to a

Chapter 7 proceeding.

The commencement of a bankruptcy case creates an estate. The estate is comprised of all legal or equitable interest of the debtor in property, wherever

located as of the commencement of the case. 11 U.S.C. §541(a). Jones v. Harrell, 858 F.2d 667, 669 (11th Cir., 1988). "The scope of this paragraph [§541(a)(1)] is broad. It includes all kinds of property, including tangible or intangible property, causes of action" HR Rep No. 595, 95th Cong., 1st Sess. 367-368 (1977); S Rep No. 989, 95th Cong., 2nd Sess. 82-83 (1978). In addition to the property specified in §541, under Chapter 12 property of the estate includes all property of the kind specified in 541 acquired after the commencement of the case but before the case is converted to a case under Chapter 7. 11 U.S.C. §1207(a)(1). This description of property of the estate includes postpetition causes of action. A trustee in a bankruptcy succeeds to all causes of action held by the debtor at the time of the bankruptcy petition is filed [Miller v. Shallowford Community Hospital Inc., 767 F.2d 1556, 1559 (11th Cir. 1985)] including postpetition causes of action held at the time of conversion. The trustee has the option to pursue any action or retrieve property of the estate. 11 U.S.C. §704; §541 - §549. The debtor or the trustee may invoke the protections of 362. In re: Brooks, 79 B.R. 479 (9th Cir. BAP 1987). Having converted the underlying case to a Chapter 7 proceeding the trustee must be given the opportunity to pursue this adversary to recovery, if any, for the benefit of the estate. It is hereby ORDERED that the Chapter 7 trustee shall investigate the cause of action asserted in this adversary proceeding, and if the trustee deems appropriate, within thirty (30) days of the date of this order move to be substituted as party plaintiff. Failure to so move shall be deemed an abandonment of the cause of action. Status conference in this matter is scheduled for May 7, 1991 at 2:00 p.m., Courtroom, U.S. Courthouse, Dublin, Georgia.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 5th day of April, 1991.

