

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 09-01020

ORDER DENYING RELIEF FROM STAY

The relief set forth on the following pages, for a total of 6 pages including this page, is hereby ORDERED.

FILED BY THE COURT
06/09/2009



Entered: 06/10/2009

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:)	Chapter 11
)	Case No. 09-01020
Charleston Affordable Housing, Inc.)	
)	ORDER DENYING RELIEF
Debtor.)	FROM STAY
_____)	

THIS MATTER is before the Court on the motion of D C Development, Inc. (DCDI) for relief from the automatic stay of 11 U.S.C. §362(a)¹ for cause pursuant to § 362(d)(1). Charleston Affordable Housing, Inc. (Debtor) objects to the relief. The matter came before the Court for hearing on June 2, 2009 in Columbia.

Findings of Fact

1. Debtor, a non-profit entity that has and hopes to develop affordable housing projects, filed a petition for relief under Chapter 11 of the Bankruptcy Code on February 12, 2009. It continues as a debtor-in-possession. §§ 1101(1), 1107.
2. Debtor scheduled DCDI as an unsecured creditor with a disputed claim of \$1,313,528. A proof of claim has not, to date, been filed.
3. Debtor is a general partner in Glenwood Falls, LP.
4. Stearns Bank foreclosed a mortgage against Glenwood Falls in York County, South Carolina by action commenced January 30, 2004. The foreclosure order was entered June 17, 2004.
5. Glenwood Falls contracted with DCDI to construct apartments on the real property that was subject to the Stearns Bank mortgage.

¹ Further reference to the Bankruptcy Code, 11 U.S.C. § 101 et.seq., will be by section number only.

6. DCDI cross-claimed in the foreclosure action against Glenwood Falls and obtained a default judgment for \$1.3 million on January 5, 2005. A subsequent motion to set aside the default was denied and the decision was affirmed by the Court of Appeals of South Carolina. *See Stearns Bank v. Glenwood Falls*, 644 S.E.2d 793 (Ct.App. 2007). That judgment is now a final order.
7. DCDI sought to collect its judgment against Glenwood Falls from the assets of Debtor under a construction of S.C. Code Ann. §§ 15-5-45, 33-42-360(b) and 33-41-370(A) (1976 as amended). That lawsuit, pending in the Court of Common Pleas for York County, South Carolina (Case No. 2008CP-46-02684), was stayed by the bankruptcy filing. On the date bankruptcy was filed, motions to amend pleadings and for attorney fees, were scheduled to be heard in that lawsuit.
8. Debtor is not presently engaged in on-going business operations but has some cash on hand, an interest in several limited partnerships, rights to notes receivable, rights to causes of action, and an expressed interest in future non-profit housing endeavors if the DCDI litigation can be satisfactorily resolved.
9. This bankruptcy is a two-party dispute. There are other minor claims of creditors that total \$500 or so, exclusive of some \$15,000 owed to a principal of Debtor or to entities associated with the principal.

Conclusions of Law

DCDI seeks relief from the automatic stay imposed by §362(a) pursuant to §362(d)² for cause. “Cause (other than lack of adequate protection) is not defined in the Bankruptcy Code; rather, the court is required ‘[to] balance potential prejudice to

² “On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest.” § 362(d)(1).

the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay...” *In re Keane*, 2003 WL 22794551 (Bankr. E.D.Va.) (quoting *Stone St. Servs. v. Granati* (*In re Granati*), 271 B.R. 89, 93 (Bankr.E.D.Va.2001) (quoting *Robbins v. Robbins* (*In re Robbins*), 964 F.2d 342, 345 (4th Cir.1992)) (See also *In re Peterson*, 116 Bankr. 247, 249 (D. Colo. 1990) (discussing balancing test)). Here DCDI asks for relief from stay to return to state court and litigate the issue of Debtor’s liability as a general partner for Glenwood Falls’ debt.

The 4th Circuit Court of Appeals in *Robbins* provided guidance to assist courts in balancing the equities on a case-by-case basis in the determination of whether “cause” exists stating,

The factors that courts consider in deciding whether to lift the automatic stay include (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court. See *In re Mac Donald*, 755 F.2d at 717; *In re Holtkamp*, 669 F.2d 505, 508-09 (7th Cir. 1982); *In re Revco D.S., Inc.*, 99 Bankr. 768, 776-77 (N.D. Ohio 1989); *In re Pro Football Weekly, Inc.*, 60 Bankr. 824, 826-27 (N.D. Ill. 1986); *Broadhurst v. Steamtronics Corp.*, 48 Bankr. 801, 802-03 (D. Conn. 1985).

Robbins, 964 F.2d 342, 345 (4th Cir.1992).

The legal issues here sound in contract and partnership law. The issues depend upon state law and are not novel. They are, however, akin to the issues this Court deals with in claims litigation on a regular basis. The estate can easily be protected by a limitation on enforcement of any judgment. The real issue here is

whether judicial economy will be served by returning the parties to state court or whether litigation in the bankruptcy court would impair progress in this reorganization case.

When a proof of claim is filed or a claim is recognized by virtue of a listing in the schedule of debts filed with the petition, a claim is allowed for distribution and voting purposes in a bankruptcy case unless some party in interest objects. § 502(a). The Court resolves objections, whether to allow the claim or not, and if it finds in favor of an allowed claim, the Court then determines the amount of the claim. § 502(b). As relevant to this dispute, the Court is to allow a claim unless it “is unenforceable against the debtor and property of the debtor, under any agreement or applicable law. . . .” §502(b)(1). The Bankruptcy Code thus directs the Court to the contract, partnership agreement, and applicable state law. The claims adjudication process in bankruptcy cases is generally in the nature of a summary proceeding. Yet, because all defenses and counterclaims should be raised for a final adjudication on the merits, the simple claims objection can be as complicated as any litigation.

This Court has previously lifted the stay and returned parties to state court when litigation had been pending in connection with a two party dispute for some time and where the matter was ready for trial. *See In re Salinas*, Case No. 06-01150, Bankr. D. S.C., August 7, 2006) Slip Op. at 6. In *Salinas* litigation had appeared on the trial roster several times and the case was ready for trial when the bankruptcy petition was filed. It is not clear that the parties in this case are ready for trial. The parties in this case have been through three or more appeals and are back at the trial court. When this bankruptcy case was filed the matters before the trial court were a motion to amend pleadings and a request for attorney fees. This matter has been

pending in state court for a longer period, five years, than *Salinas* yet it was not ready for trial, though perhaps not far from it.

This bankruptcy is a two party dispute. That factor would usually favor relief from stay and a return to state court. The Debtor argues that its non-profit status and the public interest in its “mission” of promoting affordable housing tip the scales in favor of keeping the litigation in the bankruptcy forum. The Court is not convinced of this. The fact is that Debtor is not engaged in any meaningful activity at present and until the liability issue is resolved it cannot go forward with any reorganization. If the liability issue is decided against it, any chance of reorganization dims considerably. This Court can best manage its docket by denying relief from the stay and insisting on an expedited determination of DCDI’s claim, if any. If the dispute were returned to state court the Court would have no control over progress toward trial and possible appellate resolution.

DCDI’s request for relief from stay is denied. Because the DCDI claim was scheduled as disputed, resolution of this issue in this Court can occur only when a proof of claim is filed or when the claims bar date expires. DCDI can expedite the matter by promptly filing proof of its claim. Because Debtor cannot move forward with its reorganization effort until the claims issue is resolved, Debtor is ordered to file its objection to the DCDI claim within thirty days of the filing of the proof of claim. Given the long history of litigation between the parties, each should be ready to move forward. The proof of claim filed by DCDI should include all amounts it claims Debtor owes and Debtor’s objection should include all defenses.

IT IS SO ORDERED.