

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Case No. 3:13-bk-4191-PMG

Henri Antonie Erkelens, III,

Debtor.

Chapter 11

**ORDER ON MOTION FOR RELIEF FROM STAY NUNC PRO TUNC TO NOVEMBER 13,  
2013, AND FOR A DECLARATION THAT THE AUTOMATIC STAY DOES NOT APPLY  
TO A PROOF OF CLAIM FILED BY RICHARD W. GANNETT**

**THIS CASE** came before the Court for hearing to consider the Motion for Relief from Stay *nunc pro tunc* to November 13, 2013, and for a Declaration that the Automatic Stay does not Apply to a Proof of Claim filed by Richard W. Gannett (Gannett). (Doc. 77).

On July 8, 2013, Gannett received "a 50% interest" in a Judgment against the Debtor. In the Motion under consideration, Gannett requested: (1) permission to enforce the Judgment "in any state and/or federal court," and (2) a determination that he did not violate the stay in this case by filing a Proof of Claim based on the Judgment.

The Judgment debt was discharged in a prior bankruptcy case filed by the Debtor, and Gannett's Claim based on the Judgment in this case has been disallowed. Consequently, Gannett's request for permission to enforce the Judgment should be denied.

The filing of a Proof of Claim, however, does not generally constitute a stay violation. Gannett did not violate the stay by filing his Proof of Claim in this case, therefore, even though the Claim was later disallowed. The Court makes no determination as to whether filing the Claim violated the discharge injunction entered in the Debtor's prior bankruptcy case.

### **Background**

Tammie K. Erkelens (Tammie) is the former wife of the Debtor, Henri Antonie Erkelens, III. The Debtor's marriage to Tammie was dissolved in 2006.

On or about March 7, 2008, a state court Judgment (the Judgment) was entered in favor of Tammie and against the Debtor in the amount of \$265,500.00. The Judgment was based on certain obligations related to the dissolution of marriage.

On June 27, 2012, Tammie filed a petition under Chapter 7 of the Bankruptcy Code. (Case No. 3:12-bk-4260-PMG). On July 8, 2013, Tammie and Gannett entered into a Mediated Settlement Agreement in Tammie's Chapter 7 case. Pursuant to the Mediated Settlement Agreement, Tammie assigned a 50% interest in the Judgment to Gannett.

On July 8, 2013, the same date that Tammie and Gannett signed the Mediated Settlement Agreement, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code.

On November 12, 2013, Gannett filed a Proof of Claim (Claim No. 4) in the Debtor's case. The Claim was filed in the amount of \$132,750.00, and was based on the Assignment of Judgment.

The Debtor filed an Objection to Gannett's Claim, and the Court entered an Order sustaining the Objection on September 12, 2014. (Doc. 83). In the Order, the Court found that the Judgment debt was determined to be dischargeable in a prior bankruptcy case filed by the Debtor in Massachusetts, and that the debt was discharged in the prior case under §727 of the Bankruptcy Code. Accordingly, the Court concluded that the Judgment debt is not enforceable in the Debtor's current Chapter 11 case, and disallowed Gannett's Claim.

### **Discussion**

In the Motion under consideration, Gannett seeks two forms of relief: (1) permission to enforce the Judgment "in any state and/or federal court," and (2) a determination that he did not violate the automatic stay in this case by filing his Proof of Claim.

Gannett filed the Motion for Relief from Stay before the Court entered the Order disallowing Gannett's Claim. At the hearing on the Motion, therefore, Gannett acknowledged that relief from the stay to pursue the Judgment in another forum is not appropriate, because the Court has now determined that the Judgment is not enforceable in the Debtor's current Chapter 11 case.

Even though the Judgment debt is not enforceable, Gannett also requests a determination that he did not violate the stay in this case by filing his Proof of Claim based on the Judgment. The request should be granted.

As a general rule, the automatic stay of section 362 does not operate against the court with jurisdiction over the bankruptcy. This means that actions that are specifically permitted under the Bankruptcy Code do not violate the automatic stay. (Citations omitted). For example, a creditor can file an adversary lawsuit seeking to establish the amount and dischargeability of a debt, even though the act would otherwise be regarded as a violation of the stay. Likewise a creditor can file a claim for a disputed debt, without violating the automatic stay, even if the claim is ultimately disallowed. (Citations omitted).

In re Clayton, 2010 WL 4008335, at \*3 (Bankr. E.D. Wash.)(Emphasis supplied). Filing a proof of claim is not a stay violation because (1) §501 of the Bankruptcy Code and Rule 3002 of the Federal Rules of Bankruptcy Procedure specifically provide for the filing of a proof of claim, and (2) the automatic stay does not operate against the court with jurisdiction over the bankruptcy. In re Roman, 2013 WL 6911375, at \*3 (Bankr. N.D. Ga.)(citing In re Nelson, 234 B.R. 528, 534 (Bankr. M.D. Fla. 1999)).

For these reasons, the Court finds that Gannett did not violate the automatic stay by filing his Proof of Claim in the Debtor's current Chapter 11 case.

The only issues addressed in this Order are Gannett's requests under the automatic stay provisions of §362, because the only matter before the Court is Gannett's Motion for Relief from Stay pursuant to §362(a) and §362(d) of the Bankruptcy Code. The Court makes no determination as to whether Gannett's filing of the Claim violated the discharge injunction of §524 that was entered in the Debtor's prior bankruptcy case. See In re Moore, 2014 WL 4851824, at \*8 (Bankr. E.D. Tenn.)(The "act of filing a proof of claim for a discharged debt can violate the discharge injunction of 11 U.S.C. §524(a).").

Accordingly:

**IT IS ORDERED** that:

1. The Motion for Relief from Stay filed by Richard W. Gannett is denied to the extent that Gannett seeks permission to enforce his interest in the state court Judgment entered on March 7, 2008, against the Debtor, Henri Antonie Erkelens, III.

2. The Motion for Relief from Stay is granted to the extent that Richard W. Gannett seeks a determination that he did not violate the automatic stay by filing a Proof of Claim in this case, and the

filing of Gannett's Proof of Claim No. 4 on November 12, 2013, did not violate the automatic stay provided by §362 of the Bankruptcy Code.

3. The Court makes no determination as to whether the filing of Proof of Claim No. 4 is a violation of the discharge injunction entered in the Debtor's prior bankruptcy case.

**DATED** this 22<sup>nd</sup> day of JANUARY, 2015.

**BY THE COURT**

*Paul M. Glenn*  
PAUL M. GLENN  
United States Bankruptcy Judge