

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
JUDITH K. ROGAN,) CASE NO. 08-23221 JPK
) Chapter 13
Debtor.)

ORDER REGARDING 11 U.S.C. § 362(e) WITH RESPECT
TO MOTIONS FOR STAY RELIEF FILED BY DEXIA CREDIT
LOCAL AND THE UNITED STATES OF AMERICA

At a preliminary pre-trial conference held on June 1, 2009 with respect to a motion to dismiss the debtor's Chapter 13 case filed by the United States of America on behalf of its agency the Internal Revenue Service, the court generally addressed the effect of that motion on its determination of motions for relief from the automatic stay filed pursuant to 11 U.S.C. § 362(d) by Dexia Credit Local on November 21, 2008 and by the United States of America on December 12, 2008.¹ In the course of addressing whether or not determination of the motion to dismiss should take priority over the court's decision on the § 362(d) motions, Assistant United States Attorney Joseph Stewart apparently sought to potentially invoke the provisions of 11 U.S.C. § 362(e)(2) with respect to the court's determination of the § 362(d) motions.

Any such invocation is meritless.

Dexia Credit Local filed a motion pursuant to 11 U.S.C. § 362(d) on November 21, 2008; the court has deemed the United States of America to have filed a similar motion on December 12, 2008.

An initial hearing on the motions of Dexia Credit Local and of the United States of America was held on December 16, 2008 – well within the 30-day period provide for by 11

¹ The Court has generously construed the government's "joinder" in Dexia's motion as a separate motion on behalf of the United States.

U.S.C. § 362(e)(1).² As memorialized by the court's order entered on December 23, 2008 [docket record entry #87], by consent of the parties a mechanism for determining both motions was determined. Thus, apart from the issue of whether or not the motions invoke 11 U.S.C. § 362(e)(1), any applicability of that provision was removed by consent of the parties.

As a result of a pre-trial conference held on January 27, 2009, with respect to both parties' motions, procedures were established for processing of the motions by the court's order entered on February 9, 2009. This order was entered with the consent of the parties to every provision stated in it, including the consent of Assistant United States Attorney Joseph Stewart on behalf of the United States of America. The final evidentiary hearing on both motions was set by that order for February 18, 2009. Pursuant to a pre-trial conference held on February 12, 2009, procedures for submission of the motions to the court were modified, and the final hearing was re-set to February 20, 2009 – again with the consent of all parties. The evidentiary hearing on both motions was held and concluded on February 20, 2009.

The record establishes that the final hearing on the § 362(d) motions filed by Dexia Credit Local and by the United States of America was held more than 60 days from the filing of those motions with the consent of both parties.

At the June 1, 2009 hearing, Assistant United States Attorney Joseph Stewart perhaps sought to invoke 11 U.S.C. § 362(e)(2), which states:

Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless–

(A) a final decision is rendered by the court during the 60-

² There is a significant issue as to whether the relief requested by either of the putative creditor's motions relates to "any act against property of the estate", in view of the fact that both motions seek merely to proceed to determine whether certain property is in fact property of the estate, rather than to take an affirmative act, e.g., seizure, writ of assistance, garnishment, against any property of the estate.

day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

The court has admittedly not entered a final decision during the 60-day period beginning on the date of the filing of either of the creditors' motions. However, as the record conclusively establishes, the 60-day period has been extended by agreement of all parties-in-interest, pursuant to 11 U.S.C. § 362(e)(2)(B)(i).

Simply stated, 11 U.S.C. § 362(e)(2) requires that the court enter a final determination of § 362(d) motions within 60 days after the filing of a motion unless the 60-day period is extended by agreement of all parties-in-interest. That is precisely the case here. The agreement by the parties put no end date on the court's determination, which the court has endeavored to make as promptly as it could given its caseload, and given the complexity and relative novelty of the issues presented by the § 362(d) motions. There is no basis upon which AUSA Stewart can contend that an agreement to extend the period provided by § 362(e)(2) can be rescinded somehow, and the original 60-day period reinstated somehow.

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) remains fully in effect with respect to the United States' motion filed on December 12, 2008, and Dexia Credit Local's motion filed on November 21, 2008.

Dated at Hammond, Indiana on July 15, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor, Trustee, US Trustee
AUSA Stewart