

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

BALDWIN SOD, LLC,

Case No. SL 06-02014

Chapter 12

Debtor.

MEMORANDUM ORDER

At a session of said court, held in and for said District, at the United States Bankruptcy Court, One Division, Grand Rapids, Michigan this 08 day of June, 2006.

PRESENT: HONORABLE JO ANN C. STEVENSON
Chief United States Bankruptcy Judge

This matter having come before the court upon Debtor's Ex-Parte Emergency Motion for Order Restoring Debtor to Possession of Growing Crops and the First Amended Ex-Party Emergency Motion for Lift of Stay on Behalf of Thomas M. Shoaff; and the parties having filed a Consent Order by Stipulation Concerning Lift of Stay; and a hearing having been held; and the court being duly advised in the premises;

WHEREAS, in 1996, Duane Baldwin, Mark Baldwin and Thomas Shoaff ("Shoaff") decided to start a sod farm (the "Farm"). Shoaff agreed to fund the Farm with a loan of several hundreds of thousands of dollars and a personal guaranty, while Duane Baldwin agreed to manage the Farm and indemnify Shoaff against any failure to meet the obligations of the guaranteed loan. Baldwin falsely assured Shoaff that he had enough assets to back up his indemnification when in fact he had previously transferred all of his assets into five newly-created limited partnerships ("Limited Partnerships") in which his children were given some ownership interests. Duane Baldwin retained the largest percentage. He then transferred the remainder of his assets to a revocable trust ("Trust").

The Farm failed and by 1998 it was unable to meet the payments of principal and interest coming due on the loan. When Duane Baldwin died unexpectedly in September of 1998, his estate was valued at less than \$15,000.00. Shoaff paid off the loans in September 1999 already having filed suit in state court against Duane Baldwin's estate, the Trust and the Limited Partnerships.

In 2002, the Ingham County Circuit Court ("Circuit Court") issued an amended opinion in which it found by clear and convincing evidence that the transfers of property to the Limited Partnerships were fraudulent and that the Limited Partnerships were the alter ego of Duane Baldwin with no legitimate existence apart from him. The Circuit Court further stated that the Limited Partnerships were sham entities created only to avoid Duane Baldwin's obligation to creditors.

It was also decreed that “all transfers of property, real, personal or mixed” to the Limited Partnerships were to be set aside to the extent necessary to satisfy Shoaff’s claims. Attorneys fees and costs pursuant to the terms of the indemnification agreement were also awarded.

On December 13, 2002, a final judgment was issued in the amount of \$1,352,936.82 (“2002 Judgment”) and filed with the Register of Deeds. The Michigan Court of Appeals affirmed the 2002 Judgment on February 3, 2005. The Court of Appeals decision was appealed and on December 27, 2005, the Michigan Supreme Court denied leave to appeal stating that it was not persuaded that the case should be reviewed.

In April of 2004, Duane Baldwin’s grandson, Gary Baldwin and his wife, Kimberly (“the Baldwins”) incorporated Baldwin Sod, LLC (“Baldwin Sod”). Even after all appeals had been determined against it, the estate of Duane Baldwin through its personal representative, Thomas E. Woods, conveyed, or in the event clear title could not be provided, leased real property that was formerly part of the Limited Partnerships to the Baldwins. Although the leases were dated March 28, 2006, the lease terms actually started in 2003. Shoaff responded to this transaction by filing a Verified Ex-Parte Emergency Motion to Restrain Defendants from Transferring Property to Third-Parties.

On April 17, 2006, the Circuit Court granted Shoaff’s Motion and permanently enjoined (the “Injunction”) the Baldwins, Thomas E. Woods and the estate of Duane Baldwin from “mortgaging, disclaiming, or transferring in any form to each other, third parties, or any other person or entity, the properties described in the . . . [2002 Judgment].”

The Injunction also stated that the Defendants could not commit waste or damage the property. It set a cash bond two times the amount due on the 2002 Judgment, which by then had reached \$1,526,747.29. The state court also retained “jurisdiction with respect to all proceedings supplementary to judgment and executory provisions of this order.”

On April 21, 2006, the Circuit Court issued an Ex-Parte Order to Show Cause (“Show Cause”) why the Defendants should not be held in contempt of court for violating the Injunction. Allegedly, the Baldwins had remained on the property and stripped and removed sod in violation of the Injunction. The Show Cause hearing was set for May 5, 2006 at 2:00 p.m. in Lansing, Michigan.

Baldwin Sod filed for bankruptcy protection under Chapter 12 on May 4, 2006. Sometime previous to the bankruptcy filing, but after the Show Cause notice the Baldwins voluntarily vacated the premises.

In addition to the bankruptcy filing, Baldwin Sod filed an adversary proceeding against Shoaff and Jerald Runciman¹ in the bankruptcy court alleging tortious interference with a contract or advantageous business relationship of expectance and tortious interference. Baldwin Sod also filed an Ex-Parte Emergency Motion for Order Restoring Debtor to Possession of Growing Crops.

¹Jerald Runciman owns and/or operates a farming operation adjacent to Baldwin Sod.

Shoaff responded with an Ex-Parte Emergency Motion to Lift Stay (“Emergency Motions”).

The bankruptcy court denied both Emergency Motions and set the matters for hearing on May 17, 2006. During the time set aside for the hearing, the parties met and crafted what would later be filed as a Consent Order by Stipulation of the Parties Concerning Lift of Stay. In this Order, among other provisions, the parties agreed that: the Injunction would remain in effect; the co-debtor stay would be lifted as to all parties except Baldwin Sod; the parties could proceed in state court to quiet title to the farm property; the allegations of conversion remain stayed until further order of the bankruptcy court; and to the appointment of Joseph Chrystler as the Chapter 12 Trustee in possession of the sod on the farm property.

Once these terms were agreed to by the parties, the hearing on the Emergency Motions commenced. Baldwin Sod argued that the Doctrine of Emblements applies in that a tenant, in this case Baldwin Sod, has the right to harvest crops regardless of who owns the underlying real property. In Michigan, there is a separate eviction action in growing crops and since Shoaff has failed to commence such an action, the Baldwins and Baldwin Sod have the right to complete the care and harvesting of the sod.

Also, pursuant to the UCC, crops are personal property which require the filing of a financing statement and the judgment lien in this case was filed against the real estate, not the crops. Further, Baldwin Sod argued that the 2002 Judgment set aside transfers of personal property existing prior to 2002. The sod had not come into existence until 2004, consequently it was not covered by the 2002 Judgment.

Shoaff argues that the 2002 Judgment set aside “all transfers of property, real, personal, or mixed.” This would include any growing sod. In addition, the Baldwins leased property from an entity that did not have the right to lease it. Lastly, since the Baldwins had allegedly been leasing the property for a term longer than one year, by virtue of the Statute of Frauds, the lease should have been in writing prior to 2006.

The jurisdiction of the bankruptcy courts like that of other federal courts, is grounded in, and limited by, statute. Celotex Corp. v. Edwards, 514 U.S. 300, 307, 115 S.Ct. 1493, 1498 (1995). 28 U.S.C. §1334(b) establishes the general proposition that federal district courts have original but not exclusive jurisdiction over all civil proceedings that arise in, under, or are related to a bankruptcy case. The district courts may then in turn, refer these matters to the bankruptcy judges for that district. The district court for the Western District of Michigan has done so, and its referral order of July 24, 1984, conferred this jurisdiction to the bankruptcy court.

However, the exclusivity of the bankruptcy court’s jurisdiction reaches only as far as the automatic stay provisions of 11 U.S.C. §362. Therefore, if the automatic stay applies to an action regarding the debtor or its property, jurisdiction is exclusive in the bankruptcy court. However, if an exception to the stay covers the action in question, the bankruptcy court’s jurisdiction is concurrent with any other court of competent jurisdiction. See Blachy v. Butcher, 221 F.3d 896 (6th Cir. 2000); LaCasse v. LaCasse (In re LaCasse), 238 B.R. 351 (Bankr. W.D. Mich. 1999).

Courts have uniformly held that when a party seeks to commence or continue proceedings

in one court against a debtor or property that is protected by the stay automatically imposed as part of the bankruptcy filing, the court must determine whether the stay applies to the proceedings. Once this determination is made, the non-bankruptcy court may enter orders not inconsistent with the terms of the stay and any orders entered by the bankruptcy court respecting the stay. See LaCasse, 238 B.R. at 355; Chao v. Hospital Staffing Services, Inc., 270 F.3d 374 (6th Cir. 2001).

The parties in this case are asking the bankruptcy court to interpret previously rendered state court orders. Bankruptcy court authority should not be exercised in this way when it is clear that the bankruptcy action is merely the continuation of a previously litigated dispute. The best forum for the parties to proceed is unquestionably the state court. The bankruptcy court is unable and unwilling to attempt to clarify orders issued by its state court brethren.

Consequently, the bankruptcy court will lift the stay for the parties to proceed in state court. The state court shall clarify its previous rulings specifically related to whether: the Doctrine of Emblements applies; Baldwin Sod's lease is valid; Baldwin Sod has the right to harvest crops regardless of who owns the underlying real property; Shoaff is required to commence an eviction action in order to remove the Baldwins and Baldwin Sod from the property; Shoaff owns the sod and the right to harvest the sod; and whether the effect of the 2002 Judgment was to set aside transfers of personal property prior to 2002, but not after.

In addition, we lift stay for the Circuit Court to proceed with its show cause hearing regarding the stripping and removal of sod by the Baldwins. Once all these matters have been decided by the state court, the parties shall return to the bankruptcy court for appropriate direction.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. For the reasons stated in this Memorandum Order, the Motion for Lift of Stay on Behalf of Thomas Shoaff is GRANTED;
2. The Motion for Order Restoring Debtors to Possession of Growing Crops is DENIED;
3. The automatic stay is lifted for the parties to proceed in state court for the clarification of previous orders and the hearing to show cause;

IT IS FURTHER ORDERED that this Memorandum Order shall be served pursuant to Administrative Order 2004-06 (Mandatory Electronic Filing) upon Baldwin Sod, LLC, Gary and Kimberly Baldwin, Daniel L. Kraft, Esq., Thomas M. Shoaff, Kevin B. Schumacher, Esq., Jerald J. Runciman, Gary L. Bender, Esq., Joseph A. Chrystler, Chapter 12 Trustee, and Andrew J. Gerdes, Esq.

End of Order