

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 08-10255)
)
KAGHANN'S KORNER, INC.)
)
Debtor)
)
)
NATIONAL OIL & GAS, INC.)
)
Plaintiff)
)
vs.) PROC. NO. 08-1043
)
)
KAGHANN'S KORNER, INC.)
)
Defendant)

DECISION

At Fort Wayne, Indiana, on November 17, 2008.

The plaintiff in this adversary proceeding seeks a declaratory judgment that foreclosing upon real property which is leased to the debtor by the mortgagor would not violate the automatic stay. The matter has been submitted to the court for a decision upon the parties' stipulations of fact and the briefs of counsel.¹

The debtor/defendant operates a truck stop on property which is subject to the plaintiff's lien. The owner of the property, Kay Beard, is the debtor's president and the one the plaintiff wants to foreclose upon. Pursuant to her agreement with the National Oil & Gas, Ms. Beard is pay it \$6,000 a month and she has not done so since early 2008. As a result, National Oil would like to exercise

¹The defendant has asked the court not to consider the plaintiff's brief as having been filed after the deadline established by the court's scheduling order. In response, the plaintiff argues that its brief was timely, as the extension of time to file stipulations of fact also operated to extend the time to file briefs. The plaintiff is correct. Its brief was timely.

its state law rights to proceed against Ms. Beard and to foreclose upon the property, but it would like assurances that doing so will not violate the automatic stay.

The automatic stay is very broad and, with few exceptions, prohibits all actions against the debtor, the debtor's property, and property of the estate on account of pre-petition debts. 11 U.S.C. §362. See also In re Petruccelli, 113 B.R. 5, 6 (Bankr. S.D. Cal. 1990). The bankruptcy estate is equally broad. It consists of all interests the debtor may have in property as of the commencement of the case, wherever located and by whomever held. 11 U.S.C. §541(a). This includes possessory interests in property. Matter of Depoy, 29 B.R. 466, 469 (Bankr. N.D. Ind. 1983). See also, In re Atlantic Business & Community Corp., 901 F.2d 325 (3rd Cir. 1990).

The debtor leases the property from Ms. Beard pursuant to an oral agreement which apparently constitutes a month-to-month lease. See, I.C. 32-31-1-2. As a result of this lease, the debtor has a possessory interest in the property, and that interest is protected by the automatic stay.

Broad as it is, the automatic stay does not protect third parties or their property. Winters By and Through McMahon v. George Mason, 94 F.3d 130, 135-36 (4th Cir. 1996); In re Globe Investment & Loan Co., 867 F.2d 556, 560 (9th Cir. 1990); In re Prairie Trunk Railway, 112 B.R. 924, 929-31 (Bankr. N.D. Ill. 1990); In re Fuel Oil Supply & Terminating, Inc., 30 B.R. 360, 362 (Bankr. N.D. Tex. 1983). As a non-debtor, third party, the automatic stay does not protect Ms. Beard or her interest in the property she has leased to the debtor. As long as the debtor is not named as a party to the foreclosure and the action does not seek to disturb the debtor's possession, there is no reason a proceeding against the debtor's landlord, Ms. Beard, would violate automatic stay.² In re

²In its brief the plaintiff has indicated that the foreclosure would be conducted in such a way as not to interfere with the debtor's rights.

Kash & Karry Wholesale, Inc., 28 B.R. 66, 71 (Bankr. D. S.C. 1982).

The court, therefore, concludes that so long as the plaintiff's foreclosure does not interfere with the debtor's rights in the property, a foreclosure action against its landlord would not violate the automatic stay. Judgment will be entered accordingly.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court