

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

G&B II, P.C.,

Plaintiff,

v

File No. 02-7894-CK
HON. PHILIP E. RODGERS, JR.

KEN ANDERSON a/k/a KIM JAMES and
CINDY FACSKO f/k/a CINDY ANDERSON,

Defendants.

C. William Garratt (P13858)
Attorney for Plaintiff

Douglas J. Donaldson (P37557)
Attorney for Defendant Kim James

DECISION AND ORDER GRANTING DEFENDANT
KIM JAMES' MOTION FOR RECONSIDERATION OR TO SET ASIDE
DEFAULT JUDGMENT AND ORDER OF ADMINISTRATIVE STAY

This is an ancillary garnishment proceeding. The primary debtor is Ken Anderson against whom a default judgment was entered on January 31, 2003.

On September 15, 2003, this Court entered a default judgment against Garnishee Defendant Kim James in the amount of \$42,280.06, inclusive of sanctions, fees and interest. Garnishee Defendant Kim James filed a Motion to Stay Execution on Judgment or for Expedited Hearing and a Motion for Reconsideration or to Set Aside Default Judgment.

On October 3, 2003, the Court entered an order staying execution and giving the Plaintiff seven days from the date of the order to file a response to the Motion for Reconsideration or to Set Aside Default. On October 10, 2003, the Plaintiff filed a response.

The Court has reviewed the Motion and the Response, dispenses with oral argument pursuant to MCR 2.119(E)(3), and issues this written Decision and Order granting the Defendant's Motion. It is undisputed that the United States Bankruptcy Court for the Western District of Michigan entered an Order and Notice of Stay pursuant to Section 362 of Chapter 7 of the Bankruptcy Code on July 8, 2003. This stay precluded the Plaintiff from taking any action, including pursuing garnishment proceedings, to collect on its default judgment against the

primary debtor. Any action taken in pursuit of this matter after July 8, 2003 was a direct violation of the Bankruptcy Court's stay order.

The Plaintiff seeks to have Kim James sanctioned for misconduct in this case, including failing to produce documents and failing to appear for her deposition on June 20, 2003. According to the documentary evidence that has been presented to the Court, there is a dispute over whether Kim James' deposition was rescheduled from June 20, 2003 to July 11, 2003, which was after the Bankruptcy Court's stay order was entered. He contends that the Court has the authority to sanction Ms. James regardless of the status of the bankruptcy proceeding.

The Court agrees that it has the authority to sanction a party for misconduct. However, the Court does not view a garnishee defendant's failure to appear for a deposition in an ancillary garnishment proceeding to be misconduct when the United States Bankruptcy Court has issued a stay of all proceedings against the debtor or any other person on account of any debt or claim or with respect to any property which has been submitted to the exclusive jurisdiction of the Bankruptcy Court.

What is blatant misconduct is the Plaintiff's applying for entry of a default judgment against the Garnishee Defendant on September 8, 2003 when the Bankruptcy stay was in full force and effect, presenting that motion to the Court of September 15, 2003 and procuring a default judgment without advising the Court of the bankruptcy proceeding and in violation of the bankruptcy stay.

When counsel became aware of the bankruptcy proceeding in July, counsel should have notified this Court so that an Order of Administrative Stay could have been issued staying these proceedings until the bankruptcy proceeding had been concluded.

The Defendant's Motion for Reconsideration or to Set Aside Default is granted. Any proceedings that have taken place and any orders that have been entered in this case since July 8, 2003 are null and void.

The bankruptcy proceeding is still pending. The Bankruptcy Court's stay order is still in full force and effect. This case shall be administratively stayed until such time as the bankruptcy stay is lifted. Once the stay is lifted, either party may file a motion to reopen this case. No costs are being awarded to either party.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____