

NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 11-14547)	
)	
DARREN LEE SIMMONS)	
)	
Debtor)	
)	
)	
CROSSROADS BANK)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 12-1111
)	
DARREN LEE SIMMONS)	
)	
Defendant)	

DECISION AND ORDER DENYING MOTION TO STAY PENDING APPEAL

At Fort Wayne, Indiana, on August 21, 2014.

This matter is before the court to consider the defendant/debtor’s motion for a stay of the court’s judgment pending appeal. Fed. R. Bankr. P. Rule 8005. The judgment in question denied the debtor’s discharge pursuant to § 727(a)(4).

In considering whether to grant a stay pending appeal, the court must consider and balance whether the appellant is likely to succeed on the merits of the appeal, whether the appellant will suffer irreparable injury absent a stay, whether a stay would substantially harm other parties in the litigation, and whether a stay is in the public interest. Such motions are matters committed to the court’s discretion. See, Matter of Forty-Eight Insulations, Inc., 115 F.3d 1294, 1301 (7th Cir. 1997); In re Adelpia Communications Corp., 361 B.R. 337, 346 (S.D. N.Y. 2007); In re Gleason, 2002 WL 649059 (Bankr. N.D. Ill. 2002). Although the court would ordinarily schedule a motion to stay for

a hearing, the present motion's allegations concerning the relevant factors are so insubstantial that little point would be served in doing so.

The debtor argues that he will suffer irreparable harm because the plaintiff “seeks to foreclose on its note and seize the Debtor’s assets which had been pledged as collateral” and if it is successful the debtor and the bankruptcy estate¹ “will lose title to assets, equipment, and other security . . .” Motion for Stay Pending Appeal, ¶ 11. Yet, liens pass through bankruptcy unaffected unless specifically acted upon by the bankruptcy court. In re Pence, 905 F.2d 1107, 1109-10 (7th Cir. 1990); In re Tarnow, 749 F.2d 464 (7th Cir. 1984); In re Simmons, 765 F.2d 547 (5th Cir. 1985). As a result, regardless of whether the debtor wins or loses on appeal, the bank will always be able to proceed against its collateral. Doing so does not constitute cognizable harm, much less the irreparable harm debtor suggests. Cf., Henkel v. Lickman, 301 B.R. 739, 748 (Bankr. M.D. Fla. 2003) (money, time, and energy expended in the absence of a stay are not enough); In re Abbo, 191 B.R. 680, 684 (Bankr. N.D. Ohio 1996) (monetary harm from collection activities is not irreparable harm). The only way debtor might suffer some adverse consequence that could be avoided by a stay pending appeal would be if the bank began to proceed against property that was not subject to its lien in order to collect any deficiency that remained after its collateral had been liquidated. Assuming this economic impact could constitute irreparable harm, see, Roland Machinery Co. v. Dresser Industries, Inc., 749 F.2d 380, 386 (7th Cir. 1984); Abbo, 191 B.R. at 683-4; In re Lickman, 301 B.R. 739, 748 (Bankr. M.D. Fla. 2003), the motion makes no allegations that the bank is doing so.

¹This is a chapter 7 case and whatever interests the estate may have are represented by the chapter 7 trustee. The debtor has no standing to do so. Matter of Perkins, 902 F.2d 1254, 1257-58 (7th Cir. 1990). The court also notes that the trustee has filed a no asset report in the underlying bankruptcy case and the case only remains open because of the pending issues regarding the debtor’s discharge in this adversary proceeding.

Neither has the debtor demonstrated a likelihood of success on appeal. Although the debtor has identified the issues on appeal, he says nothing about his arguments concerning them or why he thinks they will be successful. Demonstrating a likelihood of success on appeal requires more than just identifying issues; the courts needs to be told something about the arguments concerning them. See, Matter of Forty-Eight Insulations, Inc., 115 F.3d at 1301-04.

Finally, the debtor has done nothing to propose or even suggest a mechanism which would protect the plaintiff from any harm to it if it is stayed in the exercise of its rights during the appeal. See, Fed. R. Bankr. P. Rule 8005 (relief may be conditioned on the filing of a bond or other security). See also, Dornik v. Maurice, 167 B.R. 136, 138 (Bankr. N.D. Ill 1994); In re Altman, 230 B.R. 17, 21 (Bankr. D. Conn. 1999).

At the present time, this seems to be a dispute simply between the parties and there is no meaningful public interest to be considered.

In light of the foregoing, Defendant/debtor's motion for stay pending appeal is DENIED.

SO ORDERED.

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