

Dated: May 04, 2018
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Debtors.

Case No. 08-28289-JDL
Chapter 7

ORDER DENYING MOTION FOR STAY PENDING APPEAL

BEFORE THE COURT is the Motion for Stay of Effectiveness of Abandonment Order Pending Appeal and Request for Expedited Consideration and Request for Hearing filed by Church Joint Venture, A Limited Partnership ("Church JV"). Dkt. No. 708. Church JV asks that this court stay its Order Granting Trustee's Motion to Abandon and Denying Church Joint Venture's Motion for Permission to File Surreply entered April 10, 2018. Dkt. No. 692 (the "Abandonment Order").

The factual and procedural background to this dispute is set out in the Abandonment Order. The bankruptcy case is nearing its tenth anniversary, having been filed on August 15, 2008. Adversary Proceeding 15-00021, which was the subject of the Abandonment Order, has been pending more than three years, having been filed on January 22, 2015. By separate order, the court

has granted the motion to dismiss filed by the defendants in that proceeding. Both the Abandonment Order and the dismissal of the adversary proceeding are based on the sound business judgment of the Trustee, Edward L. Montedonico, that even if Church JV were successful in establishing that personal property in the possession, control and/or use of the Debtors when their bankruptcy petition was filed belongs to the bankruptcy estate, there would be no ultimate benefit to the estate because of the superior lien of the Internal Revenue Service. Church JV offered no proof otherwise at the hearing on the motion to abandon.

A motion for stay pending appeal should be granted only if there is a valid appeal pending and upon consideration of four factors:

- (1) The likelihood that the party seeking the stay ultimately will prevail on the merits of the appeal;
- (2) The likelihood that the moving party will be irreparably harmed absent a stay;
- (3) The prospect that others will be harmed if the court grants the stay; and
- (4) The public interest in granting the stay.

Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991). *See also In re Thomas*, 565 B.R. 856 (Bankr. W.D. Tenn. 2017). There is a valid appeal pending, but, having considered each of these factors, the court believes that there is no just reason to stay the effectiveness of the Abandonment Order for the following reasons.

It is not likely that Church JV will prevail on the merits of its appeal. As previously stated, in the face of the Trustee's motion to abandon, Church JV offered no proof of any potential benefit to the estate. Instead it attempted to separate abandonment of the adversary proceeding, which sought a declaration that the personal property in the possession, control and/or use of the Debtors

when their bankruptcy petition was filed belongs to the bankruptcy estate, from any benefit to the estate in the event that a declaration was made in its favor. Neither the Trustee nor the court drew such fine distinctions. Instead, both the Trustee and the court assumed for purposes of assessing the utility of abandonment that Church JV would prevail completely in obtaining a declaration that the personal property belonged to the estate. Under that assumption, no potential benefit to the estate was demonstrated. The Trustee, in fact, demonstrated just the opposite; i.e., that the adversary proceeding was burdensome to the estate, which is administratively insolvent, and would result in no recovery for the creditors of the estate.

It is unlikely that Church JV will be irreparably harmed by the stay. The United States Supreme Court has said that in order to show a likelihood of irreparable harm, the moving party must demonstrate that irreparable injury is *likely* in the absence of a stay. *Winter v. Nt. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S. Ct. 365, 375, 172 L. Ed. 2d 249 (2008). Church JV was pursuing the adversary proceeding derivatively on behalf of the estate. The benefit, if any, of its actions, would have accrued to the estate. To be sure, it is also a creditor of the estate, but the Trustee amply demonstrated that there would be no benefit to the creditors of the estate in the event that Church JV was successful in bringing more personal property into the estate. What Church JV might have lost as the result of the Trustee's abandonment of the estate's pursuit of personal property is the ability to recover some of its attorneys' fees and expenses in the event that it was ultimately successful. That would require the recovery and sale of personal property for more than enough to pay the lien of the Internal Revenue Service. The Trustee demonstrated that this was highly unlikely. Church JV asserts that in the absence of a stay, the Debtors and defendants may dissipate the assets which are the subject of the adversary proceeding. Church JV forgets, however, that the Debtors have been denied a discharge. *See Church Joint Venture, L.P.*

v. Blasingame (In re Blasingame), 559 B.R. 692 (6th Cir. B.A.P. 2016) (affirming denial of discharge). Church JV is free to seek relief from the automatic stay and pursue collection against the Debtors at any time.

It is unlikely that others would be irreparably harmed absent a stay. To the contrary, the Debtors and the other defendants in the adversary proceeding have been defending themselves in various proceedings for almost ten years now. As the result of one of those proceedings, the Debtors have been denied a discharge in bankruptcy. Any creditors of the Debtors may pursue their claims against the Debtors and property of the Debtors personally.

It seems unlikely that the public has an interest in the granting or denial of a stay. Church JV has pointed to the interest of the public in seeing that Debtors account for property of their bankruptcy estates. The Debtors' failure to account for property in the filing of their schedules has already resulted in the denial of their discharges. The public interest has been satisfied.

For the foregoing reasons, the Motion for Stay of Effectiveness of Abandonment Order Pending Appeal is **DENIED**.

cc: Debtors
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Attorney for Church Joint Venture, L.P.
Chapter 7 Trustee
Attorney for Chapter 7 Trustee (if any)
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