

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)
) In Bankruptcy
WILLIAM L. LEVIN,)
JUDITH A. LEVIN,) No. 95-31728
)
Debtors.)

OPINION

This matter is before the Court on the motion for relief from the automatic stay filed on February 1, 1996, by Kay Swanner ("Movant") in her capacity as Independent Representative of the Estate of Gary D. Swanner, deceased. At the final hearing on the motion on April 22, 1996, the Court heard argument on the question of whether Movant is entitled to have the automatic stay lifted. In addition, the Debtors raised the issue of whether Movant has filed a timely proof of claim in this bankruptcy case and is, therefore, entitled to share in the distribution under the Chapter 13 plan.

Movant is a co-defendant, along with William L. Levin (Debtor) and others, in a civil action brought in Illinois state court seeking damages for personal injury to plaintiff James Kyle under the Illinois Structural Work Act and negligence law. Movant requests that the Bankruptcy Court lift the automatic stay to allow her to prosecute a cross-claim against Debtor in the state court action and, if successful, to obtain a judgment against Debtor indemnifying her for any amounts she is required to pay in damages to James Kyle.

The relevant facts are not in dispute. The Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on September 7, 1995. The last date to file claims in the bankruptcy case was established as January 3, 1996. Despite the pending state court action, the Debtors did not list the movant (or decedent Swanner) as a creditor on their bankruptcy schedules and did not file a suggestion of bankruptcy in the state court action. Movant was not notified of the bankruptcy, nor of the deadline for filing timely claims, in the normal course of notifying creditors. In fact, Movant did not learn of the

¹The Court notes that Debtors have not filed a written objection to Movant's proof of claim and that the matter was not scheduled for hearing on April 22, 1996.

bankruptcy case until January 11, 1996, when the Debtor appeared for a deposition as part of the discovery process in the state court proceeding, Movant filed her motion for relief from the automatic stay on February 1, 1996, and filed a proof of claim on March 22, 1996.

Based on the undisputed facts, the Court finds that Movant had neither notice, nor actual knowledge, of the bankruptcy proceeding before the deadline to file proofs of claim passed. Therefore, Movant's claim will be allowed despite its tardy filing date. Additionally, the Court finds that the interest of judicial economy will be better served if the Movant's claim against the Debtor is liquidated in the ongoing state court action.

Accordingly, the Movant's claim will be allowed and Movant will be granted relief from the automatic stay to prosecute to judgment her cross-claim against Debtor in the state court proceeding.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: May 16, 1996

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE