UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**CHIEF JUDGE RICHARD L. SPEER**
Robert and Patricia Kuhlman	)	
	)	
	)	Case No. 98-35634
Debtor(s)	)	
	)	

DECISION AND ORDER

This cause comes before the Court upon the Debtor's Objection to the Movant's (Marty Matusoff & Associates) Motion for Relief From Stay. The Movant's purpose for bringing the Motion for Relief is to enable it to prosecute a breach of contract claim against the Debtor which is currently pending before an Ohio State Appellate Court. Specifically, the Movant wishes the Automatic Stay, imposed by 11 U.S.C. § 362(a), relieved so as to enable the Movant to appeal an unfavorable summary judgment verdict in which an Ohio Court of Common Pleas found the Debtor and another party not liable to the Movant for damages stemming from the disintegration of a business relationship. On February 5, 1999, a Hearing was held on this matter at which time the Debtor was ordered to provide to the Court information regarding the possible legal costs the Debtor would incur if he was forced to defend the appeal. The Debtor has now provided this information to the Court, setting forth the potential legal cost of the appeal at Six Thousand Dollars ($6,000.00). Based upon this information, and after reviewing the memorandum of law proffered by all the Parties in Interest, this Court, for the following reasons, sustains the Debtor's Objection, and thus the Movant's Motion for Relief from Stay brought pursuant to 11 U.S.C. § 362(d) is DENIED.

The Automatic Stay of 11 U.S.C. § 362, arises and becomes effective immediately upon a debtor filing a petition for bankruptcy relief. The Stay, which applies to all entities, essentially provides for an injunction against litigation, lien enforcement or other actions taken against a debtor

or the debtor's bankruptcy estate to either enforce or collect pre-petition claims. *See, e.g., In re Richardson Builders, Inc.*, 123 B.R. 736, 738 (Bankr. W.D. Vir. 1990). This injunction specifically encompasses the staying of all legal actions, including appeals, that are currently proceeding against the debtor. 11 U.S.C. § 362(a)(1); *Parker v. Bain*, 68 F.3d 1131 (9th Cir. 1995).

The purpose of the Automatic Stay is essentially threefold: give the debtor a breathing spell from creditor action; achieve an equality of distribution of the estate assets among the claimants; and promote an orderly administration of the bankruptcy case. *Hillis Motors, Inc. v. Hawaii Automobile Dealers' Assc.*, 999 F.2d 581, 585-586 (9th Cir. 1993); *In re Siciliano*, 13 F.2d 748, 750 (3rd Cir. 1994). Nonetheless, in a particular situation there may exist circumstances which are more compelling than the foregoing reasons behind the imposition of the Automatic Stay. Hence, § 362(d)(1) of the Bankruptcy Code empowers a bankruptcy court to lift the Stay "for cause."[1] Cause, however, is neither defined by the statute nor its legislative history. *Sonnax Industries, Inc. v. Tri Component Corp.*, 907 F.2d 1280 (2nd Cir. 1990). Thus, it is left to the discretion of the bankruptcy court, to determine on a case by case basis, the existence of cause in a given set of factual circumstances. *In re Laguna Associates Ltd. Partnership*, 30 F.3d 734, 737 (6th Cir. 1994).

In the present case, the Movant asserts that there is a sufficient basis to lift the Stay for cause given the fact that with the Stay left in place, the Movant will be unable to establish a claim against the Debtor, and thus will be denied any recovery from the Debtor, or the Debtor's bankruptcy estate.

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[1]Section 362(d) of the United States Bankruptcy Code provides, in pertinent part: "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property under subsection (a) of this section, if— (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization[.]"

Normally, however, a party such as the Movant, who holds no more than a potential claim against a debtor's bankruptcy estate cannot establish a sufficient basis to show the existence of cause, as that party does not have any specific interest in the debtor's property. *In re Schmidt*, 53 B.R. 70, 70-71 (Bankr. E.D.Pa.1985). Notwithstanding, under certain circumstances it has been held that a party having a potential claim against the debtor's bankruptcy estate can establish cause by demonstrating a genuine need to proceed with a cause of action that is currently pending in another forum, including an action that is currently pending on appeal. *See In re Anton*, 145 B.R. 767, 769 (Bankr.E.D.N.Y.1992) (citing H.R.REP. NO. 595, at 343-44 (1977); *Metz v. Poughkeepsie Savings Bank, FSB (In re Metz)*, 165 B.R. 769 (Bankr. E.D.N.Y. 1994); *Matter of Highway Truck Drivers & Helpers Local Union 107*, 98 B.R. 698, 704-05 (Bankr. E.D.Pa. 1989); *In re Bellucci*, 119 B.R. 763 (Bankr. E.D.Cal. 1990). Specifically, in *In re Bock Laundry Machine Co.*, this Court employed the following test to determine whether the Automatic Stay should be lifted to allow the continuation of a pending lawsuit:

> Whether any great prejudice to either the bankrupt estate or the debtor will result from the continuation of a civil suit;
>
> the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship of the debtor; and
>
> the non-bankrupt party has a realistic probability of prevailing on the merits of his case.

