



SO ORDERED.

SIGNED this 10 day of October, 2008.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

**FOR ONLINE PUBLICATION; NOT FOR PRINT PUBLICATION
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:

**TERRY J. DUCKWORTH,

DEBTOR.**

**CASE NO. 07-12686
CHAPTER 7**

**WOLFE ELECTRIC, INC.,

PLAINTIFF,**

v.

ADV. NO. 08-5023

**TERRY J. DUCKWORTH,

DEFENDANT.**

**INTERIM ORDER DENYING DEBTOR'S MOTION TO STAY ADVERSARY
PROCEEDING PENDING FINAL DETERMINATION OF STATE COURT APPEAL**

On September 11, 2008, the Court heard arguments of counsel on Debtor's Motion to Stay Adversary Proceeding Pending Final Determination of State Court Appeal and motion to file briefs in support of and opposition to said motion. Plaintiff Wolfe Electric, Inc. ("Wolfe") appeared by Ryan Peck, of Morris, Laing, Evans, Brock & Kennedy. Debtor appeared by Dallas Rakestraw, of Redmond & Nazar, LLP.

This is a dischargeability complaint, filed by Wolfe against the Debtor under § 523(a)(6), willful and malicious injury to property. Wolfe is the holder of two judgments against Debtor entered prepetition in Sedgwick County, one for damages of \$325,000 for misappropriation of trade secrets, entered on January 29, 2007, and one for attorney fees of \$140,122, entered on September 26, 2007. The cases arose out of debtor's former employment by Wolfe, a manufacturer of pizza ovens, and his establishing a competing company after his acrimonious termination. The attorney fees award is predicated upon a Kansas statute providing that fees may be awarded when the defendant willfully and maliciously misappropriated the plaintiff's trade secrets.

Debtor has appealed the judgments to the Kansas Court of Appeals, but has not sought or obtained a stay in the state court system, relying, rather, upon the automatic stay arising upon the filing of the Chapter 7 petition in this Court on November 01, 2007. It will be many months before there is a final order on the state court trade secret case. Duckworth has filed his initial brief, and Wolfe is close to or has filed the appellee's brief. It will be some time, perhaps as much as six months to a year, before the Court of Appeals rules. There is also the possibility that review of the decision rendered by the Court of Appeals will be sought, further delaying the

final appellate resolution. Of course, if the trial court judgments are reversed and remanded for retrial, additional delay will result.

The instant adversary proceeding was filed on January 30, 2008. Discovery is complete, and Wolfe desires to file a summary judgment motion. Debtor, by filing this motion to stay the adversary proceeding until final determination of the state court appeal, wishes to prevent Wolfe from doing so.

The Court granted the Debtor's motion to be permitted to file briefs on the issue of staying these proceedings at the September 11, 2008 hearing. Debtor had previously filed its brief, which the Court has considered. At the hearing Wolfe indicated that it did not wish to file a responsive brief and waived its right to do so.

At the September 11th hearing, the parties argued their positions on whether the Court should grant Debtor's motion to stay this adversary proceeding until there is a final determination of the appeal. The bottom line is that it is within the Courts discretion to either grant or not grant the stay. For the reasons stated below, I decline to grant the stay and rule that Wolfe may proceed to file the summary judgment motion, if it desires to do so. Assuming that a motion is filed, after the briefs have been filed and the case is under advisement, the Court will again consider whether, in light of the arguments presented and the status of the state court litigation, whether the motion to stay the adversary case should be granted.

The Court has no problem with the Debtor seeking protection of the Bankruptcy Court to conserve his assets pending his appeal of the state court judgments rather than seeking a stay pending appeal, which would require the posting of a supersedeas bond. On the other hand, the

Court does not believe that the Debtor should gain an undue advantage over Wolfe through use of the appeal coupled with the bankruptcy.

The Debtor does not want to incur the cost of defending a motion for summary judgment while at the same time incurring the cost of pursuing the state court appeal. This is understandable. If the Debtor wins the state court appeal, then this adversary case might, under some circumstances be rendered moot. If Debtor loses the appeal, the Debtor might choose to agree to a nondischargeability finding. In either case, the Debtor would not incur the cost of defending a summary judgment motion.

The Court must balance the possible adverse consequences to Wolfe against the economies of effort to the Debtor. It appears to the Court that the outcome of the appeal will not necessarily be dispositive of the outcome of this case. If Debtor wins the appeal, Wolfe may decide to pursue the dischargeability claim. If Debtor loses the appeal, he may choose to defend the dischargeability complaint, rather than agree to nondischargeability. In both events, the result of a stay would be to delay the date that this case can be resolved. Assuming a stay were entered and thereafter Wolfe prevails and discharge is denied, Wolfe would have been delayed in pursuing collection. It is not inconceivable that Debtor might even be using this hiatus to ensure that assets he acquires post petition are placed beyond Wolfe's reach. This litigation should not be unnecessarily delayed.

Thus, the Court finds that the best resolution of this situation is to allow Wolfe to file its summary judgment motion and for the normal briefing schedule to be utilized. After all of the briefs are filed and case is under advisement, the Court can determine the status of the state court

appeal and revisit, if requested by a party, the question of whether proceeding with this adversary case should be stayed pending resolution of the state court appeal.

IT IS SO ORDERED.

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