

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock & _____ min _____ M
JUN 29 2005
United States Bankruptcy Court
Columbia, South Carolina (26)

IN RE:)
)
Pegasus Management and Investment, Inc.,)
)
Debtor,)
_____)
)
Ralph C. McCullough, II,)
as Trustee for the Estate of)
Pegasus Management and)
Investment, Inc.)
Plaintiff,)
)
vs.)
)
Christopher M. Dubose, Natalie)
DuBose, and Yolanda Coleman,)
)
Defendants.)
_____)

Chapter 7
Asset Case

Bky. No.:05-06152-W

Asset Case

Adv. Pro. No: 05-80172-W

ENTERED

JUN 29 2005

B. R. M.

ORDER GRANTING PRELIMINARY INJUNCTION

This matter comes before the Court on the Plaintiff's Motion for a Preliminary Injunction (the "Motion") seeking to prevent the transfer and disposition of the proceeds from the sale of a residence obtained through funds allegedly diverted from the Debtor's bank accounts (the "Diverted Funds"). This motion relates to the above captioned litigation against Christopher DuBose, Natalie DuBose (collectively, the "DuBoses") and Yolanda Coleman. A hearing was held on this matter on June 28, 2005. Present at the hearing were the attorneys for the Plaintiff, J. Michael Brown, Esquire and Richard R. Gleissner, Esquire; David Wilkerson, Esquire, Attorney for Natalie DuBose; and Yolanda Coleman.

At the hearing, the Plaintiff submitted as Exhibit A a certificate of service evidencing that Christopher M. DuBose was served with a copy of the Motion at the Greenville County Detention Center on June 24, 2005. The Plaintiff submitted as Exhibit B a certificate of service evidencing that Lyle Kilvington Porter, domestic attorney for Natalie DuBose and holder of the Diverted Funds, was served by e-mail, facsimile and by United States Mail, postage prepaid with a copy of the Motion. The Plaintiff submitted as Exhibit C a certificate of service evidencing that Yolanda Coleman was served by United States Mail, postage prepaid and by Certified Mail, Return Receipt Requested, with a copy of the Motion. As mentioned above, David Wilkerson, Esquire, appeared on behalf of Natalie DuBose.

Based upon the record in this matter, including the filings made the Plaintiff, the exhibits introduced at the hearing, and the arguments and statements by counsel at the hearing, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. On June 20, 2005, this Court entered an Order Granting Temporary Restraining Order preventing the disbursement of the Diverted Funds until further Order of this Court (and subject to this Court's hearing on the preliminary injunction).

2. At the hearing, the Plaintiff introduced as Exhibits D, E, H, I, and J, copies of various bank records from the Debtor showing transfers to Citifinancial which are alleged to have been paid with the Diverted Funds.

¹ To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

3. The Plaintiff represented that he believes additional payments were made on the mortgage and other obligations owed by the DuBoses and Yolanda Coleman from the Diverted Funds. The Trustee has subpoenaed the Debtor's bank records which will be used to support these claims.

STANDARD OF LAW

Under Bankruptcy Rule 7065 the Bankruptcy Court applies Rule 65 of the Federal Rules of Civil Procedure when considering a motion for preliminary injunction. The Bankruptcy Court must apply four factors when determining whether to issue a preliminary injunction: "(1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied; (2) the likelihood of harm to the defendant if the injunction is granted; (3) the likelihood that the plaintiff will succeed on the merits; and (4) the public interest." In re Microsoft Corp. Antitrust Litigation, 333 F.3d 517, 526 (4th Cir. 2003), quoting Safety-Kleen v. Wyche, 274 F.3d 846, 858-859 (4th Cir. 2001). See also Anderson v. Blair (In re Blair), C/A No. 99-08835-W, Adv. Pro. No. 99-80410-W (Bankr. D. S.C. Jan. 25, 2000). The likelihood of irreparable harm to the plaintiff and the harm to the defendant are the two (2) most important factors. Id.

CONCLUSIONS OF LAW

1. The Court holds that the Plaintiff would suffer immediate and irreparable harm absent a temporary restraining order through the dissipation or consumption of the assets the Plaintiff is pursuing. "That irreparable harm would occur . . . is even more apparent where the very assets subject to a potential judgment will likely be dissipated without entry of the order." Elliott v. Kiesewetter, 98 F.3d 47, 58 (3d Cir.1996). The Plaintiff represented that the attorney who is holding the money in trust has indicated to the Trustee's attorneys that the funds will be disbursed upon the

expiration of any temporary restraining order. Clearly, irreparable injury will result without the issuance of a temporary restraining order.

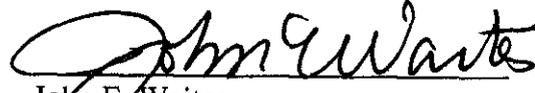
2. The Court holds that in this case no more harm is inflicted than is reasonably necessary to prevent the Plaintiff from suffering an irreparable injury. As represented by counsel for Natalie DuBose, Ms. DuBose received in excess of \$50,000.00 recently from the proceeds of the sale of the residence. Ms. DuBose should be able to support herself and her children with these funds while this preliminary injunction is in place. Therefore, substantial harm is not inflicted on the DuBoses.

IT IS THEREFORE ORDERED that the Plaintiff's request for a Preliminary Injunction is granted.

IT IS FURTHER ORDERED that the Preliminary Injunction shall remain in place until further Order of the Court, with a continued hearing on the preliminary injunction to be held on July 26, 2005 at 9:00 a.m. at the United States Bankruptcy Court for the District of South Carolina in Columbia, South Carolina, before the undersigned.

IT IS FURTHER ORDERED that service of this Order Granting Preliminary Injunction on Lyle Kilvington Porter by facsimile, e-mail, or First Class Mail shall serve as sufficient notice and that Lyle Kilvington Porter is hereby prevented from disbursing the Diverted Funds in the amount of \$23,475.00 until further Order of the Court, with a continued hearing on the preliminary

injunction to be held on July 26, 2005 at 9:00 a.m. at the United States Bankruptcy Court for the District of South Carolina in Columbia, South Carolina, before the undersigned.


John E. Waites
United States Bankruptcy Court Judge

June 29, 2005