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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 02-12538
)
CURTIS L. DAVIS,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

On June 20, 2002, the Court granted a Motion for Relief from Stay filed by First Union Mortgage Corporation in this Chapter 7 case. (Docket 16). The order lifted the automatic stay to permit the creditor to proceed against the Debtor Curtis Davis with a state court lawsuit that was pending at the time of the bankruptcy filing. The Debtor has now filed a Motion for Relief from that order. First Union opposes the motion. (Docket 26, 28, 29).

JURISDICTION

Jurisdiction exists 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) and (O).

THE POSITIONS OF THE PARTIES

The Debtor argues that the Order should be vacated under Federal Rule of Civil Procedure 60(b)(5) and (6). In support, he states that First Union's Motion for Relief from Stay asserted that the debt is not dischargeable and that First Union should be permitted to proceed with its state court lawsuit. The last date to file a complaint to determine nondischargeability was, however, March 20, 2002 and First Union did not file such a complaint. From this, the

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Debtor concludes that “the reason for the granting of the Motion for Relief, that is, to have the state court determine the facts relevant to the dischargeability of the debts allegedly owed by the Debtor to First Union, is no longer applicable or relevant.” (Motion ¶ 5). In opposition, First Union contends that based on the Court’s statements during the hearing on the Motion for Relief, the Court intended:

to permit the claim to proceed against the Debtor in the state court with the understanding that, if and when a determination as to the underlying fraud and misrepresentation counts is made, this Court would then determine whether these facts are sufficient to establish dischargeability or non dischargeability. By its ruling, this Honorable Court has granted First Union leave to delay the filing of its Complaint to Determine Dischargeability until such time as a determination has been made in the State Court as to the claims for fraud and misrepresentation.

(Docket 28).

DISCUSSION

I.

The Debtor seeks relief under Federal Rule of Civil Procedure 60(b)(5) and (6) which provide:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party . . . from a final . . . order . . . for the following reasons:

* * *

(5) the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment . . .

FED. R. CIV. P. 60(b) (made applicable by FED. R. BANKR. P. 9024).

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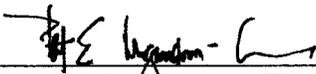
II.

Since the briefing on this issue, the Debtor has received his discharge. (Docket 30, 31). The consequence of this event is dispositive of the present dispute. On the filing of the case, an automatic stay went into effect. 11 U.S.C. § 362. That is the stay that was lifted to permit First Union to proceed against the Debtor in state court. The Debtor now wants to reinstate the stay to prevent First Union from continuing to prosecute the state court lawsuit. The stay, however, only remains in effect in an individual Chapter 7 case until the debtor receives a discharge. 11 U.S.C. § 362(c)(2)(C). Now that the Debtor has been discharged, there is no stay to be reinstated. The Debtor's rights vis a vis creditors are governed going forward by Bankruptcy Code § 523 Exceptions to Discharge and § 524 Effect of Discharge. 11 U.S.C. §§ 523, 524. Because the Debtor is requesting relief that has become unavailable since the time the request was made, the Debtor's motion is denied as moot.

CONCLUSION

For the reasons stated, the Debtor's motion is denied. A separate order will be entered reflecting this decision.

Date: 17 Sept 02



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Stephen Hobt, Esq.
Tim Collins, Esq.

By: Joyce L Gordon, Secretary

Date: 9/17/02

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In re:) Case No. 02-12538
)
CURTIS L. DAVIS,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the Memorandum of Opinion filed this same date, the Debtor's Motion for Relief from Stay is denied as moot. (Docket 26).

IT IS SO ORDERED.

Date: 17 Sept 2002


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Stephen Hobt, Esq.
Tim Collins, Esq.

By: Joyce L. Gordon Secretary
Date: 9/17/02