



FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re)
JOHN LOBHERR,)
Debtor.)

Case no. RS 88-01380 MJ

Chapter 7

MEMORANDUM OF DECISION
RE DEBTOR'S MOTION FOR
DECLARATORY RELIEF

Hearing:

Date: April 9, 2002

Time: 10:00 a.m.

Ctrm: 302

Debtor's motion for declaratory relief that renewal of a judgment during pendency of the automatic stay was null and void came on regularly for hearing on April 9, 2002 in courtroom 302 of the above entitled court, the Honorable Meredith A. Jury presiding. Franklin C. Adams, of Best, Best and Krieger, LLP appeared on behalf of Movant-Debtor John Lobherr, and the Law Office of Richard L. Enkelis appeared on behalf of Respondent, assignee of record of the state court judgment, Crystal Bergstrom dba Judicial Judgment Enforcement Services ("JES"). This Court, having considered counsels' arguments presented in the moving and responsive papers,

1 and those arguments offered in open court, ruled that the renewal of the judgment was a violation
2 of the automatic stay and therefore void. This memorandum of decision supports that decision.
3

4 I.

5 INTRODUCTION.
6

7 The facts surrounding the instant matter are largely undisputed, based on the Joint
8 Stipulation of Relevant Facts filed by the parties. On July 23, 1987, judgment was entered against
9 Debtor John Lobherr ("Debtor") and in favor of the underlying judgment creditors Robert W.
10 Mobarry, Elaine Mobarry, Robert G. Mobarry, and Mary D. Mobarry (collectively "the
11 Mobarrys") for the sum of \$248,114.09, in the Superior Court of California for the County of
12 Riverside, Case No. 174770 ("state court judgment").

13 Debtor filed a petition for Chapter 11 bankruptcy protection on February 25, 1988. On
14 May 31, 1988, the Mobarrys filed an adversary proceeding in the bankruptcy case. Through this
15 adversary proceeding, the Mobarrys sought relief under 11 U.S.C. § 727 to deny Debtor his
16 discharge and under 11 U.S.C. § 523 for a determination that the state court judgment was non-
17 dischargeable. Debtor's case was converted to one under Chapter 7 on November 28, 1988. On
18 November 16, 1990, the 11 U.S.C. § 727 cause of action was dismissed, and on April 19, 1991,
19 this Court entered a judgment against Debtor determining that the state court judgment was non-
20 dischargeable under 11 U.S.C. § 523.

21 On May 7, 1997, during the surprisingly long pendency of Debtor's case, the Mobarrys
22 filed an application for renewal of the 1987 state court judgment pursuant to California Code of
23 Civil Procedure § 683.120 *et seq.*, without first obtaining relief from the automatic stay. On the
24 same date, the Mobarrys also recorded both an abstract of the state court judgment in Riverside
25 County, and a certified copy of the application to renew the judgment, again, without first
26 obtaining relief from the stay.

1 Debtor received his discharge on December 21, 1999. Notice of the discharge was given
2 on December 23, 1999, by the Clerk of the United States Bankruptcy Court, and Debtor's case
3 was summarily closed on January 22, 2000. The Mobarrys assigned their interest in the state
4 court judgment to Respondent JJES on March 23, 2001.

5 Upon Debtor's motion to reopen, the Court reopened Debtor's case on October 24, 2001,
6 to hear the instant motion for declaratory relief. Debtor has alleged that the renewal of the state
7 court judgment should be found null and void as a violation of the 11 U.S.C. § 362(a) automatic
8 stay, and this Court so agrees, finding for Movant-Debtor in this proceeding.

9
10 II.

11 A. RENEWAL OF THE JUDGMENT CONSTITUTED A "JUDICIAL PROCESS" AND
12 WAS WITHIN THE SPHERE OF THOSE ACTS CONGRESS CONTEMPLATED AS
13 PROHIBITED BY THE AUTOMATIC STAY.

14 Pursuant to 11 U.S.C. § 362:

15 (a) Except as provided in subsection (b) of this section, a petition filed under
16 section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities,
of-

17 (1) the commencement or continuation, including the issuance or
18 employment of process, of a judicial, administrative, or other action or
19 proceeding against the debtor that was or could have been commenced
20 before the commencement of the case under this title, or to recover a claim
against the debtor that rose before the commencement of the case under
this title;

21 (2) the enforcement, against the debtor or against property of the estate, of
22 a judgment obtained before the commencement of the case under this title;

23 ...

(c) Except as provided in subsections (d), (e), and (f) of this section-

24 (1) the stay of an act against property of the estate under subsection (a) of
25 this section continues until such property is no longer property of the
26 estate; and

1 (2) the stay of any other act under subsection (a) of this section continues
2 until the earliest of-

- 3 (A) the time the case is closed;
4 (B) the time the case is dismissed; or
5 (C) if the case is a case under chapter 7 of this title concerning an
6 individual or a case under chapter 9, 11, 12 or 13 of this title, the
7 time a discharge is granted or denied.

