

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

PARKVIEW AUTO SALES, INC.

CASE NO. 91-02825

Debtor

Chapter 11

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This contested matter was brought before this Court by an Order To Show Cause obtained by Mary V. Bice ("Bice") on October 25, 1991.

Parkview Auto Sales, Inc. ("Debtor") was ordered to show cause before the Court on October 29, 1991 as to why the automatic stay imposed pursuant to §362(a) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code") should not be lifted to permit Bice to proceed with a hearing before New York State Division of Human Rights ("Human Rights") scheduled for November 4, 1991 at Syracuse, New York.

Argument was heard by this Court at Syracuse, New York on October 29, 1991 with both Bice and the Debtor appearing by their respective counsel.

JURISDICTION

This Court has subject matter jurisdiction over this contested matter pursuant to 28 U.S.C. §1334(a), §157(a), (b)(1) and (b)(2)(G).

FACTS

On or about April 10, 1986, Bice filed a complaint with Human Rights alleging sexual harassment while employed by the Debtor between 1984 and 1986.

On October 10, 1991, Debtor filed a voluntary petition pursuant to Chapter 11 of the Code in this Court and the stay imposed pursuant to Code §362(a) became effective on that date.

On October 16, 1991 Human Rights issued a Notice of Hearing scheduling a hearing on Bice's complaint to be held at Syracuse, New York on November 4, 1991 at 10:30 A.M.

ARGUMENTS

Bice contends that the Stay should be lifted to permit the November 4th hearing to go forward simply to allow Human Rights to determine the amount of her claim and enter judgement. She concedes that no effort to collect the judgement would be undertaken and she would then be treated as a creditor with a liquidated claim within Debtor's Chapter 11 case.

Bice's counsel points out that if the November 4th hearing is stayed, it may be one to two years before another hearing would be scheduled thereby greatly prejudicing Bice.

The Debtor argues that to lift the stay will greatly prejudice it since its counsel has only recently become aware of the sexual harassment claim and further the hearing on November 4th is one day before the Debtor's Code §341 meeting of creditors making preparation for the latter hearing onerous.¹

Debtor also asserts that the continuation of the Human Rights hearing will allow Bice to liquidate an otherwise contingent claim to the detriment of other creditors.

Finally, Debtor postures that Bice will not be prejudiced by a delay of the November 4th hearing because her complain has already been pending some five years.

DISCUSSION AND CONCLUSIONS

Though not styled as such, the Court considers Bice's motion as one made pursuant to Code §362(d)(1) which authorizes this Court to modify the automatic stay imposed pursuant to §362(a) for cause.

The leading case in this Circuit is Sonnax Industries Inc. v. Tri-Component Products Corp. (In re Sonnas Industries Inc.) 907 F.2d 1280 (2nd Cir. 1990).

In Sonnax, the Second Circuit adopted the so-called "Curtis factors" (In re Curtis 40 B.R. 795 (Bankr. Utah 1984)) in analyzing whether or not sufficient cause existed to induce a bankruptcy court to lift the automatic stay and allow the commencement or continuation of a

¹ At oral argument Debtor's counsel indicated that while Debtor has counsel in the Human Rights procedure, that counsel had recently withdrawn due to a lack of compensation.

proceeding against a debtor in another forum.

Having considered four of the twelve "Curtis factors", the Second Circuit concluded at page 1288, "At best Rudow demonstrates that the inquiry called for by motions to lift the automatic stay are very fact specific and involve the weighing of numerous factors peculiar to the particular case. Necessarily broad discretion is accorded to bankruptcy and district courts and other decisions are useful far more for general guidelines than as binding precedents".

Applying the "Curtis factors" here, the Court must conclude that they dictate in favor of Bice.

While it is true that the Debtor may be unprepared to proceed with the November 4th hearing, that is not a consequence of its having filed a petition pursuant to Chapter 11 and while participation in the hearing may interfere with the Chapter 11 case, the Court perceives that interference to be momentary and non-disruptive to the Chapter 11 case generally.

Clearly, Bice's claim should be adjudicated a specialized State forum such as Human Rights rather than in this Court, which focuses primarily on the administration of the Chapter 11 case.

Contrary to Debtor's assertions, the liquidation of Bice's claim will not prejudice the interest of other creditors. It will simply quantify an unliquidated claim which will allow the Debtor to more accurately assess the nature and amount of its claims in formulating a plan and disclosure statement.

Finally, the impact of the stay on the parties and the balance of harm clearly weighs in Bice's favor. Whether or not postponement of the November 4th hearing will result in a one or two year delay as Bice contends is not controlling in light of the passage of some five years leading up to Bice's "day in court".

While preparedness for trial is a "Curtis factor", the Court does not believe that it should to the Debtor's benefit here. The Human Rights proceeding has been pending for five years, the allegations of Bice are explicit and direct and Debtor has been aware of the hearing date for two weeks, albeit that it was advised by Human Rights that it was bound by the stay.

Having considered those "Curtis factors", the Court deems applicable, it is hereby,
ORDERED that stay imposed pursuant to Code §362(a) is modified to permit Bice to proceed with the hearing before Human Rights on November 4, 1991, and it is further

ORDERED that Bice may proceed in that forum to the extent of obtaining a determination that the Debtor either did or did not engage in prohibited practices and the awarding of compensatory damages, if applicable, and it is finally

ORDERED that Bice is stayed from taking any action to enforce any such award of compensatory damages by the entry of judgement or other enforcement procedures under applicable State law.

Dated at Utica, New York

this day of October, 1991.

STEPHEN D. GERLING
U.S. Bankruptcy Judge