

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : Chapter 13
: :
THOMAS G. DEAN, : Case No. 06-71654-pwb
: :
Debtor. :
_____ :

ORDER

The Court conducted a hearing in this chapter 13 case on December 12, 2006, with regard to the confirmation of the Debtor's plan, the Trustee's objections to confirmation and motion to dismiss, and several motions relating to disputes concerning the Debtor's bank account with SunTrust Bank. The Debtor's motions claim that he is entitled to a turn-over of the bank account and that he should be awarded damages against SunTrust Bank and Fifth Third Bank due to their alleged wrongful conduct with regard to the account. The banks have moved for relief from the stay to permit determination of disputed rights in the bank account.

As announced at the hearing and as summarized below, the Court determined: that the Debtor's motions for relief against the banks are procedurally defective; that the dispute over the bank account involves primarily, if not exclusively, questions of nonbankruptcy law that are best resolved in a nonbankruptcy court; that the requirements for confirmation of the Debtor's proposed plan, as amended, have not been met; that this bankruptcy case was filed for the purpose of asserting the Debtor's rights with regard to the bank account and his claims against the banks rather than for a proper bankruptcy purpose of seeking debt relief; and that no bankruptcy purpose exists for the continuation of the case in view of the fact that the Debtor is

current on his installment obligations secured by his home and residence and is otherwise generally current on his other obligations. Consequently, the Court: denied the Debtor's motions relating to relief against the banks, without prejudice; determined that abstention with regard to determination of the disputes between the Debtor and the banks concerning his bank account was appropriate under 28 U.S.C. § 1334(c); terminated the automatic stay of § 362(a), if applicable, to permit the parties to proceed to litigate any issues relating to the bank account in a nonbankruptcy court of competent jurisdiction; denied confirmation of the Debtor's plan, as amended; and dismissed the case, without prejudice.

This Order, together with the Court's findings of fact and conclusions of law announced at the hearing, which are incorporated herein, constitute the Court's findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52(a), *applicable under* FED. R. BANKR. P. 7052.

The Debtor maintained a business checking account at SunTrust Bank. Beginning in late August 2006, the Debtor engaged in internet e-mail communications with a person identified as Peter Heltz, represented to be a representative of a company known as "Propay."¹ In an email message dated August 27, 2006, Propay stated that the position of "bidding manager" was available pursuant to which the Debtor could "become an independent partner of the company and manage auction operations from an office of your own." The email stated that the bidding manager's duties were to "cooperate with bidders and sellers from your region/country, process payments from american [sic] bidders to sellers outside USA using bank account and stay in touch with auction system innovations in order to support those involved with efficient support." As

¹See Debtor's Motion for Compensatory, Incidental, Punitive & Special Damages, filed October 30, 2006 [Docket No. 20], Exhibit C.

stated in the email communications and confirmed by the Debtor at the hearing, the arrangement was for the Debtor to receive funds into his bank account by wire transfer and then to transfer the funds by wire as directed by Propay, less a seven percent "commission" that the Debtor would earn for providing this service.

According to the Debtor's bank account statement,² a wire transfer of \$29,652.29 into his SunTrust account occurred on September 6, 2006. In accordance with Propay's instructions, the Debtor on that same day directed a wire transfer of \$27,576.63 to an account specified by Propay, and a transfer occurred that day. On September 12, 2006, a second transfer into the Suntrust account occurred, this time in the amount of \$38,736. The Debtor instructed SunTrust to wire a portion of these funds as specified by Propay, but SunTrust refused and put a hold on the account. According to the Debtor, representatives of SunTrust advised him that the funds wired into his account had been stolen from an account at Fifth Third Bank. Because of the hold on his account, the Debtor asserts, numerous checks he had drawn on the account were dishonored.

The Debtor filed his chapter 13 petition on September 21, 2006. At the hearing, the Debtor stated: that, prior to the bank placing a hold on his account, he had been current on his home mortgage and car payments; that the only credit card debt he had was on an account he opened after the filing of the petition; that, after filing the case, he brought his home mortgage and car payments current; that he was essentially current, or soon would be current, on utility and insurance payments; and that he had no other debts. He later recalled that he was trying to work out a bill he owed to BellSouth for advertising of some \$1,500.

On September 26, 2006, the Debtor filed a "Motion to Redeem Bank Account and to

²*Id.*, Exhibit B.

Avoid Lien” against SunTrust Bank and Fifth Third Bank in which he seeks to “redeem” the bank account and avoid alleged liens asserted against it. [11]. On October 30, 2006, he filed a “Motion for an Order of Default,” which seeks entry of default judgment for the relief requested in the motion. [21]. He also filed a “Motion for Compensatory, Incidental Punitive & Special Damages Under 11 USCA Subsection 362(h) Against the Claimants SunTrust Bank and 5th 3rd Bank.” [12]. In this motion, the Debtor seeks damages from the banks for their alleged violation of the automatic stay. On November 29, 2006, the banks responded to the Debtor’s motions [30] and filed a motion for relief from the stay [31].

Neither of the Debtor’s motions was properly served as required by FED. R. BANKR. P. 9014 and 7004(b)(3) and (h). Furthermore, under Rule 9014, a response to a motion is not required unless ordered by the Court. For these reasons, the Court cannot enter default judgment and will deny the Debtor’s Motion for an Order of Default.

The assertion of a claim for property requires an adversary proceeding. FED. R. BANKR. P. 7001(1). The “redemption” of property that may be sought by motion under FED. R. BANKR. P. 6008 refers to the statutory right of a debtor under 11 U.S.C. § 722 in certain instances to pay the value of collateral to a secured creditor in order to release a lien on exempt property. The avoidance of a lien that a debtor may seek by motion under FED. R. BANKR. P. 4003(d) refers to the statutory right of a debtor under 11 U.S.C. § 522(f) to avoid certain liens on exempt property. The relief sought by the Debtor’s motion obviously does not fall into either of these categories. Rather, the Debtor contends that the banks are holding property that belongs to him and that should be turned over to him. Obtaining such relief requires an adversary proceeding under Rule 7001(1).

Because the Debtor's "Motion to Redeem Bank Account and To Avoid Lien" was not properly served and because the relief requested therein must be sought in an adversary proceeding, the motion must be dismissed.

The Debtor's "Motion for Compensatory, Incidental Punitive & Special Damages Under 11 USCA Subsection 362(h) Against the Claimants SunTrust Bank and 5th 3rd Bank" seeks damages premised on an alleged violation of the stay. Like the first motion, this motion must be dismissed because it was not properly served. Moreover, it is clear that the placing of an administrative hold on a checking account does not ordinarily constitute a stay violation. *Citizens Bank of Maryland v. Strumpf (In re Strumpf)*, 516 U.S. 16 (1995). Nothing presented in this case takes it out of that rule. As such, the Debtor's motion fails to state a claim for relief for violation of the automatic stay.

Both motions should be dismissed for the additional reason that it is not appropriate for this Court to exercise its jurisdiction to determine the issues they raise. Both motions are premised on the proposition that the banks have not acted properly with regard to the account. But if applicable nonbankruptcy law permits a depository bank to place a hold on an account in the event of suspected fraudulent activity, its right to defer payment is not affected by the automatic stay of § 362(a), and the Court could not compel turn-over of the account absent a determination of the dispute. The issues of whether the Debtor is entitled to the funds in the account and whether there has been a violation of the stay, therefore, depend on whether the banks complied with applicable nonbankruptcy law.

Under the facts of this case, it is not appropriate for this bankruptcy court to exercise jurisdiction to resolve the disputed questions of state or federal law on which the outcome of these

issues will depend. All of the events occurred prior to the filing of the bankruptcy case, and no reason for the filing of this bankruptcy case exists other than the Debtor's desire (apparent from the circumstances as well as from his own admission) to use this case to obtain the funds in his bank account and assert claims against the banks. In the absence of any bankruptcy purpose for the filing of this case, this Court, in connection with the dismissal of the motions, will exercise its discretion under 28 U.S.C. § 1334(c)(1) to abstain from resolving factual and legal issues relating to the rights of the Debtor and the banks in the Debtor's bank account and any claims or defenses relating thereto. Such abstention is required in the interests of justice, comity with state courts, and respect for state law. Simply put, the disputes between the Debtor and the banks are most fairly and appropriately resolved in a nonbankruptcy court.

Because the Court has thus determined that it will abstain, it is appropriate to terminate the automatic stay of 11 U.S.C. §362(a), if it is applicable at all, to make it clear that the parties may proceed to litigate elsewhere. As indicated above, § 362(a) may not apply at all if SunTrust has a right to place a hold on the account (essentially, to defer its obligation to pay money to the order of the Debtor pending its investigation and determination of its rights and obligations with regard to the account). If SunTrust has such a right, the automatic stay does not operate to accelerate SunTrust's obligation to pay to the Debtor's order any more than it would require immediate payment of a note due to the debtor in ten years. But the parties should not be in doubt as to their ability to proceed to assert their rights, claims, and defenses notwithstanding the filing of this bankruptcy case. Consequently, assuming without deciding that the automatic stay may be applicable to some extent, the Court will terminate it with regard to the Debtor's bank account at SunTrust and the assertion by any party of any rights, claims, and defenses with regard to that

account or any conduct of any party relating to the account.³

The chapter 13 trustee raised numerous objections [27] to the Debtor's plan as originally filed [2]. The Debtor's amendment to the plan [36] did not properly resolve all of the trustee's objections [38]. For reasons stated at the hearing, therefore, the Court cannot confirm the Debtor's plan.

The trustee requested dismissal of the Debtor's case. Section 1307(c) permits dismissal of a case for cause, including "(5) denial of confirmation of a plan . . . and denial of a request made for additional time for filing another plan or a modification of a plan." Because the Court has determined that no bankruptcy purpose existed for the filing of this chapter 13 case and no bankruptcy purpose exists for the Debtor to remain in chapter 13, there is no reason to permit the Debtor additional time to file another plan or to modify the existing plan. Simply put, the Debtor has no legitimate need for chapter 13 relief in view of the fact that his installment obligations are current, no real estate foreclosure or personal property repossession was or is pending or threatened, and the Debtor has paid or intends to pay his unsecured debts. The Court finds as a matter of fact that the Debtor's sole purpose in filing his chapter 13 case and in desiring to continue it is to invoke bankruptcy jurisdiction and remedies in connection with a dispute that arises solely under nonbankruptcy law, unrelated to a desire to pay some or all of his lawful debts. Because chapter 13 does not exist for that purpose, the proper result here is dismissal of this case.

Based on, and in accordance with the foregoing and the findings of fact and conclusions of law announced at the hearing, it is hereby **ORDERED and ADJUDGED** as follows:

³The banks acknowledged at the hearing that they had not properly served the Debtor with their motion for stay relief. The Court concludes, however, that the Debtor had notice and an opportunity to be heard with regard to the issues raised by the motion, which were the same ones the Debtor raised in his motions. Moreover, in view of the Court's determination to abstain, the Court would have terminated the stay *sua sponte* pursuant to 11 U.S.C. § 105. In any event, the dismissal of the bankruptcy case terminates the stay as a matter of law. § 362(c).

1. The Debtor's "Motion to Redeem Bank Account and to Avoid Lien," filed on September 26, 2006 [Docket No. 11] is **DISMISSED**, without prejudice, and the Court hereby **ABSTAINS** from resolving any matters or issues arising out of or related to the facts set forth therein pursuant to 28 U.S.C. § 1334(c).

2. The Debtor's "Motion for an Order of Default," filed on October 30, 2006 [Docket No. 21] is **DENIED**.

3. The Debtor's "Motion for Compensatory, Incidental Punitive & Special Damages Under 11 USCA Subsection 362(h), Against the Claimants SunTrust Bank and 5th 3rd Bank" [Docket No. 20] is **DISMISSED**, without prejudice, and the Court hereby **ABSTAINS** from resolving any matters or issues arising out of or related to the facts set forth therein pursuant to 28 U.S.C. § 1334(c).

4. The Motion for Relief From Stay filed by Fifth Third Bank and SunTrust Bank on November 29, 2006 [Docket No. 31] is hereby **GRANTED** as follows: The automatic stay of 11 U.S.C. § 362(a) (if and to the extent that it is applicable) is hereby terminated with regard to the Debtor's bank account at SunTrust and the assertion by any party of any rights, claims, and defenses with regard to that account or any conduct of any party relating to the account.

5. Confirmation of the Debtor's chapter 13 plan filed on September 21, 2006 [Docket No. 2], as modified on December 7, 2006 [Docket No. 36], is **DENIED**, and the Court denies the Debtor any additional time to propose another plan or to further modify the existing plan.

6. This Chapter 13 case is hereby **DISMISSED**, without prejudice.

IT IS SO ORDERED this 18 day of December, 2006.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE