

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
00 JAN 25 PM 12:28
U.S. BANKRUPTCY COURT
DIST OF SOUTH CAROLINA

IN RE:

Debra R. Blair,

Debtor.

Robert F. Anderson, Trustee

Plaintiff,

v.

Roger Frank Blair,

Defendant.

C/A No. 99-08835-W

Adv. Pro. No. 99-80410-W

ENTERED

JAN 27 2000

JUDGMENT

Chapter 7

S. R. P.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion for Preliminary Injunction is denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
1/25, 2000.

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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JAN 27 2000

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

✓ Trotter } Sent to
✓ Smith } BNC for
Service.

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ORDER

Chapter 7

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S. R. P.

THIS MATTER comes before the Court upon the Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") filed by Plaintiff on December 22, 1999. Based upon the pleadings filed by the parties and the arguments of counsel at the hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Debra R. Blair ("Debtor") filed for relief under Chapter 7 of the United States Bankruptcy Code on October 15, 1999. On October 19, 1999, Robert F. Anderson ("Plaintiff") was appointed Trustee of the Chapter 7 bankruptcy estate.
2. Roger Frank Blair ("Defendant") is Debtor's ex-husband. On August 11, 1999, Debtor commenced an action in the Family Court for Saluda County, South Carolina seeking a divorce and equitable distribution of the marital property.
3. On August 11, 1999, Debtor and Defendant executed a written marital property and support settlement agreement. Among other things, the agreement required Debtor to convey her

interest in the parties' marital real property, consisting of a house and 3.2 acres, to Defendant. Debtor further agreed that Autocare Pro Muffler Shop would exclusively remain property of Defendant, free and clear of any of Debtor's claims. In exchange for the above, Defendant agreed to the following:

- a. Assume all expenses and liabilities associated with the aforementioned property.
- b. Convey a 1996 Lincoln Town car to Debtor and agree to pay comprehensive and liability insurance on the vehicle for two years.
- c. Waive his rights to alimony.
- d. Waive all interest in Debtor's bank accounts.
- e. Agree to pay Debtor the sum of \$1,175.00 in cash.
- f. Agree to pay Debtor's Conoco credit card for two years.
- g. Agree to pay Debtor's MBNA credit card.
- h. Assume liability to Self Memorial Hospital for Debtor's past medical bills.

9. By deed dated August 12, 1999, Debtor conveyed her interest in the real estate to Defendant.

10. On September 17, 1999, a hearing was held in the Family Court for the 11th Judicial District, and an order was filed on the same date approving the agreement between the parties.

11. On October 29, 1999, Defendant transferred the real estate conveyed to him by Debtor to Kim M. Riddlehoover. The purchase price for the property was \$76,900.00, of which Defendant received \$65,283.24 after deducting closing costs and \$3,592.04 of the purchase price used to satisfy a judgment against Debtor in favor of Self Memorial Hospital, as provided by the agreement.

12. On December 22, 1999, Plaintiff filed the above captioned adversary proceeding against

Defendant alleging that Debtor's conveyances of real property and the waiver of her rights in Autocare Pro Muffler Shop constituted fraudulent transfers pursuant to 11 U.S.C. §548¹ and S.C. Code Ann. §27-23-10.

13. On December 22, 1999, the Court issued an *ex parte* Temporary Restraining Order ("TRO") requiring Defendant to deposit proceeds from the sale of the marital real estate into an interest bearing bank account and ordering Defendant to refrain from withdrawing the funds.

14. Plaintiff seeks a preliminary injunction continuing the restrictions of the TRO.

CONCLUSIONS OF LAW

Section 105, interpreted in conjunction with Federal Rule of Civil Procedure 65(b), gives the Court power to issue preliminary injunctions. The decision whether to grant injunctive relief lies within the sound discretion of the court making such determination. See, e.g. Hughes Network Systems, Inc. v. Interdigital Communications Corp., 17 F.3d 691, 693 (4th Cir. 1994) (citing Rum Creek Coal Sales, Inc. v. Caperton, 926 F.2d 353, 358 (4th Cir. 1991)). A preliminary injunction, however, is viewed by courts as "an extraordinary remedy, to be granted only if the moving party clearly established entitlement to the relief sought." Hughes Network Systems, 17 F.3d at 693; see also Alston v. State Board of Medical Examiners (In re Alston), 98-05250-W; Adv. Pro. 98-80001-W (Bankr. D.S.C. 1/19/1999). In determining whether a preliminary injunction should be granted, courts generally take into consideration four factors:

1. the likelihood of irreparable harm to the plaintiff if the preliminary injunction is not granted;
2. the likelihood of harm to the defendant if the preliminary injunction is granted;

¹ Further references to the Bankruptcy Code shall be by section number only.

3. the likelihood that plaintiff will succeed on the merits; and
4. the public interest.

See, e.g. Hughes Network Systems, 17 F.3d at 693; Rum Creek Coal Sales, Inc., 926 F.2d at 359; Blackwelder Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189 (4th Cir. 1977). The Fourth Circuit has analyzed the standard for granting preliminary injunctions and has concluded that “[t]he irreparable harm to the plaintiff and the harm to the defendant are the two most important factors.” Rum Creek Coal Sales, Inc., 926 F.2d at 359.

The weight placed on the third factor, dealing with the likelihood that the plaintiff will succeed on the merits, varies according to the outcome after balancing the first two factors.

If, after balancing [the first two] factors, the balance “tips decidedly” in favor of the plaintiff, a preliminary injunction will be granted if “the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful so to make them fair ground for litigation and thus for more deliberate investigation.” As the balance tips away from the plaintiff, a stronger showing on the merits is required.

Id. (citations omitted); see also Hughes Network Systems, Inc., 17 F.3d at 692 (“The ‘balance of hardships’ reached by comparing the relevant harms to the plaintiff and defendant is the most important determination, dictating, for example, how strong a likelihood of success showing the plaintiff must make.”).

In this case, when considering the irreparable harm to Plaintiff, Plaintiff argues that Debtor is entitled at least to one-half of the proceeds from the sale of the property. Furthermore, Plaintiff argues that Defendant’s ability to quickly conceal or dispose of the proceeds of the sale of the subject real estate could result in Plaintiff’s inability to recover against Defendant for the

full value of Debtor's interest in the property, thus warranting a preliminary injunction.² Courts have interpreted the harm necessary to justify issuance of a preliminary injunction to be a very strict standard.

The key word in this consideration is irreparable. *Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.* The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Hughes Network Systems, Inc., 17 F.3d at 693 (quoting Sampson v. Murray, 415 U.S. 61, 90 (1974)). The Fourth Circuit has further emphasized that “[m]onetary relief typically may be granted as easily at judgment as at a preliminary injunction hearing, and a party does not normally suffer irreparable harm simply because it has to win a final judgment on the merits to obtain monetary relief.” *Id.*

When considering the likelihood of harm that would result to Defendant if the requested relief is granted, it is evident that the likely harm to Defendant outweighs the likelihood of harm to Plaintiff. Defendant has sold his home and, if the Court were to order Defendant to refrain from using the proceeds from the sale, Defendant would be unable to buy a new home.

² In Defendant's Memorandum Opposing Preliminary Injunction, Defendant argues that Plaintiff's allegation that Debtor is entitled to one-half interest in the proceeds of the sale of the subject real estate is an incorrect statement. Defendant maintains that Debtor and Defendant entered into an agreement which set forth the parties' respective rights and obligations as to the marital property. The agreement which provided Defendant full rights to the real estate in question, was approved by the Family Court on September 17, 1999. Defendant argues that the parties' interest in the property has been determined by the agreement which was approved by the Family Court and that Plaintiff cannot make a clear showing of injury because, as a matter of South Carolina law, Debtor has no property interest capable of being harmed. The argument raised by Defendant relates to whether the property settlement between the parties can be collaterally attacked by Debtor. Such issue goes to the merits of the adversary proceeding and the Court refrains from deciding such issue at this time.

Presently, Defendant is living in a garage, a portion of his business premises. Thus, it is evident that the imposition of a preliminary injunction would cause harm to Defendant which outweighs the harm that Plaintiff would suffer if the preliminary injunction were not granted. In this case, Plaintiff argues that the Court should restrain Defendant from spending the proceeds from the sale of the subject real estate. However, Plaintiff has not provided the Court with any evidence as to why future monetary remedies would not be available.

The hardship balance tilts in favor of Defendant; therefore, "a stronger showing on the merits is required." See Rum Creek Coal Sales, Inc. v. Caperton, 926 F.2d 353, 359 (4th Cir. 1991). Plaintiff seeks the Court's determination that the conveyance by Debtor to Defendant pursuant to the property settlement agreement are void pursuant to §548 and S.C. Code Ann. §27-23-10. Defendant has raised substantial defenses to Plaintiff's allegations that the transfer in question was for no consideration and was made with the intent to defraud creditors by asserting that the agreement and exchange of consideration referenced therein was approved by the State Court; therefore, the third factor also weighs in favor of denying the preliminary injunction. It is therefore,

ORDERED that the Motion for Preliminary Injunction is denied.

AND IT IS SO ORDERED.

Columbia, South Carolina,
1/25, 2000.


UNITED STATES BANKRUPTCY JUDGE

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