8 Here, it is undisputed that the Mobarrys renewed their judgment during the pendency of
9 the automatic stay, as the judgment was renewed on approximately May 7, 1997 and the Debtor
10 was not granted his discharge until December 21, 1999.

11 Movant-Debtor argues that, due to the procedures for renewing a judgment as set forth in
12 California Code of Civil Procedure ("CCP") sections 683.110 *et seq.*, the actual renewal of the
13 judgment itself included the issuance or employment of process, citing a Missouri Bankruptcy
14 case in support of his argument, In re Thomasson, 66 B.R. 503 (Bankr. W.D.Mo. 1986). In
15 Thomasson, the Bankruptcy Court faced the issue of whether a judgment creditor could renew a
16 judgment at any time within ten years of entry of the judgment, by serving a writ of "*scire facias*"
17 on the judgment debtor. That court found that renewing a lien requires the continuation of a
18 judicial action and, therefore, must by definition employ process and the issuance of process.
19 Thomasson, 66 B.R. at 505.

20 Respondent, on the other hand, argues that the renewal of the judgment simply
21 constituted a preservation of the "status quo", and contends that nothing in the act of renewing a
22 judgment, without taking other steps, does anything to "create, perfect or enforce" a lien under
23 § 362(a). Respondent cites 2nd Circuit case In re Morton, 866 F.2d 561, 562-63 (2nd Cir. 1989) for
24 the proposition that renewal of the judgment was not explicitly prohibited by section 362 of the
25 Bankruptcy Code. The Morton court noted that "[s]ignificantly, [section 362(a)] does not
26 explicitly prohibit acts to *extend*, *continue* or *renew* otherwise valid statutory liens, nor is there
any indication from the legislative history that [C]ongress intended such a result." Morton, 866

1 F.2d at 564 (emphasis in original).

2 The facts of both Thomasson and Morton are distinguishable from the instant case, as the
3 judgment creditor in those cases renewed a judgment lien. This is a crucial distinguishing factor,
4 as a judgment lien could be understood as having “passed through” the bankruptcy (unless
5 appropriately avoided pursuant to 11 U.S.C. § 522); as such, one could at least arguably interpret
6 the renewal of a judgment lien as an act which only preserves the “status quo”.

7 California’s statutory scheme for renewing judgments, however, more closely resembles a
8 judicial action or proceeding - and such judicial proceedings are included in those acts prohibited
9 by the automatic stay. To gain an understanding of the exact question before this Court, one must
10 first delve into the history of California’s legislative scheme regarding the renewal of judgments.
11 In 1982, California enacted its first major revision of the state’s enforcement of judgment laws,
12 after the CCP was created in 1872. The new law was drafted by the California Law Revision
13 Commission at the specific request of the legislature. The full report of the Commission,
14 including the entire new statute and its official comments (both overall and on a section by
15 section basis) is available at 1982 *Creditor’s Remedies Legislation*, 16 California Law Revision
16 Commission Reports, 1001, *et seq.*

17 Under California law, a judgment may be enforced for ten years from the date of entry of
18 that judgment. See CCP § 683.020. In its Comments section, the Commission noted that
19 “[u]nlike former Section 681, the 10 year period provided by Section 683.020 is not extended
20 because enforcement of the judgment has been stayed or enjoined by court order or by operation
21 of law.” 16 California Law Revision Commission Reports 1001, 1208 - Official Comments to §
22 683.020.

23 However, the CCP’s newer section 683.210 allows for a renewal of a judgment during
24 such a stay, and pursuant to the Official Comments: “Section 683.210 permits the judgment
25 creditor to obtain an extension of the enforceability of a judgment even though a stay of
26 enforcement is in effect. Renewal may be necessary if a judgment is temporarily stayed during

1 the time that the 10-year enforcement period prescribed by Section 683.020 is running out.
2 Renewal during a stay of enforcement does not affect the stay, but merely prevents the
3 termination of the period of enforceability.”

4 Respondent argues that renewing the judgment was largely ministerial in nature, more a
5 procedural act than a judicial process. This argument is not persuasive. The renewal of judgment
6 was not an action that could have been taken *ex parte*, without notice. Rather, the renewal
7 process required service of the application for renewal on the judgment debtor, thus affording the
8 judgment debtor the opportunity to object to the renewal. The fact that the Debtor here may have
9 had few grounds on which to base an objection to the renewal is not relevant; what *is* relevant, is
10 that California’s statutory scheme for renewal of judgments required filing of the papers in the
11 same court from which the original judgment was obtained, service on the adversarial party, and
12 the possibility of objection. From such requirements this Court concludes that renewal of the
13 judgment was a continuation of a proceeding against the Debtor as contemplated by § 362(a)(1)
14 and, as such, was a violation of the automatic stay.

15
16 **B. SINCE 11 U.S.C. § 108(C) TOLLS THE RUNNING OF THE STATE’S STATUTE OF**
17 **LIMITATIONS FOR ENFORCEMENT OF THE JUDGMENT, CREDITOR’S**
18 **RENEWAL OF THE JUDGMENT WITHOUT FIRST SEEKING RELIEF FROM THE**
19 **AUTOMATIC STAY WAS PROCEDURALLY IMPROPER AND VIOLATIVE OF**
20 **THE AUTOMATIC STAY.**

21 Respondent argues that it has long been recognized that a federal court must follow the
22 laws of the states as interpreted by the courts in the state where the federal court sits, unless
23 Congress has passed legislation preempting the field. See Amy v. Dubuque, 98 U.S. 470, 25
24 L.Ed. 228 (1878). The Court does not dispute this law; rather, this Court disagrees with
25 Respondent’s assertion that no provision in the California statutory scheme for renewal of
26 judgments contradicts the Bankruptcy Code.

1 11 U.S.C. § 108(c) provides:

2 Except as provided in section 524 of this title, if applicable nonbankruptcy law, ... fixes a
3 period for commencing or continuing a civil action in a court other than a bankruptcy
4 court on a claim against the debtor, ... and such a period has not expired before the date of
the filing of the petition, then such period does not expire until the later of-

5 (1) the end of such period, including any suspension of such period occurring on
6 or after the commencement of the case; or

7 (2) 30 days after notice of the termination or expiration of the stay under section
8 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such
claim.

9 Although the California legislature, via CCP § 683.210, has provided a procedure
10 preventing the lapse of a creditor's judgment in the event that enforcement of that judgment is
11 stayed, neither the state court nor the state legislature has the jurisdiction to determine the
12 *application* of such a stay. Here, the Bankruptcy Code has unequivocally set forth the manner
13 and application of the automatic stay in a bankruptcy case. Section 108(c) would have no
14 meaning without the automatic stay. To the extent that § 108(c) conflicts with the time period for
15 renewing a judgment under California state law, § 108(c) preempts the California statutory
16 scheme.

17 Respondent argues that because CCP § 683.210 does not interfere with any rights of the
18 Debtor and just preserves the "status quo", the state statutory scheme thus may operate without
19 detriment to any of Debtor's rights. Though that very well may be true in this instance in a
20 practical sense, the argument does not take into consideration the very broad interpretation the 9th
21 Circuit Court of Appeals has afforded the automatic stay. The 9th Circuit has held that even a
22 *debtor* may not prosecute *her own* appeal without first obtaining relief from the automatic stay.
23 See generally Ingersoll-Rand Financial Corp. v. Miller Mining Co., 817 F.2d 1424 (9th Cir.
24 1987); Parker v. Bain, 68 F.3d 1131 (9th Cir. 1995). It would follow that here - even though the
25 state court judgment was found non-dischargeable by this Court in 1991 - a renewal of the state
26 court judgment without first obtaining relief from the automatic stay would be violative of the

1 stay, regardless of whether the renewal has any immediate impact on Debtor's rights.

2 In sum, § 108(c) was intended to give the state court creditor a way to keep her rights
3 intact (including the renewal of judgments) for 30 days after notice of the termination of the
4 automatic stay. Respondent here was not precluded from protecting its rights to the judgment.
5 Respondent instead improperly renewed the judgment in accordance with the state statutory
6 scheme, when the Bankruptcy Code specifically contained a provision for the tolling of the
7 statute of limitations for the renewal of that judgment, preempting state law. Since Respondent
8 failed to obtain relief from stay before renewing the judgment, Respondent's action constituted a
9 violation of the automatic stay, and thus, was void.

10
11 III.

12 CONCLUSION.

13
14 Respondent's renewal of the state court judgment was a violation of the automatic stay.
15 The federal statutory scheme regarding the retention of a creditor's rights to a claim against the
16 Debtor directly contradicts the state statutory scheme, and thus preempts it. Rather than turning
17 on whether the action had an immediate impact on Debtor's rights, the issue turns on the fact that
18 renewal constituted a judicial process or action; as such, the renewal is included in the range of
19 acts as contemplated by Congress to be prohibitive of the automatic stay, pursuant to 11 U.S.C.
20 § 362(a).

21
22 Dated: *Sept 13, 2002*

23 
24 MEREDITH A. JURY
25 United States Bankruptcy Judge
26