

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

In re:

KEVIN ADELL,

Chapter 11 Case

Case No. 9:03-bk-23684-ALP

Debtor. _____/

**ORDER ON MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

(Doc. No. 350)

The matter under consideration in this Chapter 11 case of Kevin Adell (Debtor) is “Creditor John Richards Homes Building Company, LLC’s Motion for Relief from Automatic Stay as to the Garnishment Actions against STN.com and Adell Broadcasting Corp.,” filed by John Richards Homes Building Company, LLC (John Richards). John Richards, in its Motion, seeks relief from the automatic stay in order to proceed in the currently pending garnishment action commenced by John Richards against Adell Broadcasting Corp. (ABC), STN.com, Inc. (STN) and the Debtor.

A recap of the matters preceding the present Motion under consideration should be helpful and can be stated as follows: Prior to the commencement of the Chapter 11 case, the Bankruptcy Court in the Eastern District of Michigan dismissed an involuntary case filed by the Debtor against John Richards and entered thereafter a sanction award against the Debtor for \$6,413,230.68.

In order to collect the judgment, John Richards commenced a garnishment proceeding against the employers of the Debtor, STN and ABC, and sought a judgment concerning the wages allegedly owed to the Debtor by the two entities. In response to the garnishment suit, ABC and STN filed an answer under oath, stating that they are not indebted to the Debtor for any salary. According to John Richards, this was a false response and misrepresented the characterization of the funds they paid to the Debtor.

After the Debtor filed his petition for relief under Chapter 11 in this Court, the Debtor filed an adversary proceeding and sought a determination that ABC and STN are creditors of the Debtor based on certain loans. On March 23, 2004, this Court entered an order and granted the Debtor's motion to abate the adversary proceeding. The order of abatement was entered for the sole purpose of permitting the Bankruptcy Court in the Eastern District of Michigan to rule whether or not the proceeding against ABC and STN would be a violation of the automatic stay. On June 9, 2004, the Bankruptcy Court in the Eastern District of Michigan ruled that the automatic stay applies to the garnishment proceeding.

Based on this, John Richards now seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) or, alternatively, because the debt owed by ABC and STN is independent of any debt of the Debtor, thus is not

property of the estate of the Debtor pursuant to 11 U.S.C. § 541 and, therefore, not protected by the automatic stay.

In support of this proposition, John Richards alleges that under the applicable law of Michigan governing garnishments, the liability of ABC and STN is an independent liability based on the false and deceptive answers filed by ABC and STN to the suit for garnishment filed by John Richards. According to John Richards, the pursuit of this claim against ABC and STN does not impact any property of the Debtor's estate.

In the alternative, John Richards seeks relief, as noted earlier, under Section 362(d)(1) of the Code and contends that the interest of John Richards in the garnishment procedure is not protected and has not been protected since the filing of the petition. Lastly, John Richards contends that based on the allegation that the Debtor has no equity in the property, the property is not necessary for effective reorganization.

Concerning this last proposition first, this Court is at a loss to understand what is the particular identifiable property of this Debtor in which John Richards has an interest, which interest is entitled to protection. The most that could be said is that the property involved in the garnishment proceeding is a claimed chose of action by John Richards against ABC and STN and this is not property

of the Debtor's estate but, more importantly, there is no basis whatsoever as a matter of law that this chose of action is entitled to any adequate protection.

In this connection, it also should be noted that John Richards also seeks relief under Section 362(d)(2) of the Code, alleging the Debtor has no equity and the property is not needed for an effective reorganization. If this Court is construing the Motion correctly that the property involved is the claimed chose of action, that is certainly not the property in which the question of equity ever comes into play. That chose of action is not encumbered by any interest and not needed for an effective reorganization. Thus, a reliance by John Richards for relief under this section of the Code is misplaced and is baseless.

This leaves for consideration the alternative theory that the action by John Richards against ABC and STN is a stand-alone independent obligation of STN and ABC and, therefore, not subject to the protection of the automatic stay. The short answer to that contention is simple because the Bankruptcy Court in the Eastern District of Michigan already ruled that the garnishment proceeding is subject to the automatic stay and this Court is disinclined to revisit that ruling and state or arrive at a different conclusion because this Court is satisfied that the Bankruptcy Court in Michigan was correct and the automatic stay prohibits John Richards to pursue its claim in the garnishment proceeding against ABC and STN.

Based on the foregoing, this Court is satisfied that the Motion is not well taken.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that Motion for Relief from Stay be, and the same is hereby, denied.

DONE AND ORDERED at Tampa, Florida, on October 15, 2004.

/s/ Alexander L. Paskay
ALEXANDER L. PASKAY
United States Bankruptcy Judge