

12/27/04

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. 04-30508-REB
	:	
JEFFREY HERMAN FROUG,	:	CHAPTER 7
	:	
Debtor.	:	
_____	:	
NADINE BELLOWS f/k/a	:	CONTESTED MATTER
NADINE FROUG,	:	
	:	
Movant.	:	
	:	
v.	:	
JEFFREY HERMAN FROUG, Debtor	:	
and BETTY A. NAPPIER, Chapter 7	:	JUDGE BRIZENDINE
Trustee,	:	
	:	
Respondents.	:	
_____	:	

INTERIM ORDER GRANTING MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

Having come before the Court for hearing on December 1, 2004, on the Motion For Relief from the Automatic Stay pursuant to 11 U.S.C. §362 and to Extend Bar Date to File Complaints Pursuant to 11 U.S.C. §523 and §727 (hereinafter "the Motion") filed by Movant, NADINE BELLOWS f/k/a NADINE FROUG, it appears to the Court as follows:

1.

Debtor filed his petition under Title 11, Chapter 7 on October 25, 2004.

2.

Debtor and Movant were husband and wife, having been married on or about June 28, 1981. Debtor and Movant divorced on or about October 2, 1998. During their 17 year marriage,

two children were born (they are hereinafter referred to as "the Children"). Debtor has since remarried. A true and correct copy of the parties Final Judgment of Dissolution of Marriage and Marital Settlement Agreement were attached to the Motion and are collectively referred to as the "Divorce Decree." These documents were stipulated by counsel into the record.

3.

The Divorce Decree provides for the following:

- a. Paragraph 6 provides that Ms. Bellows shall retain the marital residence, located at 1340 N.W. 98th Avenue, Plantation, Florida.
- b. Paragraph 6(c) provides for Debtor to pay the second mortgage on the home where Wife was to live with the Children and to hold her harmless with respect to this mortgage.
- c. Paragraph 7 divides the Tangible Personal Property of the parties and Paragraph 8 divides the Intangible Personal Property of the parties.
- d. Paragraph 9 divides the debt of the parties. This includes that the parties will pay the debt in their name and specifically requires the Debtor to pay certain specified debts, including \$1,100.00 to David Jacobs (a photographer). The Debtor was required to pay other debts, which may be outstanding and on which Ms. Bellows may be liable and that this issue is being researched by Ms. Bellows.
- e. Paragraph 11 provides for alimony to Ms. Bellows in the amount of \$3,000.00 per month for 13 months beginning December 15, 1998 and in the amount of \$5,400.00 per month for five years and 9 months, beginning on January 15, 2000. These payments are due on the 15th day of each month. Further, this paragraph specifically provides that this obligation will terminate upon Ms. Bellows' death or remarriage and that they will be taxable to her and deductible to Debtor for tax purposes;
- f. Paragraph 13 addresses custody and visitation and provides for Movant to be the

Childrens' primary place of residence. Debtor lived a considerable distance from Movant (for instance he is now in Georgia and she is in Florida) and this is anticipated in this paragraph. Accordingly, Movant was the primary care giver of the minor Children (they are no longer minors).

- g. Paragraph 14 provides for Child Support and requires Debtor to pay \$3,100.00 per month from September 1, 1998 through December 1, 1999 and \$2,809.00 per month from January 1, 2000 until both Children graduate high school, turn 18 or 19 (depending on school status), enter military service or become otherwise emancipated. This provision appears to have been modified since the parties' divorce and the most recent official recital of Debtor's child support obligation is found in the Report and Recommendation of the General Master/Hearing Officer attached to the Motion as Exhibit "C," which was stipulated into the Record by counsel.
- h. Paragraph 15 provides for the Children's Medical Care and requires Debtor to maintain medical insurance for the children so long as the terms of the policy permit, including through college and requires Debtor to pay all reasonable and necessary medical, dental, prescription drug, hospitalization, optometric and orthodontic expenses not covered by insurance until January 1, 2000 and thereafter these expenses will be shared equally until child support payments for each child terminate.
- i. Paragraph 16 provides for additional expenses for the Children and includes a requirement that the Debtor shall pay for costs associated with the Children's playing of a musical instrument; all reasonable and necessary college expenses and the pre-paid college tuition program in which they were participating.
- j. Paragraph 18 provides for Debtor to maintain a life insurance policy on his life in the amount of \$750,000.00 as well as a Disability Policy with Movant as beneficiary for so

long as the Debtor has any financial obligations to Movant or the Children.

- k. Paragraph 20 provides for the Debtor to pay Movant \$50,000.00 in attorney's fees and sets forth a schedule for payment.
- l. Paragraph 29 provides for Florida law to govern the interpretation of the Divorce Decree and provides that "The Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, shall have continuing and exclusive jurisdiction over the parties and the subject matter for purposes of enforcement, clarification, or modification of this Marital Settlement Agreement or any Final Judgment Of Dissolution Of Marriage approving and incorporating this Agreement, for as long as either party is a resident of the State of Florida."

4.

Ms. Bellows remains a resident of Broward County, Florida.

5.

Debtor has failed to perform his obligations pursuant to the terms of the Divorce Decree and this failure resulted in the entry of an income deduction order for the payment of the past due alimony and child support. Attached to the Motion as Exhibit "C" is a copy of the Report and Recommendation of the General Master/Hearing Officer addressing this Contempt. The income deduction order resulting from this Report and Recommendation was entered on September 23, 2003. Exhibit "C" was entered into the record by stipulation of counsel. Other Contempt motions have been filed with the most recent one set for hearing/trial on October 27, 2004. This Contempt was stayed by the filing of this Bankruptcy Case on October 25, 2004.

6.

Debtor currently owes Movant for the following obligations under the Divorce Decree: the second mortgage, the debt to David Jacobs (the photographer); alimony (past due and on-

going), child support (past due), medical expenses, "reasonable and necessary" college expenses for the now adult children (past due and on going), the son's pre-paid college fund, attorney's fees (previously awarded with motions for such fees also currently pending in Florida), statutory interest and possibly on co-signed debt undertaken by Debtor in the Divorce Decree. The precise sums outstanding on each of these obligations is currently in dispute but the parties acknowledge that the total outstanding indebtedness exceeds \$200,000.00 and may exceed \$313,250.00 (the figure Debtor scheduled the debt to Ms. Bellows at on Schedule F). Debtor is also to provide life insurance and disability insurance listing Ms. Bellows as a beneficiary to secure these obligations. Debtor acknowledges that this coverage is in place and is to provide proof of sufficient coverage to Ms. Bellows, through counsel. Finally, there are other non-monetary defaults under the Divorce Decree which include his obligations to (a) remove his piano from the marital residence; and (b) cooperate with the issuance of a Jewish Divorce, a "Get," for which Ms. Bellows is required to pay.

This Court heard argument concerning whether the income deduction order should be allowed to continue. Further, the Court heard argument regarding the dischargeability of the underlying obligations. Based upon the foregoing and the arguments with respect thereto, the Court's powers granted to it pursuant to 11 U.S.C. § 105 and §362, and for good cause shown, it is, therefore, hereby

ORDERED that the automatic stay, to the extent it applies, be, and hereby is, **modified** to allow the underlying income deduction order, as ordered by the General Master and entered on or about September 23, 2003, to continue post-petition. The amount of the deduction order shall remain as set forth by the General Master. In the interim, the payments received by Ms. Bellows from the income deduction order shall be applied to the outstanding child support

arrearage and not as directed by the General Master, awaiting final determination by this Court regarding the Debtor's discharge and/or the dischargeable nature of the obligations due and owing from Debtor to Ms. Bellows. It is

FURTHER ORDERED that Ms. Bellows' request for an extension of the bar date to file Complaints pursuant to 11 U.S.C. § 523(a) and § 727 be, and is hereby, **denied** without prejudice to file another request on a timely basis. It is

FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that another hearing on this Motion will be held on January 11, 2005 at 1:30 p.m. in Courtroom 1202, U.S. Courthouse and Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia. The purpose of this hearing will be to determine to which obligations the on-going income deduction payments shall be applied awaiting trial on the merits of Ms. Bellows' adversary proceeding, if same is filed, and to consider any other changes to this Order that become necessary, including but not limited to any additional relief (retroactive or otherwise) from the automatic stay as may be appropriate to allow Ms. Bellows to proceed in the Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida, with respect to (1) the "Get," (2) the payroll deduction for December 15, 2004, (3) any additional sums due Ms. Bellows for November, 2004 after allowing the Debtor credit for the amounts paid postpetition to Ms. Bellows through payroll deduction on or about October 31, 2004, and (4) the amounts to be paid as hereinafter set forth. It is

FURTHER ORDERED that, to the extent Debtor's employer cannot by reason of the delay in entering this Order, make the required bi-monthly payroll deduction of \$3635.32 for the pay period ending December 30 or 31, 2004, or the required deduction from any bonus to be received in January or February, 2005, that Debtor shall pay said required sums directly to Ms. Bellows upon receipt of his salary or bonus. It is

FURTHER ORDERED that the stay provided for in Federal Bankruptcy Rule of Procedure 4001(a)(3) is hereby **waived** and there shall be no stay of this Order granting limited relief from the automatic stay.

IT IS SO ORDERED.

At Atlanta, Georgia, this 27th day of December, 2004.

A handwritten signature in black ink, appearing to read 'R. Brizendine', is written over a horizontal line.

ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Betty A. Nappier, Esq.
PO Box 1649
Cumming, GA 30028-1649

Roger W. Moister, Jr., Esq.
305 Buckhead Avenue, NE
Atlanta, GA 30305-2315

Ms. Nadine Bellows
1340 N.W. 98th Ave
Plantation, FL 33322

Mr. Jeffrey Herman Froug
5890 Stoneleigh Drive
Suwanee, GA 30024

Shayna M. Steinfeld, Esq.
Steinfeld & Steinfeld, PC
P.O. Box 49446
Atlanta, GA 30359