FILED
2001 JUL 18 PM 3:21
CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re		Chapter
TRANS WORLD AIRLINES, INC., et al.,[1]	)	Case No. 01-0056 (PJW)
	)	(Jointly Administered)
	)	
Debtors.	)	

Hearing Date: July 20, 2001 at 9:30 a.m.
Objection Deadline: July 13, 2001 at 4:00 p.m.
[Extended to July 18, 2001 for the Debtors]

DEBTORS' OBJECTION TO MOTION OF FRED M. SANOZKY FOR RELIEF FROM AUTOMATIC STAY [RE DOCKET NO. 1825]

Trans World Airlines, Inc. ("TWA") and the other above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby object to the Motion of Fred M. Sanozky for Relief from Stay Under Section 362 of Bankruptcy Code (the "Motion") filed by Fred M. Sanozky ("Sanozky" or the "Movant"), and in support of their objection, state as follows.

Introduction

Mr. Sanozky is a litigious, former employee of TWA whose employment was terminated for insubordination and refusal to perform assigned work. Since his termination, Mr. Sanozky has instituted at least three different lawsuits and administrative proceedings against TWA. Mr. Sanozky seeks to lift the automatic stay to continue this litigation on the grounds that his "interest in collateral property" is not adequately protected and "for cause." Mr. Sanozky is

[1] The Debtors are the following entities: Trans World Airlines, Inc., Ambassador Fuel Corporation, LAX Holding Company, Inc., Mega Advertising Inc., Northwest 112th Street Corporation, The TWA Ambassador Club, Inc., Trans World Computer Services, Inc., Transcontinental & Western Air, Inc., TWA Aviation, Inc., TWA Group, Inc., TWA Standards & Controls, Inc., TWA Stock Holding Company , TWA-D.C. Gate Company, Inc., TWA-LAX Gate Company, Inc., TWA Logan Gate Co., Inc., TWA-NY/NJ Gate Company, Inc., TWA-Omnibus Gate Company, Inc., TWA-San Francisco Gate Company, Inc., TWA-Hangar 12 Holding Company, Inc., Ozark Group, Inc., TWA Nippon, Inc., TWA Employee Services, Inc , TWA Getaway Vacations, Inc., Trans World Express, Inc., International Aviation Security Inc., Getaway Management Services, Inc., The Getaway Group (U.K.) Inc.

1934

requesting relief that previously was overruled. Though the Court overruled his previous motion without prejudice, it should be noted that there is no difference between his previously denied motion requesting relief and his current motion requesting same. As set forth more fully below, the Motion should be denied because Mr. Sanozky is not a secured creditor with respect to his litigation nor has he proffered any evidence establish cause that would justify the lifting of the stay. Moreover, TWA would suffer substantial prejudice if it had to divert key personnel and other resources to this litigation.

Background

2. On January 10, 2001 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), thereby becoming debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtors' cases are being jointly administered pursuant to an order of the Court.

Sanozky's Litigation Against TWA

3. Mr. Sanozky was a former employee at TWA's facilities at the John F. Kennedy Airport in New York. TWA terminated Mr. Sanozky's employment based on insubordination and refusal to perform assigned work. Since then Mr. Sanozky has initiated the following lawsuits and administrative proceedings against TWA:

- Sanozky commenced a lawsuit against TWA in the United States District Court in the Eastern District of New York (Case No. 00 CV 3942) based on allegations of discrimination and violations of the American with Disabilities Act of 1990 (the "Discrimination Action");

  Sanozky filed a claim against TWA in a matter in front of the Workers' Compensation Board of New York (DC Case No. 062-46-1764) based on allegations of discrimination (the "Workers' Compensation Claim"); and

> Sanozky filed a claim based on his discharge for insubordination and refusal to perform assigned work that is pending before the IAM/TWA System Board of Arbitration pursuant to one of TWA's collective bargaining agreements with the International Association of Machinists and Aerospace Workers (the "Discharge Claim").[2]

In addition to the above listed lawsuits, Mr. Sanozky has objected to two stipulations to lift automatic stay from other former employees which granted them the ability to seek insurance proceeds (Waverly Lucas and Evelyn M. Rachu Blum). The objections contained no substantive arguments but simply state: "I object to this stipulation because my Notice of Motion requesting Relief from Automatic Stay in the case of Fred M. Sanozky, Pro Se v. Trans World Airlines, Inc. was denied."

Argument

4. As stated above, Sanozky argues that the automatic stay should be lifted because (a) "there is a lack of adequate protection of his interest in collateral property, and for cause ." Sanozky's Motion is groundless on both grounds. Sanozky is an unsecured litigation creditor who has no collateral that must be adequately protected. Further, the lifting of the automatic stay will result in the unnecessary diversion of TWA's minimal remaining personnel and resources necessary to defend Sanozky's litigation. This potential harm strongly outweighs any prejudice that Sanozky might suffer if he is required to litigate his claims through the bankruptcy claims allowance process.

---

[2] In accordance with In re Continental Airlines, 125 F.3d 120, 137 (3rd Cir. 1997), the Debtors, have not taken the position that the Discharge Claim is subject to the automatic stay. In fact, the Debtors and Sanozky are attempting to schedule the remaining arbitration hearing date(s) regarding the Discharge Claim.

A. Applicable Legal Authority

5. The automatic stay is one of the most fundamental protections provided to a debtor under the Bankruptcy Code. Mid-Atlantic Nat'l Bank v. New Jersey Dep't of Envt'l. Protection, 474 U.S. 494, 503 (1986). In particular, the Third Circuit has held that the purpose of the automatic stay is to:

> prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or administration of the debtor.

Borman v. Raymark Industries, Inc., 946 F.2d 1031, 1036 (3rd Cir. 1991) (automatic stay applied to debtor's appeal of judgment against it in a products liability action, even though debtor stayed the prepetition execution of judgment against it by posting a supersede as bond); In re Rexene Products, 141 B.R. 574, 576 (Bankr. D. Del. 1992).

6. Pursuant to 11 U.S.C. § 362(d), the automatic stay may be lifted or modified only under certain circumstances. In particular, Section 362(d)(1) provides, in part, that:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> > (1) for cause, including the lack of adequate protection of an interest in such property of such party in interest.

11 U.S.C. § 362(d)(1).

7. As a result, a movant must demonstrate sufficient cause to justify the lifting or modification of the automatic stay. Although the Bankruptcy Code does not define what constitutes cause, "courts generally consider the policies underlying the automatic stay

[and] . . . the competing interests of the debtor and the movant." In re Continental Airlines, Inc., 152 B.R. 420, 424 (D. Del. 1993). In particular, Delaware courts consider the following three factors in balancing the competing interests of the parties:

> the prejudice that would be suffered by the debtors should the automatic stay be lifted;
>
> the balance of hardships facing the parties if the automatic stay is lifted; and

(c) the probable success on the merits if the automatic stay is lifted.

Continental, 152 B.R. at 424; Rexene, 141 B.R. at 577.

B. Sanozky is an Unsecured Litigation Creditor With No Collateral Entitled To Adequate Protection

8. Sanozky initially moves to lift the automatic stay on the grounds that he will suffer due to a lack of adequate protection in his collateral. Sanozky is simply wrong because he does not have an interest in collateral that entitles him to adequate protection. Sanozky initiated the Discrimination Action and the Workers' Compensation Claim (collectively, the "Litigation") prepetition and seeks, among other things, monetary damages -- none of which are secured claims -- and not the collection, foreclosure, or recovery of any collateral, security interest, or the like. Therefore, Sanozky's potential claim is unsecured and not entitled to adequate protection.

9. The Supreme Court, in United Savings Association of Texas v. Timbers of Inwood Forest Assoc., Ltd., 108 S.Ct. 626, 630 (1988) addressed the application of Section 362(d)(1) to secured and unsecured claims. In finding that Section 362(d)(1) only applies to secured claims, the Court stated that, "Section 362(d)(1) is only one of a series of provisions in the Bankruptcy Code dealing with the rights of secured creditors." See In re Melson, 44 B.R.

454, 456-457 (Bankr. D. Del. 1984) (Balick, J.) ("purpose of requiring adequate protection is to preserve the secured creditor's position"); Lee v. Schweiker, 739 F. 2d 870, 875 (3rd Cir. 1984).

10. Therefore, Sanozky does not have an interest in collateral property entitled to adequate protection that would justify the lifting of the automatic stay.[3]

C. TWA Will Suffer Substantial Prejudice if the Automatic Stay is Lifted

11. Even if this Court determined that Sanozky had made a colorable claim to lift the automatic stay, the substantial prejudice to TWA if the automatic stay is lifted will outweigh any benefit to Sanozky.

12. Courts have held that the most important factor in determining whether to grant relief from the automatic stay to allow litigation to proceed against a debtor in another forum is the effect of such litigation on the administration of the estate. In re Curtis, 40 B.R 795, 806 (Bankr. D. Ut. 1984); In re Penn-Dixie Industries, Inc., 6 B.R. 832, 836 (Bankr. S.D.N.Y. 1980). If the automatic stay is lifted to allow the Litigation to continue, TWA's ability to administer its estate and its bankruptcy case will be severely prejudiced.

13. If the Litigation is allowed to proceed, TWA would be required to incur legal fees and costs in three independent proceedings. TWA strongly disputes the allegations asserted by Sanozky in the Litigation and anticipates the need to mount a vigorous defense and

---

[3] Sanozky's Motion also includes a list of items for which Sanozky "wishes to be paid." The list includes:

- TWA Secured Note - Due 7/31/01
- TWA Employee Stock Option Plan 11/30/00
- 5 weeks accrued vacation pay due
- 13 weeks severance pay due and
- 11 months lost wages (estimated back pay due)
- Legal Fees (estimated amount)

conduct extensive discovery. For example, TWA has alleged eighteen independent affirmative defenses in the Discrimination Action.

14. If the automatic stay were modified to allow the Litigation to continue, not only would TWA incur additional legal fees and costs, but certain TWA personnel who are intricately involved in TWA's bankruptcy case would have to divert their time and energy to defend the Litigation. These employees would expend time and energy that could otherwise be devoted to TWA's bankruptcy case.

15. Thus, continuation of the Litigation will result in the significant and unnecessary depletion of TWA's already limited assets, resources, and personnel. It is exactly this sort of depletion of assets due to legal costs that the automatic stay was designed to prevent. See Borman, 946 F.2d at 1036 (concerns as to the depletion of the debtor's assets are implicated whenever an action is instituted against a debtor).

D. The Balance of Hardships Weighs Significantly in Favor of TWA

16. The prejudice suffered by TWA upon a lifting of the automatic stay and the continuation of the Litigation far outweighs any inconvenience suffered by Sanozky. Unsecured creditors, such as Sanozky, "bear a heavy and possibly insurmountable burden of proving that the balance of hardships tips significantly in favor of granting relief as against the hardships to the Debtor in denying relief." In re Micro Design, Inc., 120 B.R. 363, 369 (E.D. Pa. 1990) (automatic stay not lifted where it was appropriate for movant to pursue its claim by filing a proof of claim, and participating in the claim process, in the bankruptcy case). Furthermore:

> [I]f unsecured creditors could easily obtain relief from the automatic stay to pursue their claims in other forums, rather than in the bankruptcy claims process, much of the purpose for bankruptcy filings, featuring a summary process for resolving claims, would be undermined.

Id.

17. Here, Sanozky cannot demonstrate any undue hardship or burden resulting from the automatic stay. Whatever rights Sanozky may have that the Litigation is supposed to vindicate can be dealt with through the claims resolution process, or when the Debtors' personnel can spend the time to defend the Litigation.

18. Sanozky, an unsecured creditor, should not be granted preferential treatment over other general unsecured creditors of TWA. Instead of receiving his pro rata share of the distribution to which allowed unsecured claims of TWA are entitled to receive, Sanozky, by his Motion, seeks to expend TWA's limited resources to the detriment of TWA's estate so that he might obtain a judgment against TWA. TWA's estate and unsecured creditors should not be forced to subsidize Sanozky's efforts to augment his potential recovery over other unsecured creditors. This result of one unsecured creditor favored against another is the result that the automatic stay was intended to avoid. See Borman, 946 F.2d at 1036; Rexene,141 B.R. at 576.

Conclusion

For the foregoing reasons, the Debtors respectfully request that Sanozky's Motion be denied.

Dated: , 2001

KIRKLAND & ELLIS
James H.M. Sprayregen
Marc Kieselstein
Kristin E. Rooney
Marc J. Carmel
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

and

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.

Laura Davis Jones (Bar No. 2436)
Bruce Grohsgal (Bar No. 3583)
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in Possession