

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

LAWRENCE SCHRADER

CASE NUMBER 98-14295

Chapter 7

**MEMORANDUM OPINION AND ORDER RE
MOTION OF WEST TENNESSEE ORTHOPEDICS & SPORTS
MEDICINE, P.C. FOR RELIEF FROM STAY AND FOR EXTENSION
OF TIME TO FILE COMPLAINT OBJECTING TO DISCHARGE TO
ALLOW PENDING LITIGATION TO PROCEED**

The Court conducted a hearing on West Tennessee Orthopedics & Sports Medicine's Motion for Relief from the Stay on January 20, 1999. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

The movant in this case, West Tennessee Orthopedics & Sports Medicine, ("West Tennessee"), has requested relief from the automatic stay so that it may proceed with state court litigation against the debtor. According to the motion for relief, the debtor, Lawrence Schrader, ("Schrader"), entered into a non-compete covenant with the movant in 1996. Prior to the filing of the instant chapter 7 bankruptcy petition, West Tennessee had commenced a state court lawsuit against Schrader to enjoin him from competing with West Tennessee's orthopedic practice.

Subsection (d) of 11 U.S.C. § 362 provides that:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay – (1) for cause."

11 U.S.C. § 362(d)(1). "Cause" is not defined by the Bankruptcy Code; however, the legislative history accompanying § 362(d) recognizes that "a desire to permit an action to proceed to completion in another tribunal may provide [a cause for relief]." HR Rep. No. 595, 95th Cong., 1st Sess. 343-344 (1977).

A large number of courts that have been faced with requests for relief from the automatic stay in relation to covenants not to compete have concluded that interpretation of such covenants is largely a state law question. See *In re Hughes*, 166 B.R. 103 (Bankr. S.D. Ohio 1994), *In re Hawes*, 73 B.R. 584 (Bankr. E.D. Wis. 1987), *In re Peltz*, 55 B.R. 336 (Bankr. M.D. Fla. 1985), *In re Cooper*, 47 B.R. 842

“Memorandum Opinion and Order re Motion of West Tennessee Orthopedic and Sports Medicine, P.C., for Relief from Stay and for Extension of Time to File Complaint Objecting to Discharge.”

(Bankr. W.D.Mo. 1985). In drawing such conclusions, these courts have found the necessary § 362(d) “cause” and lifted the automatic stay.

This Court agrees with these interpretations of covenants not to compete. As a result, the Court will lift the automatic stay to allow West Tennessee to proceed in its litigation against the debtor with regard to the enforceability of the covenant not to compete. This lifting, however, only allows West Tennessee to receive a determination on the validity of the covenant and whether or not Schrader has violated the covenant. West Tennessee is not authorized to execute on the state court’s judgment should it be determined that the covenant has been violated.

With respect to West Tennessee’s request for an extension of time in which to file a dischargeability action against the debtor, the Court finds that it is unnecessary to extend the deadline at this time. If West Tennessee genuinely feels that a dischargeability issue may arise after the state court rules on the covenant, it should file a complaint before the present deadline expires. If such a complaint is filed, the Court will hold it in abeyance until such time as the state court makes a ruling. Should the state court find in favor of the debtor, West Tennessee can then dismiss its dischargeability complaint.

III. ORDER

It is therefore **ORDERED** that West Tennessee Orthopedics & Sports Medicine, P.C.’s Motion for Relief from the Stay to Allow Pending Litigation to Proceed is **GRANTED**.

It is **FURTHER ORDERED** that West Tennessee Orthopedics & Sports Medicine, P.C.’s Motion for Extension of Time to File Complaint Objecting to Discharge is **DENIED**.

It is so ordered.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: January 28, 1999