



IT IS ORDERED as set forth below:

Date: May 29, 2008

A handwritten signature in black ink, appearing to read "W. H. Drake".

W. H. Drake
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
CATHIA ROSETTA KING,	:	08-10892-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Relief from Automatic Stay and Co-Debtor Stay, filed by Georgia's Own Credit Union (hereinafter "Movant"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(G)-(H); § 1334.

The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on April 1, 2008. Prior to that time, the Debtor borrowed money from Movant pursuant to a loan agreement. Under the loan agreement, Movant holds a first priority security interest

in funds in three separate deposit accounts held by the Debtor and two co-debtors, Chaisha Lewis and Cavarro Lewis (hereinafter the "Co-Debtors"). The loan agreement executed by the Debtor also grants Movant a right of setoff with regard to any balance maintained in the deposit accounts. As of the petition date, the Debtor had a combined balance in the deposit accounts of \$1038.91¹ and, according to her Schedule F, the Debtor owes Movant \$2,970.

Movant seeks relief from the automatic stay pursuant to section 362(d) to permit it to execute a setoff of its obligation to repay the Debtor the balance held in the deposit accounts against the Debtor's obligation to repay the loan. The Debtor appeared at a hearing on Movant's motion for relief and requested that the Court deny the motion and order Movant to pay the funds in the account to the Debtor. In support of this request, the Debtor simply stated that the Court should deny Movant's right to setoff and permit the Debtor to use Movant's cash collateral to pay her mortgage payment because the Debtor was saving the funds for that purpose. The Debtor does not challenge the validity of Movant's security interest or its setoff right.

The filing of a bankruptcy petition stays "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor." 11 U.S.C. § 362(a)(7). The Bankruptcy Code preserves a non-bankruptcy right of setoff. *See* 11 U.S.C. § 553 ("Except as otherwise provided in this section and in sections

¹ The Court notes that the Debtor apparently failed to disclose an ownership interest in all three accounts, as the Debtor scheduled an account with Movant with a value of only \$40.

362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case . . .");² *see also Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1995). This requirement has been satisfied in this case, as the Debtor's obligation to repay the loan, and Movant's obligation to pay the Debtor the balance in the deposit account both arose prior to the filing of the Debtor's bankruptcy petition.

Before Movant may exercise its setoff right, it must obtain relief from the automatic stay. *See* 11 U.S.C. § 362(a)(7); 362(d); *see also B.F. Goodrich Employees Fed. Credit Union v. Patterson (In re Patterson)*, 967 F.2d 505, 509 (11th Cir.1992). Relief may be granted upon a showing of cause, including lack of adequate protection. *See* 11 U.S.C. § 362(d). Having considered the facts as set forth by the parties, as well as the record of the Debtor's bankruptcy case, the Court finds adequate cause to grant relief from the automatic stay to permit the setoff.

Movant is a secured creditor, and the Debtor's plan, although it provides for payment in full of all unsecured claims, does not treat Movant's claim as a secured. The Court cannot grant the Debtor's request to order Movant to pay the funds to the Debtor, as Movant's payment of the funds to the Debtor would destroy its setoff right. Leaving the stay

² Section 553 also imposes the additional requirement that the debts being setoff against one another both arise pre-petition. *See* 11 U.S.C. § 553; *B.F. Goodrich Employees Fed. Credit Union v. Patterson (In re Patterson)*, 967 F.2d 505, 509 (11th Cir.1992).

in place without ordering Movant to pay the funds to the Debtor accomplishes nothing. Accordingly, there is no reason to further prohibit the setoff. *See, e.g., In re Rivera*, 345 B.R. 229 (Bankr. E.D. Cal. 2005) ("Denial of the Motion would be tantamount to denial of the IRS' status as a secured creditor under 11 U.S.C. § 506(a). Denial of the Motion without a turnover order would be meaningless because neither the Debtor nor the IRS would benefit from the money. . . . Denial of the Motion, coupled with a turnover order, would effectively force the IRS to finance a portion of the Plan from its cash collateral, without any showing of adequate protection as required by 11 U.S.C. § 363(e).").

For the reasons stated above, the Motion for Relief from Automatic Stay and Co-Debtor Stay is hereby **GRANTED**.

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