UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

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In re IML FREIGHT, INC., a Utah Corporation, Debtor.	Bankruptcy Case No. 83C-01950
In re IML PROPERTIES, INC., a Utah Corporation, Debtor.	Bankruptcy Case No. 83C-01951
In re INTERSTATE RENTAL OF UTAH, INC., a Utah Corporation, Debtor.	Bankruptcy Case No. 83C-01952
	MEMORANDUM OPINION

Appearances: George H. Speciale, Salt Lake City, Utah, and Richard C. LaFond, Denver, Colorado, for movants; Russell C. Fericks, Richards, Brandt, Miller & Nelson, Salt Lake City, Utah, for the trustee.

QUESTION PRESENTED

This matter is before the Court on the motion of Dominic F. Castillo, and others, plaintiffs in an employment discrimination action pending against the debtor in the United States District

Court for the District of Colorado, for relief from the automatic stay.

The Court must consider the significance of Section 104(a) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 341, codified at 28 U.S.C. § 157(d), on a request for relief from the automatic stay to permit movants to proceed to adjudication against the debtor in a pending action arising under Title VII of the Civil Rights Act of 1964. The Court concludes that the question of mandatory abstention under 28 U.S.C. § 157(d) is not properly raised, but movants have carried their burden of proof on the relief from stay issues.

FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 1976, the movants herein commenced an action against IML Freight, Inc. in the United States District Court for the District of Colorado, Civil Action No. 76M1001. On July 15, 1983, IML filed a petition for relief under Chapter 11 of the Bankruptcy Code. The case was converted to a case under Chapter 7 on November 9, 1984.

On July 10, 1984, President Reagan signed an amended version of H.R. 5174, the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353. The legislation was intended, among other things, to resolve the jurisdictional dilemma which has beset the nation's bankruptcy system since the June 28, 1982

decision of the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598. Three days later, on July 13, movants filed this motion requesting relief from the automatic stay to continue the Colorado litigation. Several hearings were set but continued at the request of the parties. Finally, on October 11, 1984, the Court heard arguments from the parties, but neither the movants nor the trustee presented evidence. At the conclusion of the arguments the Court took the matter under advisement and asked the parties to submit memoranda on the question of what effect, if any, new 28 U.S.C. § 157(d) might have on the request for relief from the automatic stay.

The Court, having considered the helpful memoranda that were submitted by the movants, the trustee, and the creditors' committee, as well as the arguments presented, renders the following decision.

DISCUSSION

Withdrawal of Reference

Section 157(d) of Title 28 provides:

> The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires

> consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

In their memoranda, all parties, namely, the trustee, the movants, and the creditors' committee, argue that this motion for relief from the automatic stay is not and should not be treated as a motion for mandatory withdrawal of the reference pursuant to Section 157(d), and, further, that this Court, not the district court, may hear and decide the stay issue. This Court agrees.

Motions for withdrawal of the reference must be addressed to the district court, 28 U.S.C. § 157(d), Rule B-106, District Court Rules of Bankruptcy Practice and Procedure (effective August 1, 1985), see In re White Motor Corp., 42 B.R. 693 (N.D. Ohio 1984), In re White Farm Equipment Co., 42 B.R. 1005 (N.D. Ohio 1984), In re UNR Industries, Inc., 45 B.R. 322 (N.D. Ill. 1984), while motions for relief from the automatic stay must be addressed to the bankruptcy court. See United States v. LeBouf Bros. Towing Co., Inc., 45 B.R. 887 (E.D. La. 1985); In re S.E. Hornsby & Sons Sand and Gravel Co., Inc., 45 B.R. 988 (M.D. La. 1985). Furthermore, a motion for relief from the automatic stay is a "core proceeding" with respect to which the bankruptcy court may enter a final, dispositive order. 28 U.S.C. § 157(b)(2)(G).

Based upon its determination that this proceeding is one for relief from the automatic stay for which 28 U.S.C. § 157(d) does not apply, it is not necessary to consider whether the employment

discrimination suit is a proceeding which "requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce."

The Curtis Factors

This Court has previously considered the factors which are applicable in determining whether to modify the automatic stay to permit litigation against the debtor to continue in another forum. Those factors are:

(1) Whether the relief will result in a partial or complete resolution of the issues;

(2) The lack of any connection with or interference with the bankruptcy case;

(3) Whether the foreign proceeding involves the debtor as a fiduciary;

(4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases;

(5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;

(6) Whether the action essentially involves third parties, and the debtor essentially functions only as a bailee or conduit for the goods or proceeds in question;

(7) Whether litigation in the other forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;

(8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);

(9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

(10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties;

(11) Whether the foreign proceeding has progressed to the point where the parties are prepared for trial; and

(12) The impact of the stay on the parties and the "balance of hurt."

In re Curtis, 40 B.R. 795, 806 (Bkrtcy. D. Utah 1984).

Of course, not every factor will apply in each case and generally no one factor will be determinative. The weight accorded each is a matter of judicial discretion. In the absence of a presentation of evidence from either party, the Court must balance the factors as it perceives them from counsel's arguments. The movants place their greatest emphasis on the progress of the litigation and the expense of handling the case in the

Utah bankruptcy court. The trustee is likewise concerned about the cost of resolving the litigation in Colorado. He argues that the ultimate issues are the liquidation and allowance of movants' claims, which are most expeditiously resolved in the bankruptcy court.

Factors (1), (2), (10), (11), and (12) are applicable to this proceeding. It would appear that liquidation of plaintiff's claims could be carried out in the district court action, thereby fully resolving that issue. The litigation cannot be said to constitute a significant interference with the bankruptcy case inasmuch as the claims of the movants must ultimately be liquidated in any event. It does not appear to the Court that judicial economy would be well served by adjudicating these claims in the bankruptcy court. There has been no suggestion that this Court could secure an earlier resolution of the issues than the district court. The present status of the district court action is uncertain, but apparently significant discovery and trial preparation have occurred.

Balancing these considerations and weighing the impact of the stay on the parties, the Court finds that movants have established a legally sufficient basis for relief, and the debtor has failed to demonstrate why it should be entitled to continuation of the stay. See In re Curtis, supra, 40 B.R. at 802-03. Therefore, they are entitled to relief from the automatic stay to

permit them to liquidate their claims against the debtor in the district court action.

Counsel for the movants shall prepare and submit an appropriate order in accordance with Local Rule 13.

DATED this 9 day of August, 1985.

BY THE COURT:

Glen E. Clark

GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE