

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

IN RE

**William Hobson and
Emma Louise Hobson,**

Case No. 01-11367

Debtors.

Chapter 13

**MEMORANDUM OPINION AND ORDER RE
MOTION TO EXTEND TIME TO EMPLOY ATTORNEY**

The Court conducted a hearing on the debtors' "Motion to Extend Time to Employ Attorney" on January 3, 2002. 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.

I. FINDINGS OF FACT

On September 27, 2001, this Court conducted a hearing on the City of Dyersburg's ("City") motion that a condemnation order its Sub-Standard Housing Board ("Board") had issued on October 26, 2000, against the debtors' property was not subject to the automatic stay. The Court granted that motion on October 10, 2001. Relying on 11 U.S.C. § 362(b)(4) and the Sixth Circuit case of *Javens v. City of Hazel Park*, 107 F.3d 359 (6th Cir. 1997), the Court held that:

The case at bar is almost identical to *Javens*. The City of Dyersburg found numerous code violations in the debtors' buildings. The debtors were given time to correct the violations, but failed to do so. The buildings were condemned and then the debtors filed for bankruptcy relief. The debtors did not make any allegations or offer any proof that the City officials were acting in bad faith. Therefore, the Court finds that in condemning and seeking to demolish the buildings, the City of Dyersburg is well within the boundaries of § 362(b)(4). The demolition of the buildings is not stayed by the filing of the debtors' bankruptcy petition.

After entry of this Memorandum Opinion and Order, the City demolished the debtors' condemned buildings.

On November 5, 2001, John Van den Bosch, Jr., filed a motion to withdraw as counsel for the debtors. As grounds for this motion, Van den Bosch alleged that the debtors "have been uncooperative with said Attorney of Record," "have . . . blatantly refused to follow the advise [sic] of counsel," and "have prepared pleadings and caused the delivery of said pleadings to the Law Offices of John Van den Bosch, Jr. with instructions for these pleadings to be filed with this Court." The debtors filed a response to this motion on November 13, 2001, in which they did not object to Van den Bosch's withdrawal so long as they were given "the priviledge [sic] to oppose the facts as submitted by another bankrupcy [sic] attorney of records [sic] on the same issues at bar by Atty, Robert E. Orians." The Court granted Van den Bosch's motion to withdraw on December 5, 2001, and conducted a hearing on the debtors' responsive motion on January 3, 2002.

II. CONCLUSIONS OF LAW

In the case at bar, the debtors are asking this Court to grant them an extension of time to hire another attorney so that they can rebut the evidence the City presented about the condemnation order at the September 27, 2001, hearing. The debtors allege that the Board's issuance of the condemnation order was a bad faith exercise of its police or regulatory powers and, therefore, should not have been excepted from the provisions of 11 U.S.C. § 362's automatic stay.

In its October 10, 2001, memorandum opinion and order, this Court noted that:

[In *Javens*], the Sixth Circuit noted state and local officials attempting to enforce their police or regulatory powers would be presumed to be acting in good faith; however, if a debtor could rebut this presumption with concrete evidence of bad faith, a court could prevent a governmental unit from attempting to exercise its police power under § 362.

[In the case at bar,] [t]he debtors did not make any allegations or offer any proof that the City officials were acting in bad faith. Therefore, the Court finds that in condemning and seeking to demolish the buildings, the City of Dyersburg is well within the boundaries of § 362(b)(4). The demolition of the buildings is not stayed by the filing of the debtors' bankruptcy petition.

This order became a final order of the Court on October 20, 2001. FED. R. BANKR. P. 9023. Federal Rule of Civil Procedure 60, made applicable to bankruptcy cases by FED. R. BANKR. P. 9024, allows a party relief from a final judgment due to "mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, etc."

In the case at bar, the debtors have not alleged any of the grounds listed in Rule 60. Even assuming that they had, however, there is no relief this Court can give them. The buildings have already been demolished by the City. The debtors' request for relief is

moot. *See, Javens*, 107 F.3d at 367. The Court cannot now find that the City was exercising its police power in bad faith when it issued the condemnation order and, therefore, stop the demolition of the buildings. They have already been destroyed.

Despite this Court's ruling, the debtors are not without recourse against the City if the state and local authorities violated their rights. The debtors are free to file a state court lawsuit against the City in Chancery Court.

III. ORDER

It is therefore **ORDERED** that the debtors' "Motion to Extend Time to Employ Attorney" is **DENIED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: January 24, 2002