

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
) Under Chapter 12  
DORR PARTNERSHIP, )  
) No. BK 87-30660  
Debtor. )

MEMORANDUM AND ORDER

This matter is before the Court on debtor's motion to vacate the Court's Order of August 17, 1987 which lifted the automatic stay as to the Federal Land Bank of St. Louis ("FLB").

Debtor filed its petition under Chapter 12 of the Bankruptcy Code on July 14, 1987. On July 23, 1987, FLB filed its motion for relief from stay. On that same day, the Bankruptcy Clerk sent notice of FLB's motion to several of the parties in the case including the debtor. The notice ordered any party wishing to object to FLB's motion to file a written response to the motion on or before August 12, 1987. The notice also stated that if no response to the motion was filed with the Court on or before said date, "an order allowing the relief sought in said motion shall be entered forthwith." Finally, the notice also provided for the setting of a hearing on the motion if a timely response was filed.

At the time the notice was sent, debtor was proceeding pro se. On August 10, 1987, Jerold W. Barringer and Thomas H. Nevins moved this Court for leave to represent debtor pro hac vice. The Court granted the motion on August 14, 1987.

Debtor did not file a response to FLB's motion for relief from stay and on August 17, 1987, the Court lifted the stay. On August 24,

1987, debtor moved to vacate the order. In the motion to vacate, debtor's attorney argues that he never received a copy of the Court's July 23, 1987 notice and order. He further argues that §362(e) gives debtor thirty days to respond to the motion and that debtor did, in fact, respond to the motion within thirty days. Finally, he alleges that §362(e) requires notice and a hearing before the Court can lift the stay.

The procedure for obtaining relief from the automatic stay is set forth in §362(d):

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay -

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if -

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

Section 362(e) provides for automatic termination of the stay in 30 days

unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this sub-section may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this

section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing.

In short, §362(e) provides that the stay is automatically terminated thirty days after a motion for relief from stay, unless the court, after notice and hearing, rules within that time that the requirements for lifting the stay listed at §§362(d)(1) and (2) are not present. In re Marine Power & Equipment Co., 71 B.R. 925, 928 (W.D. Wash. 1987). Under §102(1), the phrase, "after notice and hearing"

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if -

(i) such a hearing is not requested ~~timely~~ by a party in interest; or

(ii) there is insufficient time for such a hearing to be commenced before such act must be done, and the court authorizes such act.

It should be emphasized that, under §362(e), the stay is automatically terminated after thirty days even if the court fails to hold a hearing, "whether its failure to do so results from the parties' failure to importune the court - due to their own inadvertence or to the absence of a dispute - or from the court's own inadvertence." In re River Hills Apartments Fund, 813 F.2d 702, 707 (5th Cir. 1987) (footnote omitted). See also In re Wood, 33 B.R. 320 (Bankr. D. Idaho 1983).

In the present case, the record reveals that debtor was sent

notice of FLB's motion for relief from stay. Debtor's attorney was not sent notice of the motion because debtor was not represented by counsel at the time the motion was filed.

Although debtor's attorney claims that a response to the motion was filed within thirty days, a search of the record fails to show that any such response was ever filed. Additionally, the Court notes that debtor's motion to vacate the order lifting the stay was filed on August 24, 1987, which was thirty-two days after the motion for relief from stay was filed.

It was up to the debtor to respond in a timely manner if it wanted to ensure the continued protection of the automatic stay. While the Bankruptcy Court imposes a duty upon this Court to act within the appropriate time limit, it was defendant's burden to call the issue to the Court's attention if it wanted the stay to be continued. See, In re River Hills Apartments Fund, supra. Debtor has failed to meet that burden.

IT IS ORDERED that debtor's motion to vacate order lifting stay is DENIED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: October 13, 1987