37 B.R. 564, 566 (Bankr. N.D.Ohio. 1984); *see also Matter of McGraw*, 18 B.R. 140 (Bankr. W.D.Wis. 1982).

In undertaking an analysis of the foregoing factors, this Court must abide by the burden of proof allocation set forth in § 362(g) which charges the debtor, as the party opposing the request for relief, with the burden of proving a lack of cause. However, notwithstanding this mandate, the

creditor moving for relief bears an initial burden of production that precedes the debtor's burden to refute the existence of cause. *In re Compass Van & Storage Corp.,* 61 B.R. 230 (Bankr. E.D.N.Y. 1986); *In re Rye,* 54 B.R. 180, 181-82 (Bankr. D.S.C. 1985).

Applying the first factor of the *In re Bock Laundry Machine Co.* test to the instant case, it is clear that this factor cuts squarely in favor of leaving the Stay in place as the facts of this case show that the Debtor will incur a substantial cost, perhaps as much as Six Thousand Dollars ($6,000.00), to defend the Movant's appeal. Such a substantial cost to a debtor to defend a lawsuit on appeal will not be taken lightly by this Court. A major goal of this Country's bankruptcy system is to relieve the honest but unfortunate debtor of his prepetition obligations, and thus allow the debtor a fresh start. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934); *In re Toti*, 24 F.3d 806, 809 (6th Cir. 1994). Clearly, this policy goal would be considerably hampered if the Debtor, prior to receiving a bankruptcy discharge, was required to expend significant sums of money to defend a lawsuit which had already been decided on the merits in the Debtor's favor. The Court does realize, as the Movant points out, that the Debtor is not actually required to expend legal funds to defend his case. However, the Court does not consider such a scenario as a realistic possibility.

Supporting the Court's position is the legislative history of § 362 which holds that the policy grounds for lifting the Stay are strongest when the underlying action does not involve matters that are of great importance to the debtor's financial affairs; these actions being described as:

> causes that lack. . . any connection with or interference with the pending bankruptcy case. For example, a divorce or child custody proceeding involving the debtor may bear no relation to the bankruptcy case. In that case, it should not be stayed. A probate proceeding in which the debtor is the executor or administrator of another's estate usually will not be related to the bankruptcy case, and should not be stayed. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is

> debtor protection from his creditors. The fact of each request will determine whether relief is appropriate under the circumstances.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 343-44, 1978 U.S. Code Cong. & Admin. News 5963, 6300; S. Rep. No. 989, 95th Cong., 2nd Sess. 52, 1978 U.S. Code Cong. & Admin. News, 5787, 5838. On the other hand, as is the situation in the present case, a bankruptcy court must be more cautious when allowing a litigant to pursue an ordinary tort or contract claim because the lifting of the Stay will in all likelihood have a greater effect on the debtor and the debtor's bankruptcy estate. *See*, *e.g.*, *Computer, Inc. v. Micro Design, Inc. (In re Micro Design, Inc.)*, 120 B.R. 363 (E.D. Pa 1990).

In addition, pursuant to the first prong of the *In re Bock Laundry Machine Co.* test, the Court finds that considerable prejudice will also likely befall the Debtor's bankruptcy estate if the Stay is lifted. This holding is based upon the interaction between the following two suppositions: First, the litigation between the Parties may not be concluded for a considerable period of time. For example, a decision from the Ohio State Court of Appeals is unlikely to be rendered for at least four to six months, and thereafter there is no guarantee that the dispute between the Parties will be quickly resolved. (i.e., a trial may be needed and additional appeals may be taken.) Second, during the pendency of the Parties' litigation, the Movant, in order to protect his interests, will very likely take appropriate measures to keep the Debtor's bankruptcy case open. However, keeping a bankruptcy case open for longer than is necessary to administer the estate's assets goes against a fundamental tenant of bankruptcy law, which is to insure the prompt administration of a debtor's bankruptcy estate for the benefit of all the debtor's creditors. For example, in *Rife v. Ruble*, the Sixth Circuit Court of Appeals stated that a bankruptcy trustee is charged with the duty of expeditiously liquidating a debtor's bankruptcy estate so as to avoid all unreasonable expenses in its preservation and distribution. 107 F.2d 84, 86 (6th Cir. 1939); *see also Smith v. Tricare Rehabilitation Sys., Inc. (In re Tricare Rehabilitation Sys., Inc.)*, 181 B.R. 569, 577-78 (Bankr. N.D. Ala. 1994).

In summation, the Court finds that the first element of the *In re Bock Laundry Machine Co.* test does not support the lifting of the Stay based upon the fact that the Debtor, and in all likelihood the Debtor's bankruptcy estate, will be substantially prejudiced by the lifting of the Automatic Stay.

The second factor of the *In re Bock Laundry Machine Co.* test requires that the hardship to the non-bankrupt party by maintenance of the Stay considerably outweigh the hardship which will be imposed upon the debtor if the Stay is lifted. In contrast to the first factor, this element initially appears cut in favor of the Movant as the Movant will be effectively barred from receiving a recovery from the Debtor's bankruptcy estate if the Court declines to lift the Stay. This precept is based upon the fact that the Movant, having lost his claim against the Debtor in state court, does not have a claim to assert against the Debtor's bankruptcy estate.[2] *See* §§ 502(a) and 726. In addition, pursuant to the Rooker-Feldman [3] doctrine, the Movant is precluded from litigating his state claim against the Debtor in this Court. Nevertheless, the Movant's quandary is tempered by the following considerations:

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[2] Under § 101(5) of the Bankruptcy Code, in order for a creditor to have a claim against a debtor's bankruptcy estate there must exist a right to payment which means an enforceable obligation. *In re Mattera*, 203 B.R. 565, 570 (Bankr. D.N.J. 1997). However, even though such a right is to be interpreted broadly, such a right does not necessarily encompass every conceivable monetary obligation. *Mullen v. United States*, 696 F.2d 470, 472 (6th Cir. 1983). Thus, merely because a state court litigant is in the process of appealing an unfavorable judgment, does not necessarily denote that the litigant has a claim for purposes of bankruptcy law. *See* 11 U.S.C. §§ 101(5) and 101(12).

[3]The Rooker-Feldman doctrine is the descendant of two Supreme Court cases, *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923). The doctrine stands for the proposition that a lower federal court may not hear an appeal of a case already litigated in a state court. Instead, a party who wishes to appeal a state court decision must go entirely through the state court judicial system, and only after these remedies are exhausted may the litigant seek review of the state court decision by appealing directly to the Supreme Court of the United States. *Catz v. Chalker*, 142 F.3d 279, 293 (6th Cir. 1998); *see also Singleton v. Fifth Third Bank of Western Ohio (In re Singleton)*, 1999 WL 106976 (B.A.P. 6th Cir. 1999).

First, unlike many parties who request relief from the stay in order to prosecute a claim that has yet to be fully adjudicated, here the Movant has already had a chance to have his claim heard and decided on the merits. Second, contrary to the Movant's assertions, leaving the Stay intact does not deny the Movant the opportunity to appeal his case against the Debtor as the Stay will be automatically lifted when the Debtor receives a discharge, or the Debtor's case is otherwise closed or dismissed. 11 U.S.C. §362(c)(2). Finally, there is a Bankruptcy policy of providing a debtor with the benefits of a timely issued discharge which would be considerably frustrated if the Debtor's case were to remain open for any great length of time. *Society Bank, N.A., v. Sinder (In re Sinder),*102 B.R. 978, 988 (Bankr.S.D.Ohio 1989); *In re Halliwell*, 130 B.R. 508, 509 (Bankr. S.D. Ohio 1991). Consequently, while acknowledging that the Movant will incur some financial hardship if the Stay is kept in place, the Court, given the foregoing considerations, cannot conclude that the Movant's hardship will considerably outweigh the hardship that will be imposed upon the Debtor if the Stay is lifted.

The final prong of the *In re Bock Laundry Machine Co.* test requires the Court to consider whether the non-bankrupt party has a realistic probability of prevailing on the merits of his case. Initially, it doesn't appear as if the Movant can establish this element given the fact that an Ohio State Court granted summary judgment in favor of the Debtor. (i.e., summary judgement is only appropriate when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law.) However, the Court declines to make a specific finding on this consideration, given the fact that the only information the Court currently has to examine are the Parties' statement of facts, and the Movant's appellate brief. Accordingly, as the Court does not have before it any primary evidentiary materials relevant to the Parties' dispute, it would be improper, in this instance, for the Court to make a determination as to whether the Movant's claim against the Debtor has any merit. *See Smith v. Tricare Rehabilitation Sys., Inc. (In re Tricare Rehabilitation Sys., Inc.)*, 181 B.R. 569, 577-78 (Bankr. N.D. Ala. 1994).

In conclusion, when a party wishes the Automatic Stay imposed by 11 U.S.C. § 362(a) lifted in order to proceed with a lawsuit pending in another forum, the three requirements set forth in *In re Bock Laundry Machine Co.*, 37 B.R. 564, 566 (Bankr. N.D.Ohio 1984), must be established. In the present case, however, the Court finds that the Movant has not met his burden of production with regards to the first two considerations set forth in this test. Consequently, the Movant's request for Relief from Stay must be Denied. In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this opinion.

Accordingly, it is

ORDERED that the Movant, Mary Matusoff & Associates, Motion For Relief From Stay be, and is hereby, DENIED.

Dated:

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Richard L. Speer
Chief Bankruptcy Judge