

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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BKY No. 10-44428

In re:

Chapter 7

Lynn E. Baker,

Debtor.

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**REPLY OF MOVANT R.J. ZAYED**

Debtor Lynn E. Baker (“**Debtor**”) opposes the request of Movant R.J. Zayed, as Receiver of the Trevor Cook matters (“**Receiver**”), for relief from the automatic stay so that Debtor may evade the Receiver’s efforts under Chief Judge Davis’s Receivership and Freeze Orders to identify, locate and recover assets of the Receivership Estates.

**I. STAY RELIEF ISSUES**

The automatic stay provisions of 11 U.S.C. §362 were meant to halt collection proceedings which could affect the administration of the bankruptcy estate. They were not intended to block other matters.

As Your Honor has noted:

The mere filing of a petition in bankruptcy cannot, in and of itself, erase a plaintiff’s claim, its opportunity to litigate, or the fact that the debtor may be liable to the plaintiff in some amount. *In re Bock Laundry Mach. Co.*, 37 B.R. 564, 567 (Bankr. N.D. Ohio 1984). Bankruptcy Code section 362(d)(1) provides that the bankruptcy court may grant relief from the automatic stay for cause. *In re Blan*, 237 B.R. at 739. Although Congress did not define cause, it intended that the automatic stay could be lifted to allow litigation involving the debtor to continue in a non-bankruptcy forum under certain circumstances. *Id.* (citing H.R.Rep. No. 95-595, at 341 (1977), U.S.Code Cong. & Admin.News 1978, at 5963, 6297-6298; S.Rep. No. 95-989, at 50 (1978), U.S.Code Cong. & Admin.News 1978, at 5787, 5836). It would often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere. *Id.* (citing *In the Matter of United Imports, Inc.*, 203 B.R. 162, 166 (Bankr. D. Neb. 1996)).

*In re Wiley*, 288 B.R. 818, 822 (8th Cir. B.A.P. 2003) (Kressel, J.).

The legislative history of §362(d) does little to assist in defining "cause." However, it has been noted that:

Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is protection from his creditors. *The facts of each request will determine whether relief is appropriate under the circumstances.* H.R.Rep. No. 595, 95th Cong., 1st Sess. 343-44 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6300 (emphasis added).

*In re Matter of Holly's, Inc.*, 140 B.R. 643, 684 (Bankr. W.D. Mich. 1992) (emphasis added); *See also In re Ionosphere Clubs, Inc.*, 105 B.R. 765, 771 (Bankr. S.D.N.Y. 1989) ("The automatic stay's purpose is to protect the debtor from its creditors and to provide for the orderly administration of the debtor's estate. H.R. Rep. No. 595, 95th Cong., 1st Sess. 343-44 (1977); *Bohack Corp. v. Borden, Inc.*, 599 F.2d 1160, 1161-62 (2d Cir.1979). The automatic stay should be lifted where the proceedings bear no relationship to the protection of the debtor, or the orderly administration of the estate.")

Trevor Cook has committed one of the largest frauds in Minnesota history. Debtor, or the entities that he controls, was the recipient of some of the proceeds of that fraud. Debtor, in his affidavit, lists many of the entities to which he has an affiliation – none of which are now claimed to have any equity. In other words, Debtor claims that assets transferred by Cook are now gone.

Now Debtor would have the Court believe that, since the millions of dollars transferred to him are claimed to be gone, the Receiver is barred by the stay from doing his job.<sup>1</sup> If the

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<sup>1</sup> Arguably, stay relief could be granted pursuant to 11 U.S.C. §362(b)(4) as the Receivership Estates were created at the request of governmental entities exercising their police and regulatory powers. Although the Receiver is not a government entity, he is fulfilling his charge of the District Court pursuant to the request of governmental entities seeking to redress a massive fraud.

government had not appointed a receiver to act, there is no doubt that the government's actions would be excepted from the automatic stay. *See SEC v. Brennan*, 230 F.3d 65, 71 (2d Cir. 2000) (citing *City of New York v. Exxon*, 932 F.2d 1020, 1024 (2d Cir. 1991) (“[W]here a governmental unit is suing a debtor to prevent or stop violation of fraud . . . or . . . police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.”). That a federally-appointed receiver is now investigating and attempting to redress the fraud should equate to “cause” for relief from the automatic stay.

Finally, relying on *Jordan v. Independent Energy Corp.*, 446 F. Supp. 516 (N.D. Tex. 1978), Debtor argues that the District Court lacked authority to issue an order which precluded him from commencing a bankruptcy case. This is incorrect. As noted in the case of *SEC v. Beyers*, 2010 WL 2366539 (2d Cir. 2010):

There is no question that district courts may appoint receivers as part of their broad power to remedy violations of federal securities laws. *See, e.g., SEC v. Am. Bd. of Trade, Inc.*, 830 F.2d 431, 436 (2d Cir. 1987); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103-04 (2d Cir. 1972). . . .

An anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership. While such injunctions are to be used sparingly, there are situations in which they are entirely appropriate. . . .

In this litigation the receivership must manage hundreds of Wextrust entities that sprawl across the Middle East, Africa and the United States, many of which may have commingled assets. This is precisely the situation in which an anti-litigation injunction may assist the district court and receiver who will want to maintain maximum control over the assets. The current injunction prevents small groups of creditors from placing some entities into bankruptcy, thereby removing assets from the receivership estate to the potential detriment of all. We are persuaded that the powers afforded the receiver and the district court allow it to adequately protect the assets of the estate.

The Committees next argue that the district court committed reversible error by issuing the initial preliminary injunction without performing the necessary analysis under Federal Rules of Civil Procedure 65. The Committees rely on *Jordan v. Independent Energy Corp.*, 446 F.Supp. 516 (N.D.Tex.1978), for the proposition that a court can never issue an anti-bankruptcy injunction that satisfies the requirements of Rule 65 because the parties cannot show irreparable harm. *Id.* at 529. Plainly, *Jordan* is not binding on this Court.

*Id.* at \*4; *See also In re Fastech Production, LLC*, 2010 WL 1463401 (Bankr. E.D. Okla. 2010) (In cases involving receiverships that were specifically authorized or required by federal law or brought by government agency, “it is understandable that a federal receivership might preclude the filing of a bankruptcy.”).

Debtor’s arguments regarding stay relief are off the mark. The issues are whether there is “cause” for stay and relief and whether Chief Judge Davis can determine if Debtor is in contempt of his Orders. As detailed herein and in the Receiver’s motion, the Receiver believes that he has established cause. As discussed in the following section, Chief Judge Davis can determine whether the Debtor violated his Orders.

## **II. CHIEF JUDGE DAVIS MAY RULE ON CONTEMPT**

Debtor argues that bankruptcy is, essentially, a Constitutional right and that, because of this, Chief Judge Davis cannot determine whether Debtor is contempt of his Orders. This is wrong. The District Court retains the power to enforce its own orders and to fashion remedies for violation of those orders. In fact, the District Court has concurrent jurisdiction with this Court to determine the effect of the bankruptcy proceeding on the Receivership Estates. *See SEC v. Wolfson*, 309 B.R. 612, 617 (D. Utah 2004). The Receiver intends to request from Chief Judge Davis, among other relief, that the Receiver’s claims against the Debtor be excepted from discharge.<sup>2</sup>

Debtor’s arguments to the effect that he was not bound by Chief Judge Davis’ Orders should be made to Chief Judge Davis, not to this Court. The Receiver is requesting that he be permitted to bring the issue before Chief Judge Davis.

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<sup>2</sup> Prior to the deadline in this case, however, the Receiver will take such actions as are necessary to protect against the discharge of the Receiver’s claims against the Debtor.

### III. ALLEGATIONS THAT RECEIVER VIOLATED THE STAY

Debtor's assertions that the Receiver has violated the stay are not properly before the Court.<sup>3</sup> Further, the Receiver has not violated the automatic stay. His letter related to contempt of the Orders of Chief Judge Davis which the Receiver believes were violated by the commencement of the Debtor's case. *See Wolfson*, 309 B.R. at 620 (automatic stay does not prohibit contempt proceedings, allowing courts to enforce orders).<sup>4</sup>

The Court should take no action on Debtor's allegations of wrongdoing on the part of the Receiver.

### CONCLUSION

The Receiver is not requesting relief from this Court which would alter the administration of this bankruptcy case. Simply because Debtor elected to file bankruptcy does not mean that he is cleared of participation in the matters which are the Receiver's charge under the direction of Chief Judge Davis.

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<sup>3</sup> A party seeking to recover damages for violation of the automatic stay must commence an adversary proceeding. Bankr. Rule 7001.

<sup>4</sup> Civil contempt proceedings are not explicitly excepted from the automatic stay in 11 U.S.C. § 362, and courts are required to interpret exceptions narrowly. One Minnesota case, *Adkins v. Martinez*, 176 B.R. 998 (Bankr. D. Minn. 1994) (Kishel, J.), states that the automatic stay "restrains all persons and entities from initiating civil contempt proceedings against a debtor in bankruptcy." However, *Adkins* did not consider any different rule based on the purpose of the contempt proceeding. (*Adkins* dealt with a creditor's lawyer who, after a judgment debt had been discharged in bankruptcy, failed to quash an outstanding warrant for the debtor's arrest.)

Other jurisdictions follow the reasoning of *In re Lowery*, 292 B.R. 645 (Bankr. E.D. Mo. 2003) for the proposition that a civil contempt proceeding brought for the purpose of upholding the dignity of the issuing court, as opposed to the purpose of collecting a judgment, is excepted from the stay. *See Forsberg v. Pefanis*, 2010 W.L. 2331465 (N.D. Ga. June 7, 2010); *KuKui Gardens Corp. v. Holco Capital Group Inc.*, 675 F. Supp. 2d 1016 (D. Haw. 2009) (The majority of courts, however, have considered whether the civil contempt proceeding is one intended to effectuate collection of a judgment or one which is intended to uphold the dignity of the court. If it is to uphold the court's dignity, the civil contempt order is outside the scope of the bankruptcy stay.)

**LEONARD, O'BRIEN  
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: July 21, 2010

By \_\_\_\_\_

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Lynn E. Baker

Debtor.

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BKY No. 10-44428

Chapter 7

**UNSWORN CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2010, I caused the following documents:

***Reply of Movant R.J. Zayed***

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

Dated: July 21, 2010

/e/ Stephanie Wood

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