

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE:

KEITH O'NEIL THOMPSON,
Debtor.

Case Number 98-33606-whb
Chapter 13

OPINION AND ORDER ON MOTION FOR RELIEF FROM STAY

Earl's Used Cars, an unsecured creditor in this Chapter 13 case, filed its motion for relief from the co-obligor stay imposed by 11 U.S.C. § 1301. The motion asserts that Earl's is a judgment creditor against this Chapter 13 debtor by virtue of a Shelby County General Sessions Court prebankruptcy judgment and that Earl's obtained a judgment against this debtor's employer, Jungkind Photographic, as a result of Jungkind's alleged failure to respond to a garnishment. Jungkind filed its response, opposing the motion and asserting that the final judgment against it had been overturned by the General Sessions Court. That order is currently pending on appeal to the Circuit Court of Shelby County, Tennessee, an appeal that is admittedly stayed by this debtor's Chapter 13 filing. The debtor's attorney and the attorney for Jungkind appeared at the hearing on this motion to oppose relief and they asserted, without an offer of proof, that the debtor's employment would be in jeopardy if relief was granted. A copy of an opinion from Chief District Judge Julia S. Gibbons was presented to this Court as authority that Earl's motion should be denied, and counsel for Jungkind presented several noncontrolling cases addressing similar issues. The Court will grant relief from the automatic stay, and also under §1301, and this opinion will discuss the Court's conclusions leading to that relief. There is no dispute of facts in this case.

Earl's motion seeks relief under § 1301, but it is unclear that Jungkind is a co-obligor of the type covered by that section of the Bankruptcy Code. That section protects "any individual that is liable on [a consumer] debt with the debtor," and it is not clear that the term "individual" was intended to protect an entity such as Jungkind. Moreover, it is unclear in this case that the obligation of Jungkind would be a co-obligor debt; rather, it would appear that Jungkind's obligation to Earl's is a separate one, under Tennessee law, arising from the independent duty of an employer to respond to a garnishment. TENN. CODE ANNOT. § 29-7-112; *see also First Tennessee Bank Nat'l Assoc. v. Warner (In re Warner)*, 191 B.R. 705 (Bankr. W.D. Tenn. 1996) (discussing this and related Tennessee garnishment statutes). It was stipulated that this debtor's confirmed plan did not propose payment of 100% of unsecured claims, such as Earl's. If this is a § 1301 obligation, the fact that the debt is not being paid in this plan would be grounds for relief from the § 1301 stay. 11 U.S.C. § 1301(c)(2). Since cause exists, under 11 U.S.C. § 362(d)(1), to grant relief from the § 362(a) automatic stay, it is unnecessary for the Court to determine whether Jungkind's obligation is of the type protected by § 1301. Even if it is, grounds exist to grant relief under that statute as well.

Although the motion did not specify relief under § 362(d), that relief is encompassed within the motion, and Jungkind's response recognized that fact. The motion seeks "relief from the stay to proceed against Jungkind Photographic as an additional and separate obligor of the indebtedness." The response says that Earl's "is in violation of the automatic stay in its continuing efforts to proceed to take judgment against the debtor's employer, Jungkind Photographic."

Upon the Court's query as to reasons for denying relief, Jungkind's counsel referred to the threat to the debtor's job if Jungkind were forced to defend itself in the state court. The debtor's attorney also responded that the debtor felt threatened in his employment security. The Court is

