

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 04-4313

Judgment

The relief set forth on the following pages, for a total of 2 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
01/17/2008



Entered: 01/17/2008


US Bankruptcy Court Judge
District of South Carolina

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

IN RE:

Corner Pocket Billiards, Inc.,

Debtor.

C/A No. 04-04313-HB

Chapter 7

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the stay of 11 U.S.C. § 362 is lifted to allow the finalization of the case of Linda Leslie, as Personal Representative of the Estate of Linda Allison Leslie, Deceased, v. Corner Pocket Billiards, Inc., Case No. 2003-CP-23-06508R (pending in the Court of Common Pleas for the State of South Carolina, County of Greenville) via further appeal of the settlement decision and if necessary, to complete discovery and all other matters leading to a trial on the merits. Creditor shall seek collection of any resulting debt from this Debtor's assets through the bankruptcy court claims process only, absent any future motion and further order for relief.

IT IS SO ORDERED.

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 04-04313

ORDER

The relief set forth on the following pages, for a total of 7 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
01/17/2008



Entered: 01/17/2008


US Bankruptcy Court Judge
District of South Carolina

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

IN RE:

Corner Pocket Billiards, Inc.,

Debtor.

C/A No. 04-04313-HB

Chapter 7

ORDER

THIS MATTER comes before the Court on a Motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The Motion was filed by Linda Leslie, individually and as Personal Representative of the Estate of Linda Allison Leslie (collectively “Creditor”). The Debtor, through its attorney and principals, filed the only objection to the Motion. The facts were presented via orders and pleadings filed in the Court of Common Pleas and Court of Appeals for the State of South Carolina, and by reference to documents in this Court’s docket.

FINDINGS OF FACT

The Debtor filed a chapter 7 petition on April 13, 2004. The Debtor is a corporation and therefore is not entitled to a discharge under 11 U.S.C. § 727(a)(1). The chapter 7 trustee, Randy A. Skinner, has declared this an asset case.

Prior to the bankruptcy filing, Creditor filed a wrongful death action against the Debtor in the Court of Common Pleas for Greenville County, South Carolina (Leslie v. Corner Pocket Billiards, Inc., C/A No. 2003-CP-23-06508R). That matter was initiated in 2001. The state court action is based solely on state law, specifically the South Carolina Wrongful Death Act, S.C. Code Ann. §§ 15-51-10 to 15-51-60 (2007).

Debtor filed for bankruptcy protection two days prior to a hearing on three motions filed by Leslie: a Motion to Compel discovery, a Motion to Add Parties Defendant – which included the Debtor’s principals – and a Motion to Amend Complaint.

Leslie filed a timely proof of claim in the bankruptcy case for the pending wrongful death claim. The Debtor filed an objection to proof of claim on September 14, 2004 asserting that there had been a settlement of the wrongful death case in state court and therefore the claim amount should be reduced to the settlement amount, which Leslie disputed. The claim filed by Leslie in this case is for an unliquidated and/or contingent wrongful death claim based on state law. A proceeding to liquidate or estimate the amount of that claim for the purposes of distribution in this case is not a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

A hearing on the objection to claim was held November 23, 2004 before Judge Wm. Thurmond Bishop, the judge then assigned to the case. Judge Bishop entered an Order on December 14, 2004 which stated that the “issue as to whether or not a settlement has been reach[ed] is required to be determined by State law. It is the opinion of this Court that the State Court is the proper forum to determine the issue of whether a settlement has been reached.” Although the matter involved an objection to claim, Judge Bishop granted relief from the stay for the limited purpose of allowing the state court to determine whether there had been a settlement that impacted the bankruptcy claim. The transcript of the November 23, 2004 hearing reflects the following comments: “I’m going to modify the stay to go back into State Court for the appropriate State Court Judge to determine whether or not there was a settlement. And depending on that outcome, then

without prejudice for either party, to come back before me with a . . . final motion to lift the stay.”

On December 28, 2004, Debtor filed in the state court case Defendant’s Motion to Enforce Settlement and for Court Approval of Wrongful Death Settlement pursuant to S.C. Code Ann. § 15-51-42, asking for a determination that the matter had been settled for the sum of \$25,000. In that matter in state court, Judge John C. Few ruled on September 6, 2005 that the parties had entered into a settlement which was enforceable under Rule 43(k), SCRPC. However, later on July 17, 2006, Judge Few amended his order to apply the South Carolina Supreme Court’s March 6, 2006 decision in Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 627 S.E.2d 724 (2006). Farnsworth concluded that a settlement agreement is unenforceable under Rule 43(k), SCRPC, if it is rescinded before a motion to compel the settlement is filed. Judge Few found that “[b]ecause Plaintiff [Creditor herein] rescinded the agreement prior to the filing of Defendant’s [Corner Pocket’s] Motion to Enforce Settlement this Court is left with no alternative under the law, as it presently exists, but to now find and conclude that the parties’ settlement agreement is unenforceable under Rule 43(k), SCRPC.” Subsequent motions to again alter or amend were denied.

The Debtor filed a Notice of Appeal of the settlement decision in the state court wrongful death action on August 24, 2006. That appeal was dismissed by the South Carolina Court of Appeals by Order dated September 28, 2007. Creditor herein also filed a Notice of Appeal on August 25, 2006, but that appeal was also dismissed.

Creditor filed this Motion for relief from stay in this court on November 2, 2007, and the hearing on the Motion was held on November 27.

Debtor filed a Petition for Rehearing in the South Carolina Court of Appeals that was denied on December 5, 2007. Debtor states in its brief and via affidavit of counsel that it will file a Petition for Writ of Certiorari in the South Carolina Supreme Court, which was due on or before January 4, 2008.

DISCUSSION AND CONCLUSIONS OF LAW

Creditor seeks further relief from the stay of 11 U.S.C. § 362(a) in order to continue in state court in any manner necessary to resolve the wrongful death litigation. Debtor objects, stating that the requested relief is premature until the state courts finalize the settlement issue. However, at the same time the Debtor asks the bankruptcy court to independently determine that the settlement agreement is enforceable despite the state courts' decisions thus far. Such a decision would establish the amount of the wrongful death claim in this bankruptcy proceeding, thereby resolving the issues raised in the Debtor's September 2004 objection to claim.

The wrongful death claim is clearly unliquidated and/or contingent at this time, as the state court has not entered any judgment finding liability or establishing the amount, and the state law on which the claim is based does not recognize any enforceable agreement establishing the alleged debt. As recognized in the Debtor's brief, under 28 U.S.C. § 157(b)(2)(B), the bankruptcy court expressly lacks the authority to determine the allowance or disallowance of any claim against the estate in any matter involving the "liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11." Rather, if a federal court is involved, such matters are to be litigated in the United States District Court. 28 U.S.C. § 157(b)(5). See Baumgart v. Fairchild Aircraft Corp., 981 F.2d

824, 830-31 (5th Cir. 1993). Black's Law Dictionary defines the term "liquidate" as follows: "*To ascertain the precise amount of (debt, damages, etc.) by litigation or agreement.*" Black's Law Dictionary (8th ed. 2004). The Debtor is clearly asking the bankruptcy court to liquidate the amount of the claim by finding that the alleged agreement in question is enforceable despite Leslie's objections and the state courts' findings to the contrary. While the district court may have jurisdiction to examine this issue, this Court expressly lacks the authority to liquidate this claim under 28 U.S.C. § 157(b)(2)(B).¹

The Debtor has not provided, nor has this Court located, any authority which inspires this Court to go against the clear limitations of the federal law to meddle in wrongful death matters. Federal courts are courts of limited jurisdiction. If no specific grant of jurisdiction is found, it is presumed that jurisdiction does not exist. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Finley v. U.S., 490 U.S. 545, 548 (1989). Further, the state wrongful death law itself does not appear to contemplate a bankruptcy court's involvement in the approval or enforcement of settlements under the applicable state law. See S.C. Code Ann. §§ 15-51-41 (2007).

Since the state law wrongful death matter, now pending for over 4 years, may not be finalized in the bankruptcy court and no party has requested removal of the claim objection to the district court for trial, there are ample grounds for granting relief from the stay to allow the case to be concluded in state court as Judge Bishop initially contemplated. See Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992);

¹ This case is easily distinguishable from the court's administrative authority to give a stamp of approval to settlements wherein the debt has already been liquidated and both parties agree to this fact and jointly support the application to the bankruptcy court. In those cases the bankruptcy court is not asked to determine any rights or responsibilities as between the parties, and thus no "liquidation" or "determination" of any claim is involved.

In re Salinas, No. 06-01150-dd, slip op. at 5 (Bankr. D.S.C. Aug. 7, 2006). Therefore, the stay must be lifted to allow the finalization of that matter, via further appeal of the settlement decision or if necessary, a trial. The estate may be appropriately protected in the interim by requiring the Creditor to seek collection of any resulting debt from this Debtor's assets through the bankruptcy court claims process.

IT IS SO ORDERED.