

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at ___ O'clock & ___ min. ___ M

MAY 14 2009

United States Bankruptcy Court
Columbia, South Carolina (19)

IN RE:

C/A No. 03-13118-JW

Isaac Brown and Laurie Williams Brown,

Chapter 13

JUDGMENT

Debtor(s).

ENTERED
MAY 14 2009

Based upon the Findings of Fact and Conclusions of Law recited in the attached

SRP

Order of the Court, the request of Isaac Brown ("Debtor") that certain judgments be declared void due to violation of the automatic stay is denied.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 14, 2009

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Debtor(s).

ORDER

MAY 14 2009

This matter comes before the Court upon correspondence to the Court (“Motion”) **SRP** filed by Isaac Brown (“Debtor”) on April 22, 2009, in which Debtor¹ requested that certain judgments be declared void due to violation of the automatic stay. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and § 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). After carefully considering the evidence and arguments presented at the hearing on May 7, 2009, the Court makes the following Findings of Fact and Conclusions of Law² pursuant to Fed. R. Civ. P. 52 and Fed. R. Bankr. P. 7052 and 9014.

FINDINGS OF FACT

1. Debtor and Laurie Williams Brown (collectively “Debtors”) filed a petition under Chapter 13 of the Bankruptcy Code on October 20, 2003. Debtors did not list Jeffrey Buncher (“Buncher”) or Heritage Trust FCU (“Heritage Trust”) as creditors, and neither creditor filed a proof of claim. An order discharging Debtors was entered on December 3, 2008. However, the case remains open.

2. On May 19, 2004, Heritage Trust filed a civil suit against Debtors in small claims court. On September 17, 2004, Heritage Trust obtained a judgment in Charleston County

¹ Debtor is pro se in this matter.

² To the extent 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.

magistrates' court against Debtors in the amount of \$478.92.³

3. On July 22, 2004, Buncher filed a civil suit against Debtor in small claims court. On January 5, 2005, Buncher obtained a judgment of \$7,580 against Debtor in Charleston County magistrates' court.⁴

4. On July 24, 2008, Debtor moved to dismiss the judgments obtained by Heritage Trust and Buncher on the ground that he was in bankruptcy at the time of the judgments. On August 6, 2008, the small claims court issued a letter to Debtor, referencing the Buncher matter, informing Debtor that his request to have the case reopened and dismissed was denied because the matter "happened a year after [he was] protect[ed] under the Bankruptcy Court," and "therefore it [did] not protect [him] in this case."

5. On December 2, 2008, Debtor moved to dismiss the case against him brought by Buncher and strike the court's judgment on the basis the matter should have been stayed during Debtor's bankruptcy proceedings. The small claims court found Buncher had no notice of or opportunity to participate in the bankruptcy proceedings. The court denied Debtor's motion, relying on § 523(a)(3)(A), quoting a "discharge under [this] section . . . does not discharge an individual debtor from any debt . . . neither listed nor scheduled . . . in time to permit . . . timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing."

³ At the May 7, 2009 hearing, Debtor stated that Heritage Trust's judgment was based on a loan made to Debtor. Initially, Debtor explained he did not list Buncher or Heritage Trust as creditors in his bankruptcy petition because the basis of their claims occurred after he filed his petition. However, Debtor subsequently stated he thought he borrowed money from Heritage Trust before he commenced the bankruptcy case and he forgot to list Heritage Trust as a creditor in his petition.

⁴ At the hearing, Debtor stated that following the commencement of the bankruptcy case, he installed a driveway for Buncher, and Buncher initiated an action in small claims court alleging the driveway was defective.

CONCLUSIONS OF LAW

Section 362 provides the filing of a bankruptcy petition “operates as a stay, applicable to all entities, of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.” 11 U.S.C. § 362(a)(1). Section 362 also stays “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate” and “any act to create, perfect, or enforce any lien against property of the estate.” § 362(a)(3) & (4).

The stay pursuant to § 362 is “broad in scope and its operation is automatic upon the filing of the petition.” Weatherford v. Tinmark (In re Weatherford), No. 03-15184-JW, Adv. Pro. 08-80094, slip op. at 10 (Bankr. D.S.C. Apr. 6, 2009). Once the stay is in place, it “protects all property of the estate regardless of whether or not notice has been given of the pendency of the case.” McGuffin v. Barman (In re BHB Enters., LLC), No. 97-01975-JW, Adv. Pro. 97-80201, 1997 WL 33344249, at *4 (Bankr. D.S.C. Aug. 27, 1997). The stay does not apply to “actions arising post-petition;” however, “attachment or execution of a judgment obtained as a result of a post-petition claim [falls] within the stay provision of subsections 362(a)(3) and (4), [and] a creditor must obtain relief from the stay to satisfy a judgment against property of the bankruptcy estate.” Bellini Imps., Ltd. v. Mason & Dixon Lines, Inc., 944 F.2d 199, 201 (4th Cir. 1991). As this Court recently discussed in Weatherford, courts in this district have “consistently held that actions taken in violation of the automatic stay are void ab initio and thus

not legally effective.”⁵ No. 03-15184-JW, Adv. Pro. 08-80094, slip op. at 11. Further, the South Carolina Supreme Court has held the automatic stay deprives state court judges of “subject matter jurisdiction to take any action inconsistent with the stay.” Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 663-64 (1993).

Based on the record before the Court, it is apparent that the post-petition suit initiated by Buncher pertained to a post-petition claim. Furthermore, the Court finds Debtor presented insufficient evidence that the judgment obtained by Heritage Trust related to a pre-petition debt. Debtor’s statements to the Court regarding the timing of the actions giving rise to Heritage Trust’s claim were contradictory and unclear, and Debtor offered no details or documentation regarding the small claims court proceeding involving Heritage Trust. Thus, the Court concludes that the actions brought by Buncher and Heritage Trust in small claims court did not constitute violations of the automatic stay.

While any attempt by either Buncher or Heritage Trust to enforce its respective judgment would be void as a violation of the stay, the Court finds no indication, by Debtor or otherwise, of such an attempt by either creditor to execute its judgment or create a lien on any real property of the bankruptcy estate. See S.C. Code Ann. § 15-35-180 (2005) (providing that judgments requiring the payment of money “may be enforced in those respects by execution as provided in this Title”); S.C. Code Ann. § 15-35-810 (2005) (a final judgment or transcript which is “entered upon the book of abstracts of judgments and duly indexed” shall create a lien on real estate of the judgment debtor in that county); Johnson v. Serv. Mgmt., Inc., 319 S.C. 165, 167, 459 S.E.2d

⁵ Although the small claims court’s order and judgments address, or at least require an analysis of, the applicability of the automatic stay, it appears that res judicata and the Rooker-Feldman doctrine do not preclude its consideration of this matter since this Court may review and declare void a state judgment that violates the automatic stay. Weatherford, No. 03-15184-JW, Adv. Pro. 08-80094, slip op. at 10-11; see also McGhan v. Rutz (In re McGhan), 288 F.3d 1172, 1178-79 (9th Cir. 2002); LaBarge v. Vierkant (In re Vierkant), 240 B.R. 317 (B.A.P. 8th Cir. 1999); Alfred Vail Mut. Ass’n v. Steward (In re Steward), 2006 WL 3796609, at *5 n.3 (D.N.J. Dec. 21, 2006); In re Clarke, 373 B.R. 769, 771 (Bankr. S.D. Fla. 2006).

900, 902 (Ct. App. 1995) (“Judgments generally are enforced by way of writs of execution issued to the sheriff.”). Thus, Debtor has not shown any violation of the stay pursuant to § 362(a)(3) or (4).

Based upon the foregoing, the Court denies Debtor’s Motion to declare the judgments of Buncher and Heritage Trust void.⁶

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 14, 2009

⁶ The Court notes that Debtor’s failure to seek the requested relief through an adversary proceeding, as required by Fed. R. Bankr. P. 7001(2) and (9), offers an additional ground to deny Debtor’s Motion.