

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

CASE NO. 03-05229

STONECRAFT, LLC

CHAPTER 11

STONECRAFT, LLC

PLAINTIFF

VERSUS

ADV. PROC. NO. 03-00173

JOHN SLAGTER

DEFENDANT

OPINION

On consideration before the court is a motion to enforce judgment filed by the plaintiff, Stonecraft, LLC, (Stonecraft); a response to said motion having been filed by the defendant, John Slagter (Slagter); and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (N), and (O).

II.

Following a trial in the above captioned adversary proceeding, this court entered an opinion and order, both dated March 7, 2005. A judgment was thereafter entered on April 22, 2005, which provided as follows:

I.

The defendant, John Slagter, occupied a fiduciary relationship to the plaintiff, Stonecraft, LLC. As such, consistent with §450.4404(5), MLLCA, Slagter held as trustee for Stonecraft any benefit that he derived from the development of the subject composite and the related patent, i.e., U.S. Patent No.: US6,569,923B1. Consequently, he is hereby ordered to transfer the patent to Stonecraft, as well as, any interest that he might have in the Patent Cooperation Treaty Request, PCT/US00/07192, and all international applications (PCTs), the said intellectual property rights being more specifically identified as follows:

1. United States Patent No. 6,569,923, granted May 27, 2003, entitled “Polymer-Cement Composites and Methods of Making Same.”
2. Canadian Patent Application No. 2,367,798, entitled “Polymer-Cement Composites and Methods of Making Same.”
3. European Patent Application No. 00918106.6, entitled “Polymer-Cement Composites and Methods of Making Same.”
4. Japanese Patent Application No. 2000-060544, entitled “Polymer-Cement Composites and Methods of Making Same.”
5. Mexican Patent Application No. PA/a/2001/9447, entitled “Polymer-Cement Composites and Methods of Making Same.”
6. PCT Patent Application No. PCT/US00/07192, entitled “Polymer-Cement Composites and Methods of Making Same.”

That the transfer from the defendant to the plaintiff shall be accomplished pursuant to the Assignment form, which is approved by the court, and which is appended hereto as Exhibit A.

That the said transfer from the defendant to the plaintiff shall be completed within 10 days following the date that this Judgment becomes final and non-appealable.

II.

The conclusion herein is also premised on a finding by this court that the invention, which is addressed by the subject patent, was “reduced to practice” by the plaintiff through the work of Dr. H. Dale DeFord, fully at the expense of the plaintiff.

III.

The affirmative defense asserted by the defendant, i.e., his alleged wrongful termination and/or the inequitable conduct on the part of the other Stonecraft members, cannot be effectively raised to negate the decision of this court that the defendant must transfer the subject patent and the PCTs to the plaintiff. The defendant's right to pursue his cause of action against the aforesaid members may be exercised, without prejudice, in an appropriate state court of competent jurisdiction.

IV.

Count III of the Amended Complaint is now moot because of the confirmation of the plaintiff's amended plan of liquidation. As such, it is hereby dismissed.

As set forth hereinabove, the court included the following unnumbered paragraph concerning the enforcement of the judgment:

“That the said transfer from the defendant to the plaintiff shall be completed within 10 days following the date that this judgment becomes final and non-appealable.”

The use of this wording, which was not noticed for several months by the court or either party to this proceeding, was unfortunate in that it has now been construed by Slagter to the effect that the enforcement of the judgment is stayed pending the conclusion of all appellate processes. The court takes full responsibility for the inclusion of this language, but would assert unequivocally that it was not the court's intention to preclude the enforcement of the judgment.

Indeed, despite the aforesaid language, Slagter filed a motion to stay the judgment pending appeal. A hearing was conducted and the court entered an order on April 19, 2005, which provides as follows:

On consideration before the court is a motion filed by the defendant, John Slagter, for a stay pending appeal of the order and final judgment ordering the transfer of certain

intellectual property rights from the defendant to the plaintiff, Stonecraft, LLC; a response to said motion having been filed by the plaintiff; and the court, having heard and considered same, hereby finds, orders and adjudicates as follows, to-wit:

The defendant's motion for a stay pending appeal is sustained conditioned upon the said defendant posting a bond, within 10 days of the date of entry of this order, in the sum of \$200,000.00, in cash or with sufficient sureties subject to the approval of the court. That said bond shall be made payable to the plaintiff and shall be subject to forfeiture in its entirety to the plaintiff in the event that the defendant's appeal is unsuccessful.

Had anyone thought that the enforcement of the judgment was already stayed, the proceeding on Slagter's motion for a stay pending appeal would not have been necessary at all. When Slagter could not post the supersedeas bond required by the order, he filed a Chapter 13 bankruptcy case on April 29, 2005, in the United States Bankruptcy Court for the Western District of Michigan styled In re: John T. Slagter, Case No. 05-06151-JDG. On August 29, 2005, the Bankruptcy Court for the Western District of Michigan lifted the automatic stay so that the litigation of this adversary proceeding could continue to a conclusion.

Slagter filed a notice of appeal to the United States District Court for the Southern District of Mississippi on April 29, 2005. The trial record of this adversary proceeding was submitted to the district court on October 18, 2005.

III.

At the hearing on the subject motion to enforce judgment filed by Stonecraft, Slagter, relying on the language in the sentence noted hereinabove, took the position that the judgment could not be enforced because it had not become "final and non-appealable." This was the first time that the court realized the unintended consequences that might be attributed to the aforesaid language. This court would not have conducted a hearing on Slagter's earlier motion for a stay

pending appeal, as well as, entered the aforementioned order granting a stay conditioned upon the posting of a supersedeas bond by Slagter if this court had intended from the outset that the judgment could not be enforced until all appellate processes were exhausted.

Further evidencing this position, the court, on May 20, 2005, executed an order, confirming the auction sale of Stonecraft's assets, which contained the following language, to-wit: "On April 29, 2005, Slagter filed a voluntary petition for relief pursuant to Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Michigan, Case No. 05-06151-JDG. Accordingly, the automatic stay has been activated which precludes Stonecraft from taking action against Slagter personally such as requiring him to transfer the patents and intellectual property by the execution of the aforementioned assignment." This language indicates, that since Slagter had not met the condition required for a stay pending appeal, this court was of the opinion that the bankruptcy automatic stay now prohibited Stonecraft from requiring Slagter to execute the assignment. Quite frankly, had Slagter actually thought that he did not have to execute the assignment until the appellate processes were completed, he would not have had to file his bankruptcy case in order to obtain the benefit of the automatic stay as a substitute for his failure to post the supersedeas bond.

Therefore, the court is of the opinion that the language in the judgment should be interpreted to mean the following: "That the said transfer from the defendant to the plaintiff shall be completed within 10 days following the date that this judgment is entered." This interpretation does not change the results of the decision on the merits in the adversary proceeding and relates only to the enforcement of the judgment. This interpretation also correctly reflects the court's initial intention in preparing the said judgment.

IV.

The court is cognizant of the fact that Slagter has taken an appeal of the aforementioned judgment. This court is of the opinion, however, that it has continuing jurisdiction to interpret and enforce its judgment until the judgment has been stayed or superseded. In Sony Electronics, Inc. v. Daisytek, Incorporated (In re Daisytek, Incorporated), 2004 WL 1698284 (N.D. Tex. 2004), the district court offered the following comments:

Notwithstanding an appeal, however, “the bankruptcy court retains jurisdiction to address elements of the bankruptcy proceeding that are not the subject of that appeal.” [FN3] In re Transtexas, 303 F.3d at 580 n.2 (5th Cir. 2002); see also Resolution Trust Corporation v. Smith, 53 F.3d 72, 76 (5th Cir. 1995); Alberti v. Klevenhagen, 46 F.3d 1347, 1358 (5th Cir. 1995); In re Board of Directors of Hopewell International Insurance, Ltd., 258 B.R. 580, 583 (Bankr. S.D. N.Y. 2001). Further, the bankruptcy court has continuing jurisdiction to interpret and enforce its judgment until the judgment has been properly stayed or superseded, see, e.g. Alberti, 46 F.3d at 1358.

In United States v. Revie, 834 F.2d 1198 (5th Cir. 1987), the Fifth Circuit commented as follows:

...For many years, case law in our Circuit has recognized that a court maintains continuing jurisdiction to enforce a judgment. Until the judgment has been properly stayed or superseded, the district court may enforce it through contempt sanctions. Farmhand Inc. v. Anel Engineering Industries, 693 F.2d 1140, 1145-46 (5th Cir. 1982); Brown v. Braddick, 595 F.2d 961, 965 (5th Cir. 1979). In Farmhand, we ruled that the district court retained jurisdiction to supervise its injunction in a patent infringement action if no stay of the injunction had been granted. Farmhand relied on our Court’s ruling in Braddick, which sustained jurisdiction of the district court to hold civil contempt proceedings despite appeal of the district court’s judgment.

Since Braddick failed to ask the district court for a stay pending appeal and to post supersedeas bond as required by F.R.C.P. 62(d), the district court retained power to enforce its order by civil contempt proceedings.

834 F.2d at 1205.

The Fifth Circuit has expressly declined to adopt the broad rule that a bankruptcy court may not consider any request which either directly or indirectly touches upon the issues involved in a pending appeal. In Matter of Sullivan Central Plaza I, Ltd., 935 F.2d 723 (5th Cir. 1991), the court commented as follows:

...Sullivan Central proposes that this court adopt the broad rule that a bankruptcy court may not consider any request which either directly or indirectly touches upon the issues involved in a pending appeal and may not do anything which has any impact on the order on appeal. See In re Kendrick Equip. Corp., 60 B.R. 356, 358 (Bankr. W.D. Va. 1986); In re Urban Dev. Ltd., 42 B.R. 741 (Bankr. M.D. Fla. 1984).

We decline to adopt such a broad rule. Sullivan Central's formulation would severely hamper the bankruptcy court's ability to administer its cases in a timely manner. Parties could tie up proceedings for long periods of time while their various appeals wound their way through three levels of appellate review. Here, the matter on which the bankruptcy court ruled--the motion to convert--was not the subject of the pending appeal. Accordingly, the bankruptcy court retained jurisdiction to consider the motion.

935 F.2d at 727.

V.

In its motion to enforce judgment, Stonecraft has requested this court to appoint the clerk of this court to execute the assignment on behalf of Slagter pursuant to Rule 70, Federal Rules of Civil Procedure, or to provide some other means of enforcing the judgment such as requiring Slagter to execute the assignment. Rule 70, Federal Rules of Civil Procedure, provides in pertinent part, as follows:

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party.

Once the correct interpretation is applied to the judgment entered by this court on April 22, 2005, coupled with the fact that there is no effective stay pending appeal, as well as, that the automatic stay has been lifted in Slagter's personal bankruptcy case, this court is of the opinion that Slagter should be compelled to execute the assignment within a period of 10 days from the date of the entry of this order. Should Slagter fail to do so, the court directs the Clerk of Court, Charlene Kennedy, to execute said assignment in Slagter's stead, as if it were executed by Slagter, all pursuant to Rule 70, Federal Rules of Civil Procedure.

A separate judgment will be entered consistent with this Opinion.

This the 20th day of October, 2005

/s/ DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE