



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
July 17, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 18-17155-MKN
) Chapter 11
DANIEL H. ROSENBLUM,)
) Date: July 10, 2019
Debtor.) Time: 10:30 a.m.
)

**ORDER ON SECURED CREDITOR SHEILA ROSENBLUM'S MOTION FOR
EXCEPTION FROM AUTOMATIC STAY UNDER 11 U.S.C. § 362(b)(2)(B) AND (C)
AND (b)(4), AND WAIVER OF 14-DAY STAY UNDER RULE 4001(a)(3)¹**

On July 10, 2019, the court conducted a hearing on Secured Creditor Sheila Rosenblum's Motion for Exception from Automatic Stay under 11 U.S.C. §362(b)(2)(B) and (C) and (b)(4), and Waiver of 14-Day Stay Under Rule 4001(a)(3) ("MEAS"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On December 1, 2018, Daniel H. Rosenblum ("Debtor") filed a voluntary Chapter 11 petition for reorganization. (ECF No. 1).² He has filed schedules of assets and liabilities as well

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to provisions of the Federal Rules of Bankruptcy Procedure.

² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket and claims register in the above-captioned Chapter 11 proceeding. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) ("The Court may consider the records in this case, the underlying bankruptcy case and public records.").

1 as a statement of financial affairs (“SOFA”), in addition to various amendments to those
2 documents during the course of this proceeding. (ECF Nos. 1, 47, 110, and 230). Debtor signed
3 all of the documents under penalty of perjury. On his initial unsecured creditor Schedule “E/F,”
4 Debtor listed his former spouse, Sheila Rosenblum, as having an unliquidated, disputed, priority
5 unsecured claim of \$700,000 for a domestic support obligation.³ In response to question 7 of his
6 SOFA, Debtor attested that he made no payments to insiders, including child support and
7 alimony, within one year before filing bankruptcy. In response to question 9, Debtor listed the
8 Divorce Proceeding with Sheila Rosenblum that is pending in New York State Court.

9 On December 21, 2018, Debtor filed an amended Schedule “E/F,” in which he again
10 listed Sheila Rosenblum as having an unliquidated, disputed, priority unsecured claim of
11 \$700,000 for a domestic support obligation. In response to question 7 of his amended SOFA,
12 Debtor again attested that he had made no payments to insiders, including child support and
13 alimony, within one year before filing bankruptcy.

14 On December 21, 2018, Sheila Rosenblum filed proof of claim number 3 in the amount
15 of \$190,787,212.18, of which she attests that \$14,102,391.78, constitutes delinquent domestic
16 support obligations entitled to priority of payment under Section 507(a)(1).

17 On February 11, 2019, Debtor filed another amended Schedule “E/F,” in which he no
18 longer listed Sheila Rosenblum as having any claim for a domestic support obligation. In
19 response to question 7 of his amended SOFA, Debtor again attested that he had made no
20 payments to insiders, including child support and alimony, within one year before filing
21 bankruptcy.

22 On May 10, 2019, an order was entered denying the Debtor’s request to extend the
23 exclusive 120-day period for him to file a proposed Chapter 11 plan and required disclosure
24 statement. (ECF No. 180). In addition to denying his request, the order set a deadline of June 3,
25 2019, for the Debtor to file a proposed plan of reorganization and accompanying disclosure

26
27 ³ Debtor and Sheila Rosenblum are the subject of a marital dissolution proceeding
28 (“Divorce Proceeding”) that was commenced on September 27, 2013, in the Supreme Court of
the State of New York, County of New York (“New York State Court”), denominated Case No.
350086/2013.

1 statement. The same order scheduled a hearing for July 10, 2019, for the court to consider
 2 approval of a disclosure statement previously filed by Sheila Rosenblum as well as the disclosure
 3 statement to be filed by the Debtor. The order also directed that any hearing on confirmation of
 4 Sheila Rosenblum's proposed plan of liquidation, as well as the Debtor's proposed plan of
 5 reorganization, would commence no later than August 26, 2019.

6 On May 24, 2019, Sheila Rosenblum filed the instant MEAS by which she seeks a
 7 "comfort" order allowing her to proceed in the New York State Court to enforce certain
 8 judgments and orders entered in the Divorce Proceeding. (ECF No. 191). On the same date,
 9 Sheila Rosenblum also filed a Motion to Dismiss Under 11 U.S.C. § 1112(b)(4)(P) for Debtor's
 10 Failure to Pay Post-Petition Child and Spousal Support Obligations ("Dismissal Motion"). (ECF
 11 No. 193). Both motions were noticed to be heard on July 10, 2019. (ECF Nos. 195 and 196).⁴

12 On June 3, 2019, Debtor filed his proposed plan of reorganization and proposed
 13 disclosure statement ("Debtor Disclosure Statement"). (ECF Nos. 200 and 201).

14 On June 14, 2019, Sheila Rosenblum filed redlined, first amendments to both her
 15 proposed plan and proposed disclosure statement ("Sheila Disclosure Statement"). (ECF Nos.
 16 208, 209 and 210).⁵

17 On June 26, 2019, Debtor filed an opposition to the MEAS. (ECF No. 222).

18 On July 3, 2019, Debtor filed an amended exemption Schedule "C." (ECF No. 230).⁶

19 On July 3, 2019, Sheila Rosenblum filed a reply in support of her MEAS. (ECF No.
 20 234).

23 ⁴ A separate order is being entered in connection with the Dismissal Motion.

24 ⁵ Separate orders have been entered in connection with the request to approve the Debtor
 25 Disclosure Statement as well as the Sheila Disclosure Statement. (ECF Nos. 242 and 243).

26 ⁶ Under FRBP 4003(b)(1), parties in interest have 30 days to object to an amended claim
 27 of exemptions, or the claimed exemptions will be deemed allowed under Section 522(l). Once
 28 estate property becomes exempt, it is no longer property of the bankruptcy estate. See Mwangi
v. Wells Fargo Bank, N.A. (In re Mwangi), 764 F.3d 1168, 1177 (9th Cir. 2014).

DISCUSSION

Sheila Rosenblum expressly requests a “comfort order” that would allow her to return to the New York State Court to resume her efforts to hold the Debtor in civil contempt, including by incarceration, for his failure to comply with previous orders entered in the Divorce Proceeding.⁷ She maintains that under several provisions of Section 362(b), such efforts are excepted from the automatic stay.

In particular, Sheila Rosenblum seeks a “comfort order” with respect to three exceptions to the automatic stay: [1] “the collection of a domestic support obligation from property that is not property of the estate” under Section 362(b)(2)(B); [2] “the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute” under Section 362(b)(2)(C); and [3] “the commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit’s...police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s...police or regulatory power” under Section 362(b)(4).

In subsection (a), Section 362 specifies the acts to which the automatic stay applies. In subsection (b), the statute also specifies the acts to which the automatic stay does not apply. In subsection (c), the statute specifies the circumstances under which the automatic stay no longer continues to be in effect. Finally, in subsection (d), the statute specifies the grounds under which a party in interest may have the automatic stay terminated, annulled, modified, or conditioned, based on, *inter alia*, a demonstration of “cause.”

Under Section 362(j), at the request of a party in interest, the court is directed to issue “an order under subsection (c) confirming that the automatic stay has been terminated.” While

⁷ On November 13, 2018, in the Divorce Proceeding, a hearing was conducted by the New York State Court on a Motion for an Order to Show Cause why, *inter alia*, the Debtor should not be held in contempt for failing to pay child and spousal support. At the end of that hearing, a further hearing was scheduled for Tuesday, December 4, 2018, or Wednesday, December 5, 2018, but the Debtor filed his voluntary Chapter 11 petition on Saturday, December 1, 2018. As previously discussed at 2, *supra*, Debtor attests in his SOFA that he did not make any payments for child support or alimony during the year prior to filing his Chapter 11 petition.

1 Section 362(j) clearly provides for the entry of the equivalent of a “comfort order,” it only
2 applies to circumstances where the automatic stay no longer continues under subsection (c).
3 Section 362(j) does not require the court to issue orders confirming when the automatic stay
4 applies under subsection (a), nor when it does not apply under subsection (b), because those
5 provisions are and must be, self-executing.

6 It is questionable whether a bankruptcy court has general authority to enter so-called
7 comfort orders relating to the automatic stay when Section 362(j) is specifically limited to orders
8 that merely confirm that the stay no longer exists by operation of Section 362(c). Even Section
9 105(a), which permits a court to enter orders that are “necessary or appropriate to carry out the
10 provisions of” the Bankruptcy Code, does not authorize a bankruptcy court to enter any order it
11 sees fit. See, e.g., Law v. Siegel, 571 U.S. 415, 421-23, 134 S.Ct. 1188, 1194-95 (2014)
12 (bankruptcy court has no authority under Section 105(a) to surcharge a valid state law exemption
13 claim under Section 522 in order to pay attorney’s fees incurred by a Chapter 7 trustee).

14 Even if such authority exists, however, the exercise of such authority is unnecessary in
15 this case. Section 362(b)(2)(B) clearly excepts from the automatic stay the collection of a
16 domestic support obligation from property that is not property of a bankruptcy estate. Whether
17 the Debtor in this case actually has any assets that are not property of the Chapter 11 estate is
18 unknown because the 30-day deadline to object to his amended exemption Schedule “C” has not
19 elapsed. See discussion at 3 and note 6, supra. Moreover, Section 362(b)(2)(C) clearly excepts
20 from the automatic stay acts “with respect to the withholding of income...for payment of a
21 domestic support obligation under a judicial...order...” Finally, it is clear that under Section
22 362(b)(4), the automatic stay does not preclude a non-bankruptcy court from enforcing its prior
23 orders by holding a debtor in civil contempt. See, e.g., TransFirst Group, Inc. v. Magliarditi,
24 2018 WL 8014338, at *1 (D.Nev. June 29, 2018), citing Dingley v. Yellow Logistics, LLC (In re
25 Dingley), 852 F.3d 1143, 1147-48 (9th Cir. 2017).

26 Sheila Rosenblum expresses concern that if she returns to the New York State Court in
27 reliance on the statutory exceptions discussed above, she nonetheless risks a claim by her former
28 spouse that she violated the automatic stay. In this circuit, it is well established that acts in

violation of the automatic stay are void ab initio. See Burton v. Infinity Capital Mgmt., 862 F.3d 740, 747 (9th Cir. 2017), citing Schwartz v. U.S. (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). Moreover, an individual who is injured by a willful violation of the automatic stay shall recover actual damages, including costs and attorney's fees, and in appropriate circumstances, punitive damages. See 11 U.S.C. § 362(k)(1). A willful violation occurs when a creditor has knowledge of the automatic stay and intends the acts that violate the automatic stay. See Sundquist v. Bank of America, N.A. (In re Sundquist), 566 B.R. 563, 586 (Bankr. E.D. Cal. 2017), vacated in part, 580 B.R. 536 (Bankr. E.D. Cal. 2018). Specific intent to violate the automatic stay is not required. Id.

At this juncture, of course, it is pure speculation whether the Debtor will ever file a motion seeking sanctions under Section 362(k)(1). If Sheila Rosenblum pursues action in the New York State Court that is excepted from the automatic stay under Section 362(b)(2) or (4), then no basis would exist for the Debtor to pursue damages under Section 362(k)(1). If the Debtor nonetheless pursues damages under Section 362(k)(1) without any basis in fact or law, then Sheila Rosenblum is free to seek relief against the Debtor as well as his counsel under FRBP 9011.

Section 362(j) expressly authorizes the court to enter an order confirming that the automatic stay has terminated under Section 362(c). There is no provision, however, that authorizes the court to enter an order confirming that an act is excepted from the automatic stay under Section 362(b).

The appropriate means to obtain the comfort that Sheila Rosenblum seeks, however, would be to request relief from stay for cause under Section 362(d)(1). The burden on the parties when relief from stay is sought under Section 362(d) is expressly allocated under Section 362(g). Because relief from stay has not been requested, it cannot be granted in the form of the present MEAS.

IT IS THEREFORE ORDERED that Secured Creditor Sheila Rosenblum's Motion for Exception From Automatic Stay Under 11 U.S.C. § 362(b)(2)(B) and (C) and (b)(4), and Waiver of 14-Day Stay Under Rule 4001(a)(3), Docket No. 191, be, and the same hereby is, **DENIED**.

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2 Copies sent via CM/ECF ELECTRONIC FILING

3 Copies sent via BNC to:

4 DANIEL H. ROSENBLUM
5 3750 S. LAS VEGAS BLVD., #2604
6 LAS VEGAS, NV 89109

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