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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

97 OCT 15 PM 2:54
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 95-11350
)
DEAN A. FALVO) Chapter 13
MICHELLE FALVO,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
) **MEMORANDUM OF OPINION**

Debtors filed a Motion for Clarification of Order Lifting Stay and Request for Expedited Hearing. (Docket 41). The Motion requests clarification of an Agreed Judgment entered in this case on May 19, 1995 granting Frank Tedeschi and Applied Concepts, Inc. relief from stay for a specified purpose (the "Agreed Judgment"). (Docket 13). Mr. Tedeschi and Applied Concepts, Inc. (sometimes collectively referred to as "Creditors") filed a Response to the Motion. (Docket 42). For the reasons set forth below, the Motion will be granted.

JURISDICTION

The Court has jurisdiction to hear this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

FACTS

The facts are largely undisputed based on the statements of counsel at the hearing. The Agreed Judgment granted Applied Concepts, Inc. and Mr. Tedeschi relief from stay as to all matters then pending in Cuyahoga County Common Pleas Case No. 276602 "until the rights of

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all affected parties have been resolved. The parties further agree that this Court shall withhold judgment on Turnover until the Common Pleas case has been fully adjudicated.” (Docket 13). Several months later, Debtors filed a Motion to Modify their proposed plan. (Docket 25). That motion referenced an agreement with Creditors as to how their claims would be treated in the plan and was soon followed by a second Agreed Judgment Entry (the “Second Agreed Judgment”). The Second Agreed Judgment, signed by the lawyers for both Creditors and Debtors, (1) valued the post-petition claim of Applied Concepts, Inc. and provided that it would be paid 100% through the plan; and (2) valued the pre-petition claim of Mr. Tedeschi and provided that it would be paid through the plan at the percentage to be paid to other general unsecured claims. Both claims were subject to adjustment following their liquidation in the state court. (Docket 26).

The plan was then confirmed without further objection from Creditors. The confirmed plan provided that the estimated claims of Creditors would be paid with other unsecured claims until they were liquidated in the Common Pleas Court, after which time there would either be: (1) disgorgement of excess payments by Creditors, or (2) the filing of an amended claim by Creditors, depending upon the result reached in the state court. (Docket 27).

The state court action resulted in judgment being entered against Debtor Dean Falvo and others. Creditors then attempted to collect on the judgment. As a result of these collection efforts, the Parma Municipal Court issued an Order in Aid of Execution. Debtor Dean Falvo did not appear in response to that Order and the Parma Municipal Court issued an arrest warrant based on the failure to appear. This Motion to Clarify followed.

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There was a gap between the filing of the Motion to Clarify and the hearing date due to counsel's schedules. At the request of Debtors, the Court entered a Provisional Order barring Creditors from taking collection actions in the Parma Municipal Court until the hearing could be conducted. (Docket 47). Creditors immediately complied and asked the Parma Municipal Court not to take any further action with respect to the arrest warrant or the collection efforts.

DISCUSSION

Debtors argue that Creditors violated the automatic stay when they began collection efforts post-judgment. Creditors argue that the Agreed Judgment permits them to do everything that they did. At the hearing, Debtors stated that they did not wish to pursue this as a damage issue for any violation of the automatic stay, but instead limited the relief sought to a declaration as to the meaning of the Agreed Judgment. Creditors also requested clarification at the hearing.

11 U.S.C. § 362 provides in general that the filing of a bankruptcy petition serves to stay all actions against the debtor. A review of the facts in this case indicates that the parties agreed to lift the stay for the limited purpose of liquidating the claims in state court, with the claims to be paid through the plan after liquidation. This is a standard form of agreement routinely entered into by debtors and creditors where there is a pending state court action at the time of a bankruptcy filing. The usual procedure is for the creditors to file an amended claim after the claim is liquidated. That claim is then paid by the Chapter 13 Trustee at the appropriate time and in the amount provided for in the plan. That is what the Agreed Judgment, the Second Agreed Judgment, and the confirmed plan all contemplate.

As an initial matter, Creditors and their counsel state that they did not receive a copy of the Second Agreed Entry. The significance of this argument is not entirely clear, as counsel

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acknowledges signing the Second Agreed Entry and the order is docketed and appears in the file. It is, therefore, a valid court order. Additionally, the Second Agreed Entry is consistent with the provisions of the plan and that plan is binding on Creditors. 11 U.S.C. §1327.

Creditors next point to that part of the Agreed Judgment that states that the stay is lifted until all pending matters are “resolved”. They claim that this matter is not “resolved” until the judgment is paid in full and, therefore, they can take any and all actions to obtain that payment outside of the plan. This interpretation is contrary to the Agreed Judgment, the Second Agreed Judgment, and the plan.

Creditors also argue that they should be permitted to pursue independent collection efforts because they have not received any payments under the plan. The Chapter 13 Trustee reported at the hearing that Debtors are funding the plan, but all payments are being applied to debt that has a higher distribution priority than that of general unsecured creditors. The fact that payments are not yet being made to that class does not justify permitting Creditors to strike out on their own to find assets to apply to their judgment. One of the points of filing a bankruptcy case is to avoid exactly that sort of independent collection activity.

Finally, Creditors contend that their interpretation of the Agreed Judgment should be accepted because this case is similar to one in which a secured creditor is given relief from stay and then has the right to proceed on its own to foreclose on the secured property. The analogy is not persuasive. Secured creditors who receive relief from stay are given permission to sell their security and apply the proceeds to their debt. If there is a remaining balance, it is unsecured debt and the creditor must return to the bankruptcy court to share in distributions, if any, to the

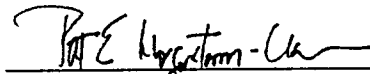
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unsecured creditors. Creditors in this case are not secured and so they do not have any right to proceed against specific property.

CONCLUSION

For the reasons stated above, Creditors should not have executed on the state court judgment they received against Debtor Dean Falvo and their actions constitute a violation of the automatic stay. Debtors' Motion to Clarify will, therefore, be granted and the Agreed Judgment Entry of May 19, 1995 will be clarified to provide that the stay was lifted in order to liquidate the claims in Common Pleas Court, with any payment due following the entry of judgment in that Court to be made under the terms of Debtors' Chapter 13 plan. A separate Order in accordance with this Memorandum of Opinion will be entered.

Date: 15 Oct 1997



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Susan M. Gray, Esq.
Joan Allyn Kodish, Esq.
Myron Wasserman, Trustee

By: Joyce L. Gordon, Secretary

Date: 10/15/97

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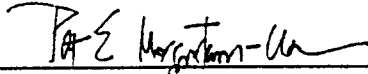
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EASTERN DIVISION

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CLEVELAND

In re:) Case No. 95-11350
)
DEAN A. FALVO,) Chapter 13
MICHELLE FALVO,)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date,
IT IS, THEREFORE, ORDERED that the Debtors' Motion for Clarification of Order
Lifting Stay is granted and the Agreed Judgment Entry of May 19, 1995 (Docket 13) is clarified
to provide that the stay was lifted in order to liquidate the claims in Common Pleas Court, with
any payment due following the entry of judgment in that Court to be made under the terms of
Debtors' Chapter 13 plan.

Date: 15 October 1997



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Susan Gray, Esq.
Myron Wasserman, Esq.
Joan Kodish, Esq.

By: Joyce L. Gordon, Secretary

Date: 10/15/97