

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
NEW ENERGY CORP.,) CASE NO. 12-33866 HCD
) CHAPTER 11
)
DEBTOR.)

ORDER

At South Bend, Indiana, on April 24, 2013.

Before the court is the Motion of Randall L. Chrobot (“movant”) for Relief from Automatic Stay and objections thereto filed by chapter 11 debtor New Energy Corp. (“debtor”) and secured creditor United States Department of Energy (“DOE”). A pretrial conference on the matter was held on April 24, 2013. Appearing at the conference were Stanley F. Wruble, Esq., on behalf of Mr. Chrobot; Jeffrey J. Graham, Esq., on behalf of the debtor; Margaret M. Newell, Esq., on behalf of the DOE; and Alexander L. Edgar, Esq., on behalf of the United States Trustee.

Mr. Chrobot filed a lawsuit against the debtor in the St. Joseph Circuit Court on March 1, 2010, alleging state law claims. In his Motion and at the hearing, the movant presented the following reasons for granting relief from the automatic stay so that he can complete the pending state court trial:

- (1) A continuation of the state court civil suit will not result in any great prejudice to either the bankrupt estate or the debtor;
- (2) if the stay is not suspended, the movant will suffer great hardship, given that this action is ready to proceed to trial; and
- (3) the movant will prevail on his state court claims.

R. 271.

The debtor argued that the movant’s Motion should be denied because no “cause” existed for the stay relief. *See* R. 334. He pointed out that the state court action sought a determination that Chrobot was owed approximately \$1.9 million pursuant to an employee incentive plan with the debtor. However, the

debtor had scheduled the movant as a non-priority, unsecured creditor in that amount, and the movant had filed proofs of claim in approximately that amount. The debtor asserted that the parties have no significant disagreement regarding the amount of the claim that should be allowed. It concluded that there was no benefit to the state court litigation and that the state court action would dilute cash resources from the estate that would be potentially available to pay claimants.

The DOE's objection concurred substantially with the debtor's objection. *See* R. 335. It asserted that the movant failed to show sufficient cause to lift the stay. Following the Seventh Circuit's three-factor balancing tests for determining cause, as articulated in *International Business Machines v. Fernstrom Storage and Van Company (In re Fernstrom Storage)*, 938 F.2d 731, 735 (7th Cir. 1991), the DOE pointed out that the state court litigation would greatly prejudice the debtor's bankruptcy estate by depleting assets in order to present a defense. In contrast, the stay of that trial would not prejudice the movant, whose uncontested claim of approximately \$1.9 million has been deemed allowed in the bankruptcy proceedings. In any case, the DOE pointed out, the movant's unsecured claim was unlikely to receive a meaningful distribution from the estate, since secured creditors (including the DOE, with a secured claim of \$33 million) had claims totaling more than ten times the amount of assets left in the estate and were entitled to payment before the creditors with lower priority general unsecured claims such as the movant's claims. It finally argued that the movant should not be permitted to enforce or collect on his claims under Indiana law, outside the bankruptcy proceeding, which provides equitable liquidation procedures for all creditors.

At the pretrial conference the debtor and DOE agreed that there was no objection to the amount of the movant's claim of about \$1.9 million. The debtor stated that it would stipulate to the amount sought by the movant, but insisted that the characterization of the claim was a bankruptcy issue to be determined in this court rather than the state court. The DOE confirmed that it was appropriate to preserve any objections to the characterization and subordination of the Chrobot claim for the bankruptcy court.

The movant urged the court to finalize the issues in state court, since discovery was over and the case was ready for trial.

The Bankruptcy Code provides that “the court shall grant relief from the stay . . . for cause.” 11 U.S.C. § 362(d)(1). “Although this section is written in mandatory terms, the bankruptcy court has discretion whether and to what extent it will grant relief from the stay.” *Matter of Williams*, 144 F.3d 544, 546 (7th Cir. 1998). After its review of the Motion and Objections, the court heard the arguments of counsel at the hearing. It determined that the parties had agreed that the Chrobot claim, to which no objection was raised, was deemed allowed and that the amount of the claim was approximately \$1.9 million. In light of the lack of objection to the amount of the claim, the court believed there was no purpose to continuing the state court litigation, which was brought because the movant “sought to recover just under two million dollars.” R. 271 at 2. Further litigation to prove what has been admitted by all parties would be a meaningless exercise which only would dissipate estate assets and dilute the amount available to pay claimants.

The court also determined that the characterization of Mr. Chrobot’s claim as a non-priority, unsecured claim is a bankruptcy rather than a state court issue, and any objection to that position must be considered in this court. Finally, it noted that, in light of the DOE’s secured claim of \$33 million and of other secured claims, and in light of the much lower amount of the debtor’s total assets available for creditors, Mr. Chrobot’s claim is not likely to receive a substantial distribution from the debtor’s bankruptcy estate. For those several reasons, therefore, the court concluded that there was no cause to lift the automatic stay: The movant’s request that the stay be lifted to continue the state court trial was without any merit.

Accordingly, the Motion of Randall L. Chrobot for Relief from Automatic Stay is denied.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT