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AT
JUN 30 1987
William L. Olson, Clerk
By Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	BK 83-2087
	)	CV 86-0-1023
CARL R. NELSON,	)	
	)	
Debtor.	)	ORDER

This matter is before the Court on appeal from an order of the Bankruptcy Court dated November 25, 1986, overruling the debtor's motion to hold the Arcadia State Bank ("Arcadia") and others in contempt for violating the automatic stay. Upon being informed in the premises, the Court finds that the decision of the Bankruptcy Court should be affirmed.

On January 30, 1984, Arcadia, the principle secured creditor of the debtor Carl Nelson, was granted relief from the automatic stay by the Bankruptcy Court. Nelson appealed the order granting relief but was unsuccessful in obtaining a stay of the Bankruptcy Court's order pending appeal. While the appeal was pending, Arcadia obtained a summary judgment in replevin against Nelson in state court. Arcadia also appealed to the Nebraska Supreme Court an adverse jury verdict regarding the ownership of certain property subject to the replevin. While Arcadia's appeal was under submission with the supreme court, this Court reversed the original order of the Bankruptcy Court granting relief from the stay.

At the outset, the Court notes that the Bankruptcy Court's findings of fact are subject to the clearly erroneous standard, while its legal conclusions are subject to de novo review. In re Martin, 761 F.2d 472, 474 (8th Cir. 1985).

If there is no automatic stay in effect, an action for contempt of the automatic stay provision is obviously without merit. Until reversed on May 9, 1986, the Bankruptcy Court's order granting Arcadia relief from the stay was valid and in force. The actions taken by Arcadia between the time of the original Bankruptcy Court order and the time it was reversed were not prohibited by the automatic stay and may not be the source of an order of contempt. Nelson apparently argues that the mere appeal of an order suspends its operation. Absent the entry of a stay pending appeal, such is not the case.

Nelson also objects to activities taken by the trustee appointed to administer his case. The trustee is not subject to the automatic stay, and cannot be found in contempt for activities undertaken to properly oversee Nelson's reorganization. The Bankruptcy Court was within its discretion in overruling Nelson's motion. The decision of the Bankruptcy Court shall be affirmed.

In light of this resolution of the issues presented, the Court shall also deny Nelson's motion (filing 16) to consolidate and his expedited motion (filing 18 and 19) for a temporary restraining order as moot.

Accordingly,

IT IS ORDERED as follows:

1. The decision of the Bankruptcy Court should be and hereby is affirmed.

2. The debtor's motions (filings 16, 18 and 19) should be and hereby are denied as moot.

3. This action should be and hereby is dismissed.

DATED this 30th day of June, 1987.

BY THE COURT:

C. ARLEN BEAM, CHIEF JUDGE
UNITED STATES DISTRICT COURT