

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

In the matter of:

EUGENE T. AMBROSE

Debtor

LISA GOURMBA
KATHRYN VEALE

Movants

v.

EUGENE T. AMBROSE

Respondent

Chapter 13 Case

Number 98-42615

Filed
November 3rd, 1998
3:15 pm
RMH

ORDER ON MOTION FOR RELIEF FROM STAY

On September 1, 1998, Lisa Gourmba and Kathryn Veale filed a Motion for Relief from the Automatic Stay in the above case seeking permission to proceed with a civil action seeking damages for the wrongful death of the Movants' mother, Ester Ambrose.

On May 31, 1997, Debtor was convicted for the murder of his wife and sentenced to life imprisonment. He is presently incarcerated and his conviction is on

appeal in the appellate courts of the State of South Carolina. The wrongful death action is scheduled for trial during the November term of the Superior Court of Effingham County, Georgia. A preliminary hearing was conducted on September 3, 1998, and a final hearing on October 21. At the preliminary hearing Movants argued that it was necessary to permit the litigation in Superior Court to go forward in order to liquidate the amount of the Movants' claim that would be administered in the Debtor's Chapter 13 proceeding which is at present unliquidated. Debtor, through counsel, argued that it was not in the interest of the Debtor to be forced to go to trial. First, they contend a strong likelihood of reversal of his conviction, based on information provided by his non-bankruptcy criminal defense counsel; second, they argue that it would be impossible to procure the Debtor's presence at trial in order to properly prepare and present a defense in the wrongful death action.

At the conclusion of the preliminary hearing I ordered that the Debtor was entitled to the breathing spell contemplated by Congress in establishing the automatic stay at least for a short period of time, but directed that a final hearing be assigned in October, stating on the record that it would provide sufficient time for counsel to attempt to solve the problem of procuring Debtor's appearance at the civil trial. It was also contemplated that it might provide criminal defense counsel with the opportunity of seeking expedited review on the Debtor's appeal of the criminal conviction.

When the matter came on for a final hearing the parties essentially had no

new evidence or argument to present. Debtor's counsel still contended that the Debtor should be afforded protection of the automatic stay in order that he have the opportunity to appear at the trial of the civil case, but was unable to produce any evidence of how long the stay would need to remain in effect in order to secure the Debtor's appearance. There was no evidence from criminal defense counsel as to what steps, if any, would be successful in having him transported to the Superior Court of Effingham County, Georgia, by South Carolina authorities for the purpose of appearing, how long it might take for the appeal to be resolved, or any efforts that had been undertaken to determine the answer to those questions. Movants argued once again that it was necessary for the claim to be liquidated in order to determine whether the Chapter 13 case is feasible, and if so what amount would be paid on the Movants' claim.

In light of the evidence currently available I conclude that the Motion should be granted. Debtor's case was filed in August and as a result of the ruling on the preliminary hearing Debtor was afforded some interval of time during which his counsel could attempt to solve the problem presented by his prospective inability to appear at the civil trial and/or to obtain a final determination on his criminal conviction. At the final hearing they were unable to show any progress on those matters. I therefore conclude that the Movants' interest in proceeding to obtain a determination of the amount of their claim outweighs any residual benefit that the Debtor could show by further delay, other than the obvious fact that delay puts off the final day of reckoning.

Certainly Debtor is free to present his arguments to the Superior Court of Effingham County, Georgia, in an effort to obtain a continuance, but I conclude that court is the proper forum for the assertion of his contentions. That court is best equipped to determine whether his current circumstances rise to the level that would justify the granting of a continuance under Georgia law, can best coordinate with the proper authorities in the State of South Carolina, if necessary, to determine the feasibility of his appearance at trial, and can best rule on other matters which relate to the Debtor's rights as a civil litigant in the State of Georgia. The Debtor, however, has shown no federally protected interest justifying further delay of these proceedings. Movants have a right to be freed of the automatic stay in order to press their case before the Superior Court, and a timely resolution of the civil action will aid this Court in administering the Debtor's Chapter 13 estate.

For the foregoing reasons, IT IS THE ORDER OF THIS COURT that the Motion for Relief from Stay is granted.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 30th day of November, 1998.