

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 06-55754

GLENN RICHARD UNDERWOOD,

Chapter 11

Debtor.

Judge Thomas J. Tucker

GLENN RICHARD UNDERWOOD, *pro se*,

Plaintiff,

v.

Adv. Pro. No. 14-4966

PATRICIA SELENT, *pro se*, et al.,

Defendants.

OPINION AND ORDER DENYING PLAINTIFF’S MOTION FOR AN INJUNCTION

This adversary proceeding is before the Court on Plaintiff’s motion, filed January 27, 2015, entitled “Motion for an Injunction to Allow Time to Determine Applicability of Automatic Stay under 11 U.S.C. 362(a)(c) and (g) Pending the Filed Interlocutory Appeal of the December 10, 2014 U.S. Bankruptcy Court Order Pursuant to Fed. R. Civ. Proc. 65, Bank. Rule 7065; and Fed. R. Civ. Pro. 7, Bank Rule 7001(7)” (Docket # 107, the “Motion”).

In his Motion, Plaintiff requests the following forms of relief: (i) a determination as to whether the automatic stay is in place due to the reopening of Plaintiff’s bankruptcy case on August 27, 2014 (*see* Order, Docket # 214, Bankruptcy Case No. 06-55754); (ii) a stay pending Plaintiff’s appeal of this Court’s interlocutory order filed on December 10, 2014; and (iii) the entry of an injunction. The Court will deny the Motion in its entirety, for the following reasons.

First, there is no automatic stay in effect, because:

(a) the automatic stay terminated, by operation of law, no later than August 6, 2007, when the conditions under 11 U.S.C. § 362(c)(1) and (2) occurred.¹

Under § 362(c)(1), the automatic stay of an act against property of the estate continues until the property is no longer property of the estate. Article VII, page 23 of the Debtor's "First Modified Combined Plan and Disclosure Statement" (Docket # 67, the "First Modified Combined Plan," Bankruptcy Case No. 06-44754), provided that the Debtor was "vested with title to all property of the estate." *See also* 11 U.S.C. § 1141(b)("[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a [Chapter 11] plan vests all of the property of the estate in the debtor"). Article IX of the Debtor's First Modified Combined Plan, at page 24, provided that the effective date of the Debtor's First Modified Combined Plan would be 11 days after the date the order of confirming plan ("OCP") was entered. The OCP was entered on July 24, 2007 (Docket # 114). This means that the effective date of the Debtor's First Modified Combined Plan was Monday, August 6, 2007.

Based on these provisions of the Debtor's First Modified Combined Plan, the automatic

¹ Section 362(c)(1) and (2) state that, with exceptions not applicable here,

- (1) **the stay of an act against property of the estate** under subsection (a) of this section continues **until such property is no longer property of the estate;**
- (2) **the stay of any other act under subsection (a)** of this section **continues until the earliest of—**
 - (A) the time the case is closed;
 - (B) the time the case is dismissed; or
 - (C) **if the case is** a case under chapter 7 of this title concerning an individual or **a case under chapter 9, 11, 12, or 13** of this title, **the time a discharge is granted or denied;**

11 U.S.C. § 362(c)(1) and (2)(emphasis added).

stay of any act against property of the estate ceased once such property vested in the Debtor on August 6, 2007. As such, the Debtor's interest in any of the funds currently escrowed or on deposit with the Oakland County Circuit Court, in connection with its Case No. 04-056175-CB, would no longer be protected by the automatic stay.

In addition, under § 362(c)(2)(C), any other act stayed by subsection (a) of Section 362 continued until the debts to the Defendants in this adversary proceeding were determined to be nondischargeable, in the OCP (Docket # 114). *See generally Boatmen's Bank of Tennessee v. Embry (In re Embry)*, 10 F.3d 401 (6th Cir. 1993).² This means that under § 362(c)(2)(C), the automatic stay continued until entry of the OCP on July 24, 2007.

(b) the automatic stay did not arise again merely because the Debtor's Chapter 11 case was reopened on August 27, 2014.

For these reasons, the Oakland County Circuit Court was correct in its January 15, 2015 Opinion and Order (Ex. 1, Docket # 107), when it held that there is no automatic bankruptcy stay in place that bars that court from disbursing the escrow funds at issue, consistent with this Court's December 10, 2014 Order (Docket # 65).

Second, except for the automatic stay issue discussed above, the Motion is at most just another motion for a stay pending appeal, which this Court already denied in its January 26, 2015

² In the *Embry* case, the United States Court of Appeals for the Sixth Circuit held that the phrase "the time a discharge is granted or denied" in 11 U.S.C. § 362(c)(2)(C) includes not only the time when a Chapter 7 debtor's discharge is denied altogether under 11 U.S.C. § 727(a), but also the time when an individual creditor's debt is determined by the bankruptcy court to be nondischargeable under § 523(a). As a result, when the bankruptcy court determines that a particular debt is nondischargeable under one or more provisions of § 523(a), the automatic stay terminates under § 362(c)(2)(C), with respect to any act that creditor may take to collect the nondischargeable debt, other than acts against property of the estate. *See* 10 F.3d at 403-04. The holding of *Embry* is applicable in the Debtor's bankruptcy case even though the Debtor filed a Chapter 11 case.

Order (Docket # 105), and this aspect of the Motion must be denied for the same reasons again.

Third, there is no valid basis alleged in the Motion for the Court to enter an injunction.

For these reasons,

IT IS ORDERED that the Motion (Docket # 107) is denied, in its entirety.

Signed on February 5, 2015

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge