

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:12-bk-6997-PMG

Danny J. Suggs,

Debtor.

Chapter 7

**ORDER ON MOTION OF THE SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT'S MOTION FOR RELIEF FROM STAY**

THIS CASE came before the Court for hearing on the Motion of the Southwest Florida Water Management District (the District) for Relief from Stay. (Doc. 116).

On July 9, 2009, a Judgment was entered in favor of the District and against the Debtor in a State Court action in Sumter County, Florida. In the current Motion, the District seeks relief from the stay to ask the State Court to correct a clerical error in the Judgment pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure. According to the District, the Judgment should be corrected to identify the Debtor's wife as a person against whom the Judgment was entered.

Section 362(d)(1) of the Bankruptcy Code provides that the automatic stay may be modified for "cause." In this case, "cause" exists to allow the District to seek relief from the Judgment in State Court, because of a Court's inherent authority to correct its own clerical mistakes, and the Bankruptcy Code's general policy of respect for State processes.

Background

On July 9, 2009, the Circuit Court for Sumter County, Florida, entered a Final Judgment in a case styled Southwest Florida Water Management District v. Danny J. Suggs, Gary D. Suggs, Joann Suggs-Krueger, Joseph M. Krueger, Harold W. Steed, and Lisa Steed, Case No. 2003-CA-000724. (Doc. 77, Exhibit G). Pursuant to the Final Judgment, the Defendants were liable to the District for an amount that exceeded \$1,718,450.00, and were required to apply for an Environmental Resource Permit for the restoration of certain property.

The Final Judgment was recorded in the public records of Sumter County, Florida, in 2009, and a Judgment Lien Certificate was recorded with the Secretary of State in 2010. (Doc. 77, Exhibits G, H).

On October 25, 2012, the Debtor, Danny J. Suggs, filed a petition under Chapter 7 of the Bankruptcy Code. His wife, Deborah Suggs, is not a debtor in the bankruptcy case.

On his schedules, the Debtor listed various parcels of jointly-owned real property, and claimed the real property as exempt pursuant to §522(b)(3)(B) of the Bankruptcy Code. Generally, §522(b)(3)(B) provides an exemption for property held as a tenant by the entirety.

The District objected to the Debtor's exemptions, and asserted that the Debtor is not entitled to claim the real property as exempt under §522(b)(3)(B) because his wife is jointly liable for the debt owed to the District. (Doc. 16).

On October 3, 2013, the Court entered an Order on the District's objection to exemptions. (Doc. 101). In the Order, the Court determined that "the District does not hold a judgment against both the Debtor and the Debtor's wife, because its Final Judgment does not identify the Debtor's spouse as a person against whom judgment is rendered, as required by §55.01 of the Florida Statutes."

On January 14, 2014, the District filed the Motion for Relief from Stay that is currently before the Court. In the Motion, the District “seeks relief from the automatic stay to petition the Circuit Court under Fla. R. Civ. P. Rule 1.540(a) to correct an error of omission in the final judgment *nunc pro tunc* to accurately reflect that judgment was rendered against all of the Suggs Family Defendants, including judgment debtors Deborah Suggs, Amber Suggs, and Amanda Suggs.” (Doc. 116, p. 2).

Discussion

The District filed the Motion for Relief from Stay pursuant to §362(d)(1) of the Bankruptcy Code. Generally, §362(d)(1) provides that, upon the request of a party in interest, the Court shall terminate, annul, modify, or condition the automatic stay for “cause.” 11 U.S.C. §362(d)(1).

The Eleventh Circuit Court of Appeals recently explained the case-by-case analysis that is required for a determination of “cause” under §362(d)(1):

The term “cause” is not defined in §362(d)(1) or elsewhere in the Bankruptcy Code. (Citations omitted).

There is no set of circumstances that a bankruptcy court is required to consider in evaluating whether §362(d)(1) “cause” exists to lift the automatic stay. Rather, courts evaluating whether to grant stay relief have looked to a variety of case-specific factors, including (1) whether the debtor has acted in bad faith, . . . ; (2) the “hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code,” . . . ; and (3) pending state court proceedings.

In re Feingold, 730 F.3d 1268, 1276-77 (11th Cir. 2013). “‘Cause’ is an intentionally broad and flexible concept which must be determined on a case-by-case basis.” In re Brown, 311 B.R. 409, 412-13 (E.D. Pa. 2004)(quoted in In re Project Orange Associates, LLC, 432 B.R. 89, 103 (Bankr. S.D.N.Y. 2010)).

In this case, the District seeks relief from the stay to ask the State Court to correct a clerical error in a Judgment that was entered in 2009. “Cause” exists to modify the stay under §362(d)(1), because of a

Court's inherent authority to correct its own clerical mistakes, and the general policy of respect for state processes.

A. A Court's authority to correct clerical errors

First, the State Court has the authority to correct clerical errors contained in its own orders and judgments.

The District proposes to “petition the Circuit Court under Fla. R. Civ. P. Rule 1.540(a) to correct an error of omission in the final judgment *nunc pro tunc*.” (Doc. 116, p. 2). Rule 1.540(a) of the Florida Rules of Civil Procedure provides that clerical mistakes contained in a state court judgment may be corrected by the State Court at any time. Specifically, the Rule provides:

Rule 1.540. Relief from Judgment, Decrees, or Orders

(a) Clerical Mistakes. Clerical mistakes in judgments, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Fla. R. Civ. P. 1.540(a). “Rule 1.540(a) allows the court to correct clerical mistakes, and errors from oversight or omission, in any part of the record at any time.” McKibbin v. Fujarek, 385 So.2d 724, 725 (Fla. 4th DCA 1980). See also Malone v. Percival, 875 So.2d 1286, 1288 (Fla. 2d DCA 2004)(A trial court may correct a clerical error at any time pursuant to Rule 1.540(a)).

A parallel provision is found in the Federal Rules of Civil Procedure. Rule 60(a) of the Federal Rules provides that a “court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed.R.Civ.P. 60(a).

It is axiomatic that courts have the power and the duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake.

Gagnon v. United States, 193 U.S. 451, 24 S.Ct. 510, 48 L.Ed. 745. Rule 60(a) of the Federal Rules of Civil Procedure, 28 U.S.C.A., recognizes this power

American Trucking Associations v. Frisco Transportation Company, 358 U.S. 133, 145, 79 S.Ct. 170, 3 L.Ed.2d 172 (1958). Under Rule 60(a), for example, federal courts are authorized to correct mechanical errors in orders to reflect their intent at the time of the ruling. In re McClellan, 459 B.R. 371, 373 (Bankr. E.D. Wisc. 2011). See also In re McBride, 203 B.R. 633, 636 (Bankr. S.D. Ohio 1996)(“It is well settled that all courts, including bankruptcy courts, have the power to correct their own mistakes.”).

In this case, the Judgment against the Debtor was entered by the Circuit Court of Sumter County, Florida. The District asserts that the Debtor’s wife, Deborah Suggs, was a named defendant in the State Court action, but that she was omitted from the form of Judgment due to a clerical error. (Doc. 116). The District therefore proposes to ask the State Court to correct the clerical error pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure.

This Court makes no determination as to whether the omission of Deborah Suggs from the Judgment is the type of “clerical mistake” that may be corrected pursuant to Rule 1.540(a). Clearly, the Rule applies only to “accidental slips” or technical errors, and not to errors of substance. Malone v. Percival, 875 So.2d at 1288; McKibbin v. Fujarek, 385 So.2d at 725. Nevertheless, the Judgment was entered by the State Court, and the State Court has the authority to correct clerical errors in its own orders and judgments pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure.

B. Respect for State processes

Second, the stay should be modified for “cause” under §362(d)(1) because of the Bankruptcy Code’s general policy of respect for state processes.

Specifically, the Bankruptcy Code recognizes that “under proper circumstances, it is more appropriate to have a state court hear certain matters of state law,” even if a federal court otherwise possesses jurisdiction. In re Hospitality Ventures/Lavista, 314 B.R. 843, 850 (Bankr. N.D. Ga. 2004)(quoted in In re Queen, 2013 WL 6116864, at 1 (Bankr. N.D. Ga.)). Section 1334(c)(1) of title 28, for example, provides:

28 U.S.C. §1334. Bankruptcy cases and proceedings

...

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. §1334(c)(1). This provision for permissive abstention reflects that, in limited circumstances, “federal courts should abstain from ruling on a controversy within their jurisdiction, and in every one it is because of a determination that important policy grounds such as federalism or respect for state processes make it appropriate or necessary that the matter be resolved in a state tribunal.” In re Hospitality Ventures/Lavista, 314 B.R. at 850(Emphasis supplied).

In this case, the District asserts that its dispute with the Debtor in State Court “has been a long, tumultuous litigious battle,” that the basis of this Court’s Order on the Debtor’s exemptions “is materially different than what transpired in Circuit Court,” and that the Order on exemptions justifies a request for the State Court to correct an alleged clerical error in the Judgment. (Doc. 116, p. 8).

Specifically, the District contends that it filed the State Court action against the Debtor in 2003, that the State Court granted the District’s motion to add the Debtor’s wife as a defendant in 2006, that the Debtor’s wife actively participated in the litigation as a defendant in both pre-Judgment and post-

Judgment proceedings, and that the Debtor's wife was never dismissed as a defendant from the action. (Doc. 116, pp. 2-4). The name of the Debtor's wife, however, does not appear anywhere in the Judgment that was entered on July 9, 2009, as required by §55.01 of the Florida Statutes. Consequently, the District asserts that the Judgment should be corrected to identify the Debtor's wife as a person against whom the Judgment was rendered, and proposes to ask the State Court to correct the error pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure.

Under these circumstances, the stay should be modified to allow the District to seek relief from the Judgment in State Court. The State Court action has been litigated for more than ten years, the State Court is most familiar with the proceedings that were conducted in the action, the State Court entered a Judgment in 2009, the District has explained its basis for asserting that a mistake appears in the Judgment, and Rule 1.540(a) provides a specific State law procedure to address the District's assertion.

For these reasons, the District should be permitted to file a motion to correct the Judgment in State Court under Rule 1.540(a), because of the Bankruptcy Code's general policy of respect for State processes.

Conclusion

On July 9, 2009, a Judgment was entered in favor of the District and against the Debtor in a State Court action in Sumter County, Florida. In the current Motion, the District seeks relief from the stay to ask the State Court to correct a clerical error in the Judgment pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure. According to the District, the Judgment should be corrected to identify the Debtor's wife as a person against whom the Judgment was entered.

Section 362(d)(1) of the Bankruptcy Code provides that the automatic stay may be modified for “cause.” In this case, “cause” exists to allow the District to seek relief from the Judgment in State Court, because of a Court’s inherent authority to correct its own clerical mistakes, and the Bankruptcy Code’s general policy of respect for State processes.

Accordingly:

IT IS ORDERED that the Motion of the Southwest Florida Water Management District for Relief from Stay is granted, and the automatic stay is modified to permit the District to seek relief in State Court from the Final Judgment entered on July 9, 2009, pursuant to Rule 1.540(a) of the Florida Rules of Civil Procedure.

DATED this 4 day of March, 2014.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge