

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION_____
IN RE:||
CASE NO. 04-91944

Christine M. Stadler,

CHAPTER 7

Debtor.

JUDGE MASSEY

||ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE AND
AS TO CONTEMPT OF N.C.A., INC. AND REQUEST FOR EMERGENCY HEARING

Mark Zamora, a creditor of the Debtor in this case, filed a motion on March 29, 2005, seeking an order requiring a company called N.C.A. Systems of Illinois, Inc. ("NCA") to show cause why it should not be held in contempt for violating the automatic stay by continuing a lawsuit against a firm known as Law Group of Georgia by Stadler, LLC ("Law Group"). Mr. Zamora says that NCA contracted with both Stadler and Law Group and that Stadler owns Law Group. Debtor was also named as a defendant in that action, but Mr. Zamora attached to his motion a copy of a judgment that NCA obtained only against Law Group. Mr. Zamora seeks an emergency hearing on his motion. A hearing is not necessary because Mr. Zamora lacks standing, and his motion fails to state a claim upon which relief could be granted.

The motion alleges that NCA is trying to collect receivables belonging to the estate in violation of the automatic stay and that if "NCA wrongfully seeks to collect monies which – if collected – are payable to the Trustee, not to NCA." Mr. Zamora reaches this conclusion based on Debtor's ownership of Law Group. He points out that a limited liability company combines the advantages of limited liability of a corporation with pass-through taxation applicable to

partnerships. He then concludes that because Stadler is the sole member of Law Group, the “earnings and accounts receivables, etc. would pass through” to Stadler and that because she is in bankruptcy her earnings pass through to the trustee.

Mr. Zamora’s argument confuses tax law with property law and the law of corporations, partnerships and associations. What the LLC earns may well show up in the tax return of its member, but what belongs to the LLC does not belong to the member, any more that property of a corporation belongs to a shareholder or property of a partnership belongs to a partner. Indeed, section 14-11-501(a) of the Georgia Code Annotated plainly so states: “[a] limited liability company interest is personal property. *A member has no interest in specific limited liability company property.*” (Emphasis added.) Presumably Mr. Zamora does not practice business law, or surely he would have known that.

The only property that belongs to Debtor’s bankruptcy estate is her ownership interest in the LLC and in any distributions to her made by the LLC after the petition date. See 11 U.S.C. 541. The automatic stay imposed by section 362(a) of the Bankruptcy Code applies only to property of the debtor and the estate. It does not apply to property owned by a nondebtor, even if the debtor owns all of the equity in the nondebtor.

Section 362(a) does not proscribe actions brought against nondebtor entities, even where there is a close nexus between those nondebtors and their bankrupt affiliates. That concept has consistently been confirmed and applied in a host of cases everywhere (exemplified in this Circuit by such cases as *Pitts v. Unarco Indus., Inc.*, 698 F.2d 313, 314 (7th Cir.1983) (per curiam) and *In re James Wilson Assoc.*, 965 F.2d 160, 170 (7th Cir.1992)). And the doctrine applies with equal force even where the nondebtor is a corporation wholly owned by the debtor (see, e.g., *Funding Systems Railcars, Inc. v. Pullman Standard, Inc.*, 34 B.R. 706, 709 (N.D. Ill.1983)).

In re Winer, 158 B.R. 736, 743 (N.D. Ill.1993).

In short, Mr. Zamora's legal theory is incorrect, and he has failed to state a claim upon which relief can be granted.

Even if the proceeds of receivables collected by NCA were property of Debtor's estate the motion is flawed. Mr. Zamora seeks damages as a result of NCA's alleged conduct, but in alleging that "if" NCA collects receivables, the collections would be property of the estate, he is saying that the estate has yet to suffer damage. Nor does he show how he personally has been damaged by what he alleges that NCA has done or might do.

The debts allegedly being collected by NCA are also not payable to Mr. Zamora, which undercuts severely an argument that he has standing. Only the Trustee is empowered to protect property of the estate. A bankruptcy case would be unmanageable if a creditor could attempt to step into the shoes of a trustee every time that the creditor was impatient or upset with the trustee's action or lack of action. In *In re Pecan Groves of Arizona*, 951 F.2d 242 (9th Cir. 1991), the Court of Appeals held that creditors lacked standing to pursue an appeal of a judgment adverse to the estate that the trustee declined to appeal, stating.

. . . [T]he majority of jurisdictions which have considered standing under the automatic stay provision, 11 U.S.C. § 362, have concluded that section 362 is intended solely to benefit the debtor estate. *See In re Globe*, 867 F.2d at 559 & n. 6 (citing cases). Language from many cases indicates that, if the trustee does not seek to enforce the protections of the automatic stay, no other party may challenge acts purportedly in violation of the automatic stay. *Washington Mut. Sav. Bank v. James (In re Brooks)*, 79 B.R. 479, 481 (Bankr. 9th Cir.1987), *aff'd* on other grounds 871 F.2d 89 (9th Cir.1989); *Bryce v. Stivers (In re Stivers)*, 31 B.R. 735, 735 (Bankr.N.D.Cal.1983); *Hadsell v. Philadelphia Life Ins. Co. (In re Fuel Oil Supply and Terminaling, Inc.)*, 30 B.R. 360, 362 (Bankr.N.D.Tex.1983).

Id. at 245.

This Court agrees that an unsecured creditor may not pursue a stay violation on behalf of a bankruptcy estate. Hence, Mr. Zamora lacks standing even if his statement of limited liability company law were correct.

Even if Mr. Zamora had standing in his capacity as a creditor, it would only be because his distribution with respect to his proof of claim would be diminished by the conduct of NCA. But he has not alleged any fact to support that proposition. Not only has Mr. Zamora not alleged that NCA has actually collected debts owed to the estate, he has not shown that the Trustee could collect those debts or that if the debts could be collected, the effort would produce enough funds to pay general unsecured creditors such as Mr. Zamora, after payment of all secured claims, administrative expenses and priority unsecured claims.

Because Mr. Zamora lacks standing and has failed to state a claim upon which relief could be granted, it is

ORDERED that Mark Zamora's Motion for Order to Show Cause and as to Contempt of N.C.A., Inc. and Request for Emergency Hearing are DENIED.

Dated: March 30, 2005.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE