

The court incorporates by reference in this paragraph and adopts as the findings and analysis of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: November 30 2015


John P. Gustafson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 15-32286
)	
Jeffrey Wayne Dawson,)	Chapter 7
)	
Debtor.)	JUDGE JOHN P. GUSTAFSON
)	

**ORDER GRANTING MOTION FOR RELIEF FROM STAY FILED BY MORTON
BUILDINGS, INC.**

This cause comes before the court on Morton Buildings, Inc.'s ("Movant", "Morton", or "Morton Buildings") Motion for Relief from Stay [Doc. #26], Debtor's Objection to Motion for Relief from Stay [Doc. #32], and Morton Building's Reply to Debtor's Objection to Motion for Relief from Stay. [Doc. #34]. The matter was set for Hearing on November 20, 2015, at which time the court heard arguments from counsel for Morton Buildings and the Debtor.

FACTUAL BACKGROUND

On July 13, 2015, the Debtor, Jeffrey Dawson, filed a petition in this Court for relief under Chapter 7 of the United States Bankruptcy Code.

On October 28, 2015, the Movant, Morton Buildings Inc. filed its Motion for Relief from Stay ("Motion"). Morton Buildings has also filed a complaint against the Debtor, seeking for its claim a determination of nondischargeability under 11 U.S.C. §§523(a)(2) and 523(a)(6). This adversary proceeding is pending before this Court and has been assigned case number 15-03082. ("Adversary Proceeding").

The Adversary Proceeding brought by Morton arises from allegedly wrongful actions taken by the

Debtor while he was a salesman and construction manager for Morton and while he was operating under an employment agreement with Morton. Regarding such allegations, Morton had, in 2013, commenced an action in the Allen County Court of Common Pleas, in a case entitled *Morton Buildings, Inc. v. Jeffrey Dawson, et al.*, Case Number CV20130453 (“Allen County Action”).

In the Allen County Action, Morton, in an amended complaint, raised nine counts against the Debtor: (1) Fraud; (2) Conversion; (3) Conspiracy; (4) Theft; (5) Unjust Enrichment; (6) Breach of Contract, stemming from a Violation of a Non-compete Agreement; (7) Breach of Contract, based upon the misappropriation of trade secrets; (8) Breach of Contract, based upon the Faithless Servant Doctrine; and (9) Tortious Interference with Prospective Business Relations.

In its Motion, Morton asks that the Court modify the automatic stay of 11 U.S.C. §362(a) for “cause” so as to allow the “Allen County Action to resume and to allow such further litigation to occur in the Allen County Action as necessary to enable the Court of Common Pleas to enter such final orders as are necessary to complete the Allen County Action, . . .” [Doc. # 26, p. 7].

In addition to non-bankrupt defendants, one of the defendants in the Allen County Action filed a Chapter 7 proceeding in 2010 [Case No. 10-37438, Doc. # 1], which is currently pending before the Honorable Mary Ann Whipple. Debtor Jared R. Bennett [“Bennett”], also filed an adversary proceeding against Morton Buildings, with a counterclaim having been filed by Morton Buildings. *See, Jared R. Bennett v. Morton Buildings, Inc.*, Case No. 14-03244 (“Bennett Adversary”). It was represented at the Hearing that many of the claims against Bennett are agreed to have arisen post-filing. Accordingly, he will be participating as a defendant in the Allen County Action as to those post-filing claims.

The Allen County Action had been scheduled for trial on January 5, 2015, and was stayed when the Bennett Adversary was filed against Morton Buildings.

LAW AND ANALYSIS

Section 362(d)(1) does not provide a definition of what constitutes sufficient “cause” to warrant granting a creditor relief from stay. *Laguna Associates Limited Partnership v. Aetna Casualty & Surety Co.*, 30 F.3d 734, 737 (6th Cir. 1994). Instead, bankruptcy courts must determine whether sufficient cause exists on a case-by-case basis. *Id.*; *In re Chari*, 262 B.R. 734, 737 (Bankr. S.D. Ohio 2001).

The court has reviewed cases which set out multi-part tests for determining whether or not relief from stay should be granted to allow a trial in another court. *See e.g., In re Medical Care Management Co.*, 361 B.R. 863, 877 (Bankr. M.D. Tenn. 2003); *In re Cummings*, 221 B.R. 814, 818-819 (Bankr. N.D. Ala. 1998).

Several factors weigh in favor of granting relief and allowing the determination as to liability and damages to be decided in the state court. First, the state court case was scheduled for trial before the bankruptcy case was filed. The “trial readiness of the proceeding in the non-bankruptcy forum” appears to favor the state court action. *See, Cummings*, 221 B.R. at 818.

Judicial economy is difficult to foresee, but it appears that if relief from stay is granted the state court matter will go forward with all defendants participating in that case. If Defendant-Debtor is successful in his defense, there would be nothing for this court to determine as there would be no debt. On the other hand, if the Plaintiff were to prevail, the proceedings in this court would be limited to just the issue of dischargeability of the previously determined judgment.

If the court were to hold a trial on both liability and dischargeability, it would be likely that Defendant-Debtor would be testifying in three proceedings - the action against Bennett for pre-filing liabilities (if any), the state court action involving the other defendants, and the trial in this court. Potentially, the result in the state court action could result in at least one fewer trial.

The cause of action asserted by Morton Buildings is based upon Ohio law. While this court regularly deals with issues of Ohio law, in determining liability and damages through the jury trial process, the state court is dealing with its bread-and-butter issues. Or, as the Fourth Circuit Court of Appeals stated it: where the issues in the pending litigation “involve only state law, . . . the expertise of the bankruptcy court is unnecessary.” *Robbins v. Robbins (In re Robbins)*, 964 F.2d 342 (4th Cir. 1992). If liability and damages are found, the effect of the above captioned Chapter 7 on that judgment will be determined by this court.

Having all of the parties to the dispute in a single trial on the issues of liability and damages would appear to have the advantage of providing the fact finder the opportunity to hear arguments from all parties. Further, a single action reduces the risk of inconsistent judgments.

Moreover, the Plaintiff has requested a jury trial. Proceeding in state court will afford Plaintiff the right to have a jury determine both liability and damages.

Finally, this is not a situation where other parties would be adversely affected by the granting of relief. This is not a situation where the litigation would potentially delay a reorganization effort, or potentially delay a distribution to creditors. Instead, it appears that the impact of the litigation is limited to the parties involved in the dispute.

For all of the above reasons the court finds that “cause” has been shown for the granting of relief from stay. Accordingly,

IT IS ORDERED that Morton Building's Motion be, and hereby is, **Granted**; and

IT IS FURTHER ORDERED that the automatic stay imposed by §362 of the Bankruptcy Code is modified with respect to the Movant, its successors, and assigns, to allow litigation to continue in the Allen County Action, pending in the Court of Common Pleas of Allen County, Ohio as Case No. CV 2013 0453, allowing the Court of Common Pleas of Allen County, Ohio to enter final judgment regarding liability on all claims pending before that Court, provided however, that following entry of final judgment, Movant shall not attempt to enforce any such judgment against Jeffrey Wayne Dawson until this court determines, pursuant to this court's exclusive jurisdiction over issues relating to 11 U.S.C. §§523(a)(2) and 523(a)(6), whether or not any such obligation is non-dischargeable through the entry of an appropriate order in the Adversary Proceeding, pending in this court under case number 15-03082.

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