sensitive to the debtor's concern; however, the issue before the Court may be succinctly expressed as follows: Is there cause to grant relief from the automatic stay to permit Earl's Used Cars to determine in appropriate state courts whether it is entitled to a judgment against Jungkind Photographic? This is a different issue from that before Judge Gibbons in her affirmation of Chief Judge David S. Kennedy, *Aetna Casualty and Surety Company v. Delta Mailing Service, Inc.*, Case Number 86-2692 (W. D. Tenn. July 29, 1988). In *Aetna*, the bankruptcy judge found that the creditor's postbankruptcy garnishment judgment against Delta was a violation of the stay provisions of § 362(a)(4). The debtor in that case, Gerry K. Eubanks, had filed for Chapter 13 relief on November 13, 1985, and Aetna obtained a conditional judgment against Mr. Eubanks's employer Delta on that same day. Then, on November 17, 1985, after the bankruptcy petition was filed and without seeking relief from the automatic stay, Aetna obtained a final judgment against the employer. Delta moved in the bankruptcy case to have the final judgment set aside and Judge Kennedy granted that motion. Without difficulty, Judge Gibbons affirmed that result. It is true that in dicta Judge Gibbons discussed whether the conditional and final judgments against an employer are actually indirect efforts to collect from the debtor's future wages, which under § 1306(a)(2) are property of the bankruptcy estate, but the basis for her affirming order was that the postbankruptcy judgment was a violation of the automatic stay.

This is not the issue before this Court. Here, the creditor moved for relief from the stay, and no actions were alleged to have been taken in violation of that stay. Earl's merely wants to proceed in the pending appeal before the Circuit Court to have that state court determine if it is entitled to a judgment against Jungkind. If this Court denies such relief, who would decide if such liability exists? It is not at all clear that this issue would be a core proceeding under 28 U.S.C. § 157(b)(2).

There is a prebankruptcy judgment from the General Sessions Court that is on appeal to the Circuit Court. This Court, as a federal trial court, should not become a state appellate court. *See In re Johnson*, 210 B.R. 1004 (Bankr. W. D. Tenn. 1997), where this Court discussed the *Rooker-Feldman* Doctrine so holding. It would be unduly prejudicial to the creditor in this case to leave the state court's determination of Jungkind's liability in limbo. This Court has no knowledge, for example, whether Jungkind would remain in place and financially viable until the end of this bankruptcy case. Moreover, the fact that this debtor is not proposing to pay the debt to Earl's in full, coupled with maintenance of the automatic stay against Jungkind, would extend bankruptcy protection against a third party without a showing of cause to do so. The mere speculation that the debtor's employment status may suffer if Jungkind is required to prosecute its state court appeal is not a basis to extend extraordinary relief to Jungkind. The Court notes, also, that Jungkind asserts in its written response that it has a defense to Earl's garnishment claim. It is in the interests of all parties to have a determination by the state courts whether there is such a defense.

CONCLUSION AND ORDER

Based upon this Court's conclusions in this particular case, cause is found pursuant to 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay, and from the co-obligor provisions of § 1301, to permit Earl's Used Cars and Jungkind Photographic to proceed in the state courts to determine to finality whether Jungkind is obligated to Earl's. However, the automatic stay is lifted only for that purpose. Should the final state court judgment be that Jungkind is not obligated to Earl's, that would end this matter. Should, however, the final state court judgment be in favor of Earl's, the automatic stay remains in effect pending a further hearing in this Court to determine if it should be further lifted to permit collection against Jungkind. Counsel for Earl's has responsibility

to file a further pleading in this Court, should a further hearing be necessary here. This procedure will provide an opportunity for this Court to determine if collection would be from property of this bankruptcy estate. Should this bankruptcy case be dismissed or closed prior to the finality of a state court judgment, no stay would remain in effect to prohibit Earl's collection against Jungkind.

SO ORDERED, this January 21, 1999.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY
JUDGE

Law Offices of Raymond Weber & Assoc.
Attorney for Debtor
P.O. Box 41497
Memphis, TN 38174-1497

George F. Higgs
Attorney for Earl's Used Cars
200 Jefferson Avenue, Suite 1000
Memphis, TN 38103

Susan Breymaier
Attorney for Jungkind Photographic
P.O. Box 17235
Memphis, TN 38187-0235

George W. Emerson
Chapter 13 Trustee
200 Jefferson Avenue, Suite 1113
Memphis, TN 38103