

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In Re:

WILLIAM A. BLANK,

Debtor.

Case No. SK 02-06328

Chapter 13

NOT FOR PUBLICATION

OPINION

This matter comes before the Court upon Debtor's Motion for Stay Pending Appeal. In preparing this Opinion, the Court has taken into account all pleadings filed by the parties and their oral arguments. The Court has accepted as true, the following assertions the parties have made throughout the course of this case.

On or about 1976, William Blank (Blank or Debtor) attended two Galesburg City (the "City") Commission meetings and one Planning Commission meeting wherein a discussion ensued regarding a parcel of property Blank intended to purchase.¹ Once he was satisfied that the property in question was zoned Industrial, Blank purchased the property with the intention of using it for his excavating business and

¹That property is identified as 421 M-96, (also called East Battle Creek Road), Galesburg Lot 295 and adjoining 4.1 acres. Both parties agree this is the only property owned by Blank on which the City has a lien.

residence.

In 1977, without notice, the zoning of the property was changed to Agricultural. Due to a grandfather clause, the property was considered as being a non-conforming use and in 1979, Circuit Court Judge Mullen entered a Permanent Restraining Order (the 1979 Order) which affirmed Blank's use of the property but required Blank to comply with certain provisions regarding where personal property could be stored.

Judge Mullen retired in 1989, and Circuit Judge William G. Schma was assigned to the case. Judge Schma interpreted Judge Mullen's 1979 Order differently, and decided that Blank was not complying with the clean-up/storage provisions. He therefore deemed as scrap certain items that arguably were not. As a result, Blank could store virtually no personal property on the premises.

Throughout the following years, the City and Blank endured a contentious relationship. The City continued to request the clean-up of the property while pursuing Blank in State Court. At one point the City filed a petition requesting Blank to show cause why he should not be held in contempt of court for violating a Permanent Restraining Order signed on September 9, 1983. As a result of the City's petition, an Order signed March 11, 1996, required Blank to remove all tangible property from the premises and fined him \$500.00 per day for the period commencing January 10, 1996 through April 10, 1996.

The State Court conducted an on-site inspection of Blank's property on May 29, 1996, followed by an evidentiary hearing on June 24, 1996, regarding that inspection. Judge Schma again presided at the hearing and both the City and Blank were represented by counsel. In its Order of July 10, 1996, (the "July 10, 1996 Order") the State Court made the following determinations: the assessment of fines was reduced from \$500.00 per day to \$100.00 per day for the period of January 10, 1996 through April 10, 1996; the

City was authorized to file the Order with the Kalamazoo County Register of Deeds to establish a lien on Blank's property in the amount of \$9,100.00; the City's lien was modifiable if it appeared that the prior mortgages or liens claimed by Blank and others were less than \$69,000.00; and the Court reserved the right to impose additional fines on Blank and grant the City additional liens following subsequent on-site inspections by the Court regarding Blank's compliance with a November 14, 1995 Order to Further Enforce Permanent Restraining Order.

Blank and the City continued its acrimonious relationship and another evidentiary hearing in front of Judge Schma ensued. Both parties were represented by counsel. An Order was issued on March 10, 2000, for Additional Sanctions and Lien. Blank was found in contempt of court for "failing and/or refusing to remove all tangible personal property from Defendant's premises in the required time." Again, the City was awarded sanctions of \$100.00 per day commencing April 10, 1996 and continuing until the property was brought into compliance. The lien granted in the July 10, 1996 Order was amended to permit the City to file an additional lien of \$139,400.00 for the period of April 11, 1996 to February 4, 2000. Judge Schma also ordered that the lien was modifiable until the property was cleaned up.

Blank appealed the March 10, 2000 Order. That appeal was dismissed by the Michigan Court of Appeals on July 20, 2000 for lack of jurisdiction.

On October 22, 2001, a hearing was held on the City's Motion for Summary Judgment. On November 8, 2001, the State Court ordered that all occupants of the property remove their personal property and the City could proceed with its foreclosure and sale of the property. The proceeds of the sale were to be applied toward Blank's indebtedness to the City. Blank's appeal of the November 8, 2001 Order was dismissed by the Michigan Court of Appeals on May 21, 2002 for want of prosecution and

Blank's failure to timely file a brief under MCR 7.217(D). Even though the Court Rule then in effect allowed a party an additional 56 days after receipt of the dismissal order to file a delinquent brief, Blank apparently chose not to do so.

On October 29, 2001, Blank sued the City, the Planning Commission, various members of the City Commission, jointly and severally, as well as several other Defendants including Circuit Court Judge Schma. Blank's complaint alleged conspiracy, violation of his constitutional due process rights, prolonged harassment and discrimination, physical and emotional harm and damage, wrongful incarceration and financial damage. The Complaint sought an award of \$5 Million in damages. The City responded with a Motion for Summary Judgment. At the hearing the City was represented by counsel but Blank appeared neither through counsel nor in pro per. In the April 11, 2003 Order Granting the City's Motion for Summary Disposition Judge Corsiglia ruled that Blank failed to state a claim upon which relief could be granted, there was no genuine issue as to any material fact, and the statute of limitations had run. Blank appealed the Order on April 28, 2003. This appeal is still pending before the Michigan Court of Appeals.

It should be noted that on January 20, 2004, Blank, in pro per, filed a 42 U.S.C. §1983 action in the United States District Court for the Western District of Michigan naming as defendants, the City, Mayor George Robert Weston and Diana Skidmore, the Galesburg City Clerk, jointly and severally. That suit also seeks damages of \$5 Million and alleges violation of his due process rights, conspiracy and inverse condemnation as a result of the rezoning of Plaintiff's property in January of 1977 and September of 2001. Although his Complaint does not specifically identify the property at issue, it appears this appeal, at least in part, relates to the same property which is the subject of the City's lien.

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Interspersed within the litigious history of the parties are three Chapter 13 bankruptcy filings, with the first one commencing on June 7, 1994. After a number of motions by the Chapter 13 Trustee, the case was dismissed on May 14, 1996 for Blank's failure to make payments and present a confirmable plan. That case was closed on November 25, 1996.

The next Chapter 13 case was filed on December 3, 2001. This case was initially dismissed on January 7, 2002 for failure to timely file the requisite schedules and statement of affairs. It was reinstated, over the Trustee's objection, on January 30, 2002. Even so, Blank failed to make any payments or to confirm a plan. The bankruptcy was again dismissed on motion of the Chapter 13 Trustee on February 13, 2002, and the case was closed on May 28, 2002.

On May 31, 2002, Blank filed his current Chapter 13 case. Again, documents were initially missing, but subsequently filed on July 9, 2002. Confirmation hearings were scheduled for August 14, 2002; October 15, 2002; January 8, 2003; July 29, 2003; September 2, 2003; September 15, 2003; October 6, 2003; January 6, 2004; and February 9, 2004. Each confirmation hearing was met with objections by the Chapter 13 Trustee and the City. The Trustee also filed various motions to dismiss. Within this time period however, the Debtor did file his delinquent tax returns and paid \$14,919.00 to the Chapter 13 Trustee.² Despite these numerous opportunities, Blank was unable to propose a viable Chapter 13 Plan

²While the payment into the Chapter 13 estate is laudable, it is not sufficient. Paramount here is the Debtor's inability after three and a half years to propose a reasonable and confirmable Plan which deals with all his creditors including the City.

which fairly treated the City's claim. Following several hearings in this case, the Court granted the Trustee's Motion to Dismiss on February 17, 2004. Included as part of that Order was a 180 day bar from refiling any bankruptcy case.

On February 27, 2004, Debtor, in pro per, appealed from the dismissal of his bankruptcy case pursuant to 11 U.S.C. §105. At the same time, he filed an Emergency Motion for Stay Pending Appeal and Brief in Support. Debtor neglected to serve the Notice of Appeal, Motion for Stay Pending Appeal and Brief in Support upon opposing counsel and the Chapter 13 Trustee. The Court remedied this when it included these documents along with its Notice of Hearing and Scheduling Order.

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Whether correct or incorrect, Blank most obviously and very strongly feels persecuted. He has spent considerable time arguing about the City's motives for wanting his property, and the appropriateness of the State Court's ruling and assessment of fines and liens. Although the Bankruptcy Court is a federal court of equity, we are concomitantly bound by the full faith and credit clause of the United States Constitution and the Doctrines of Collateral Estoppel and Res Judicata. In other words, we are bound by the final judgments of courts in other states as well as final determinations in the courts of our state. The Bankruptcy Court is not a court of appeals. We have no jurisdiction to redetermine the decisions of any state court decision. What has been determined by the state court and not successfully appealed cannot be undone by the Bankruptcy Court. People v. Gates, 434 Mich. 146, 154 n.7, 452 N.W. 2d 627 (1990); W.E. Rozinak Properties, Ltd. v. Leemon Oil Co., 2002 WL 265897 (Mich. App.). Consequently, the

only issue before us is whether the Debtor is entitled to a stay pending his appeal.

The grant or denial of a stay pending appeal in bankruptcy proceedings is governed by the twin provisions of Fed. R. Bankr. P. 7062 and Fed. R. Bankr. P. 8005. “The interrelationship between such automatic appellate stay and such discretionary stay has not been authoritatively resolved.” Editor’s Comment, Norton Bankruptcy Law and Practice to Federal Rule of Bankruptcy Procedure 8005. However, since the Debtor has not posted a bond, we can easily conclude that he is not entitled to an automatic appellate stay.

There are four factors which must be considered in determining whether an appellant is entitled to a discretionary stay pending appeal. They are: (1) whether the defendant has a strong or substantial likelihood of success on the merits; (2) whether the defendant will suffer irreparable harm if the bankruptcy court proceedings are not stayed; (3) whether staying the bankruptcy court’s order will substantially injure other interested parties; and (4) where the public interest lies. Baker v. Adams County/Ohio Valley School Board, 310 F.3d 927 (6th Cir. 2002); Grutter v. Bollinger, 247 F.3d 631 (6th Cir. 2001); and Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150 (6th Cir. 1991).

The factors must be balanced as the Sixth Circuit instructs:

The strength of the likelihood of success on the merits that needs to be demonstrated is inversely proportional to the amount of irreparable harm that will be suffered if a stay does not issue.

However, in order to justify a stay of the district court’s ruling, the defendant must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the

harm that will be inflicted on others if a stay is granted. See In re DeLorean Motor Co., 755 F.2d 1223, 1229 (6th Cir. 1985)

Baker, 310 F.3d at 928.

The movant must demonstrate more than the mere “possibility” of success on the merits.

Mason County Medical Association v. Knebel, 563 F.2d 256, 261 n.4 (6th Cir 1977).

[E]ven if a movant demonstrates irreparable harm that decidedly outweighs any potential harm to the defendant if a stay is granted, he is still required to show, at a minimum, serious questions going to the merits.”

Griepentrog, 945 F.2d at 153-154

The City’s dispute with Blank over the property has been ongoing since 1977, some twenty-seven years. The judgment totaling \$148,500 is a result of two separate orders issued on July 10, 1996 and March 10, 2000, four to eight years ago. Although the Debtor filed three separate Chapter 13 bankruptcy cases during this time period, he has never paid one cent to the City. The State directed the City to sell the property in November 2001. We then ordered the property to be sold at the January 6, 2004 hearing, directing the parties to list it at 15% above the appraised value. Although not explicitly stated, the Court intended that the sale be a legitimate one to a bona fide purchaser. To date the City still has received neither payment nor the property.

At the February 6, 2004 hearing the Court was presented with a buy-sell agreement executed by LCM Associates, LLC, (LCM) a sole proprietorship wholly owned by Luanne McClain, (McClain) the Debtor’s fiancé. This agreement contained the purchase price of \$150,000.00 with an earnest money

deposit of \$100.00 and was contingent upon two conditions: (1) that the prospective purchaser obtain a mortgage within 180 days and; (2) that the property be rezoned. No financial statement regarding LCM Associates was proffered.

When questioned under oath, McClain testified that LCM was formed in September 1999 to purchase real estate in the City of Kalamazoo. LCM's only asset is a warehouse with a state equalized value of \$40,000.00. Located at 1734 Lake Street, it is currently used for her personal storage. The building has never been appraised and she did not know its fair market value. LCM has no debt other than taxes owed in the amount of \$3,000.00. McClain had not applied for a mortgage on the property although she spoke to Rick File about borrowing money. There was no commitment letter from File.

McClain also stated that for the past nine years she has resided with the Debtor at 421 East M-96 in Galesburg. This also is the address of LCM. She works at B&B Enterprises and Environmental, where Blank has "some interest." Her salary last year was \$12,000.00.

The Court finds that this purchase agreement was not an arms-length transaction. The following factors make this bargain untenable: (1) the relationship between the Debtor and the purchaser (both personal and professional); (2) the purchaser's yearly salary; (3) the lack of corporate assets; (4) the unknown value of the warehouse, LCM's only corporate asset; (5) the lack of financing; (6) the absence of any commitment for financing; (7) the meager earnest money down payment; and (8) the failure to produce a corporate financial statement. Moreover, the added contingency of having the property rezoned simply guarantees further delay of any "sale" and the turnover of proceeds to the City. Because the Debtor did not comply with this Court's January 6, 2004 Order, and the lack of progress of this case, the Court dismissed his Chapter 13 bankruptcy case.

The Debtor has been in bankruptcy a total of three and a half years, and has yet to file a feasible plan which pays the City its secured debt. In the current case, the Debtor failed to even list the City as a creditor. Having finally progressed to the point where the Court ordered the listing of the property or its sale to a legitimate buyer, the Debtor failed to do either.

The addition of a 180 day bar to refile has been sanctioned by other courts. See In re Price, 304 B.R. 769 (Bankr. N.D. Ohio 2004); In re Buck, 2004 WL 385412 (Bankr. E.D. Tenn.); In re Flores, 291 B.R. 44 (Bankr. S.D.N.Y. 2003); In re Roland, 224 B.R. 401 (Bankr. E.D. Mo. 1997); In re Robinson, 198 B.R. 1017 (Bankr. N.D. Ga. 1996). In light of this Debtor's past history of filing Chapter 13 cases to hold off the City rather than proposing a confirmable plan to pay creditors, we believe the 180 day bar is not only warranted but required.

Consequently, the Court finds that the Chapter 13 case filed by Blank was neither feasible nor filed in good faith. After three Chapter 13 cases, the failure to file a confirmable plan, the failure to sell the property in an arms-length transaction and several stalling tactics by the Debtor, the Court finds it highly unlikely that the Debtor will prevail on the merits of an appeal.

Staying the Court's Order will further harm the City. The property dispute has been ongoing for some twenty-seven years, and while fees were only secured by a lien four to eight years ago, the City is entitled to payment.

The public interest lies in ensuring that the bankruptcy system is not abused. Chapter 13 is intended to allow Debtors to propose a reasonable and bona fide plan which pays their creditors. That has not happened in this instance.

If the stay pending appeal is not granted, the harm that will befall the Debtor is most likely the sale

of his property. Although an unpleasant outcome for the Debtor, the City has consistently prevailed on the merits of its claim in State Court. As stated previously, we are unable and unwilling to undo these determinations. The Debtor has hung on and stalled the inevitable long enough. The City is due payment on its debt which can only occur with the sale of the property.

Dated: March 30, 2004

Honorable Jo Ann C. Stevenson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In Re:

William A. Blank,

Debtor.

Case No. SK 02-06328

Chapter 13

**ORDER DENYING DEBTOR'S MOTION
FOR STAY PENDING APPEAL**

At a session of said Court, held in and for said District, at the United States Bankruptcy Court, Federal Building, Grand Rapids, Michigan this 30 day of March, 2004

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

For the reasons stated in the attached Opinion,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Debtor's Motion for Stay Pending Appeal is DENIED;
2. A copy of this Opinion and Order shall be served by first class United States mail, postage prepaid upon William A. Blank, Robert A. Soltis, Esq., City of Galesburg, John Van Elk, Esq., Mary K. Viegelahn Hamlin, Chapter 13 Trustee.

Dated: March 30, 2004

Honorable Jo Ann C. Stevenson
United States Bankruptcy Judge

Served as ordered:
