UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

JOHN T. DOLAN, d/b/a RUSH 4 X 4 ENTERPRISES a/k/a RUSH ENTERPRISES,

CASE #92-21462

DECISION AND ORDER

Debtor.

BACKGROUND

On May 26, 1992, John T. Dolan (the "Debtor"), filed a petition initiating a Chapter 11 case. On his schedules, the Debtor listed Marine Midland Bank ("Marine") as the holder of a claim in the amount of $18,000 for the amounts due on a September 12, 1984 United States Small Business Administration Note in the original principal amount of $45,000.00, which was secured by a collateral security second mortgage on his residence located at 227 Crockett Drive, Rochester, New York (the "Marine Secured Indebtedness").

On January 5, 1994, the Debtor filed a Disclosure Statement (the "Disclosure Statement") and a Plan of Reorganization (the "Plan"). Page 7 of the Disclosure Statement indicated that under the Plan the Marine Secured Indebtedness would be repaid in consecutive monthly installments of $480.00 until paid in full. Article IV, Paragraph 2 of the Plan provided that: "The collateral security mortgage owed to Marine Midland Bank will be repaid at the rate of $480.00 per month until paid."

On June 21, 1994, an Order Confirming the Plan was entered, and on November 14, 1994, in accordance with the practice in this District, an Order was entered administratively closing the case subject to restoration for certain purposes.

Marine has presented the Court with an *ex parte* motion (the "Marine Motion") and a proposed order to reopen the Debtor's Chapter 11 case to permit it to bring a Motion For an Order Terminating or Modifying the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code

because the Debtor has defaulted on the payments to Marine provided for by the Plan.

The Court has elected to file a brief decision on the Marine Motion to set out in a decision: (a) its prior oral holding that in a Chapter 11 case the automatic stay provided by Section 362 of the Bankruptcy Code terminates upon the entry of an order confirming a plan of reorganization; and (b) the Court's policy and expectations regarding motions to reopen cases pursuant to Section 350(b).

DISCUSSION

I. The Automatic Stay

In *In re Turning Point Lounge, Ltd.*, 111 B.R. 44 (Bankr. W.D.N.Y. 1990), now retired Bankruptcy Judge Edward D. Hayes held that the automatic stay imposed by 11 U.S.C. Section 362(a) terminated by operation of law pursuant to 11 U.S.C. Section 362(c) upon the entry of an order of confirmation. The Court reasoned that all of the stays provided by Section 362(a) were terminated under Section 362(c) in a case under Chapter 11 where there was a confirmed plan because Sections 1141(b) and 1141(d) granted the debtor a discharge and revested title to property of the estate in the debtor, unless the specific provisions of the confirmed plan or an order of the Court provided otherwise.

Since succeeding Judge Hayes on January 3, 1992, I have consistently held that the automatic stay terminates upon the entry of an order of confirmation in a Chapter 11 case, consistent with the holding in *In re Turning Point Lounge, Ltd.* and numerous other cases.[1] Furthermore, since January 3, 1992 at all hearings on the approval of disclosure statements and confirmations of plans in Chapter 11 cases, I have attempted to identify and either eliminate or clarify retention of jurisdiction and notice of default provisions that are overly broad. One of the reasons for this has been to eliminate

---

[1] *See In re Herron*, 60 B.R. 82 (Bankr. W.D.La. 1986); *In re Harrell*, 57 B.R. 88 (Bankr. D.S.C. 1985); and *In re Sykes*, 53 B.R. 107 (Bankr. W.D.Va. 1985).

confusion at the time of a default under a plan on the part of creditors that, in order to be "safe rather than sorry", the creditor should return to the Bankruptcy Court to get permission to enforce its rights.

In the present case, it does not appear that there is any language in either the confirmed Plan or the Order Confirming the Plan that would impose a stay on Marine or require it to return to the Bankruptcy Court to obtain permission to enforce its rights as a creditor in the event of a default by the Debtor in the payment of the Marine Secured Indebtedness. Therefore, there is no need for the Court to exercise its discretion, either under Section 350(b) or otherwise, to grant the Marine Motion to reopen the case to allow it to bring an unnecessary motion for relief from the automatic stay which has been terminated.

II. Motions to Reopen Pursuant to Section 350(b).

Many Bankruptcy Courts consider a motion to reopen pursuant to Section 350(b), which is addressed to the discretion of the Court, to be merely an administrative matter which should be routinely granted, believing that the Court will then address whatever substantive issues are raised by the moving party in a subsequent request for relief. This Court, however, has instituted a policy concerning *ex parte* motions under Section 350(b) to reopen cases, in order to avoid: (a) unnecessary work on the part of the Bankruptcy Court Clerk's Office and Chambers[2]; (b) unnecessary litigation[3];

---

[2] At least one debtor who made a motion to reopen a Chapter 13 case appears to have been under the mistaken impression that the mere reopening of his closed Chapter 13 case, which had been dismissed for failure to make plan payments and in which the stay had been terminated to allow a mortgage holder to pursue a state court foreclosure of the debtor's residence, would result in the reimposition of the automatic stay and thus stop a pending foreclosure sale.

[3] Reopening to seek relief for which there is no legal basis is an inefficient use of the resources of both the litigants and the Court. Prior to the implementation of the policy, some debtors made motions to reopen cases in order to be able to avoid liens under Section 522(f). However, when the Section 522(f) motions were ultimately made, it was learned that the liens sought to be avoided were unavoidable statutory liens.

and (c) potential abuses[4]. The Court has notified the local Bar Associations, by a Notice dated March 22, 1993, a copy of which is attached, that all motions to reopen cases pursuant to Section 350(b) must set forth: (a) sufficient detail as to exactly what additional relief the moving party will be requesting should the case be reopened; and (b) sufficient detail to demonstrate a reasonable likelihood that the relief to be requested will be granted.

After its review of the motion to reopen, in its discretion, the Court may grant the application, require the application to be made on notice to appropriate parties, with a right to a hearing if an objection is interposed, or deny the application, sometimes without prejudice to reapplying if the detailed information required was not set forth.

CONCLUSION

The relief requested by Marine, to have this Chapter 11 case reopened so that it can bring a motion to terminate or modify the automatic stay, is in all respects denied.

IT IS SO ORDERED.

/s/
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: May 30, 1995

---

[4] Prior to the implementation of the policy, debtors made motions to reopen cases which were granted, however, no subsequent relief was ever sought by the debtor. The Court can only speculate as to what may have happened in those cases.