

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 3, 2022 at 10:00 a.m.

1. [20-22873-E-7](#)
[PLC-1](#)

KEVIN EHMKA
James Keenan

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-13-22 [61]**

BRENDA EHMKA VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 12, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion is granted, the court confirming that the automatic stay arising pursuant to 11 U.S.C. § 362(a) does not apply to, or operate as a stay "of the collection of a domestic support obligation from property that is not property of the estate," 11 U.S.C. § 362(b)(2)(B), for the state court judgment entered against Debtor in favor of Movant in California Superior Court for Placer County Case No. S-DR-0048998.

Brenda Ehmka ("Movant") seeks relief from the automatic stay to allow Movant to enforce her spousal support arrears against Kevin Ehmka ("Debtor"). A judgment was entered against Debtor in favor of Movant in the amount of \$33,792.35, exclusive of interest. Exhibit A, Dckt. 63.

Movant requests the court grant the Motion to modify Movant's rights, pursuant to 11 U.S.C. § 362(b)(2)C), to allow Movant to proceed with enforcement of a state court judgment for spousal support arrears.

Movant has provided the Declaration of Rodney Simmons, attorney for Movant, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Debtor. Declaration, Dckt. 65.

DEBTOR'S RESPONSE

Debtor a Response on October 21, 2022. Dckt. 69. Debtor opposes the Motion, asserting "[r]egular monthly payments are being made. When bankruptcy is finalized, my situation should clarify. Much depends on the final decision of my bankruptcy case."

MOVANT'S REPLY

Movant filed a reply on October 24, 2022. Dckt. 70. Movant states the opposition does not state grounds or opposition and Debtor is still not making their monthly spousal support requirements.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith*

Brokerage Co. (In re Kemble), 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Absence of Stay

Movant cites 11 U.S.C. § 362(b)(2)(C) as grounds for modifying the stay. The provisions of 11 U.S.C. § 362(b)(2)(C) establish no automatic stay goes into place “with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute.”

Here, Movant is requesting a modification of the stay to enforce a judgment for spousal support arrears. This is clearly in line with the provisions of 11 U.S.C. § 362(b)(2)(C). Rather than granting relief from the stay, the court confirms that the automatic stay is not in effect as to property of the Debtor for payment of spousal support to Movant under the state court judgment. Absent the stay, Movant is allowed to proceed with the enforcement of the state court judgment.

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Brenda Ehmka (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the court confirms the automatic stay provisions of 11 U.S.C. § 362(a) do not apply to, or operate as a stay “of the collection of a domestic support obligation from property that is not property of the estate,” 11 U.S.C. § 362(b)(2)(B), for the enforcement of the state court judgment entered against Debtor in favor of Movant in California Superior Court for Placer County Case No. S-DR-0048998.

The term “domestic support obligation” is a defined, federal law, term as specified in 11 U.S.C. § 101(14A) as follows:

(14A) The term “domestic support obligation” means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.