

2018 WL 3014442

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United States District Court, N.D.

Alabama, Southern Division.

SERVISFIRST BANK, Plaintiff,

v.

HARDING ENTERPRISES, LLC, et al., Defendants.

Civil Action Number 2:17-cv-00605-AKK

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Signed 05/03/2018

Attorneys and Law Firms

Lee R. Benton, Brenton K. Morris, Douglas J. Centeno,
Benton & Centeno LLP, Birmingham, AL, for Plaintiff.

Elizabeth Ann McMahan, Simpson, McMahan, Glick &
Burford PLLC, Birmingham, AL, Jason Scott Leiker,
Levy Craig Law Firm, Kansas City, MO, for Defendants.

ORDER

ABDUL K. KALLON, UNITED STATES DISTRICT
JUDGE

*1 The court has for consideration the Hanover Insurance Company's Motion to Stay Lawsuit, doc. 126, based on the bankruptcy petitions filed by Gregory Harding, Andrea Harding, and Harding Enterprises, LLC (collectively "Enterprises"). See docs. 121, 124. Hanover contends that the automatic stay imposed by the Hardings' bankruptcy cases applies to both ServisFirst Bank's claims against Hanover and Hanover's counterclaims against ServisFirst because they allege dueling security interests and other rights over various assets belonging to Enterprises.¹ Doc. 126. According to Hanover, because Enterprises' property and assets are now the property of the bankruptcy estate, the bankruptcy court's exclusive jurisdiction over these assets denies this court jurisdiction over ServisFirst and Hanover's claims to determine which of the two creditors is entitled to those property and assets. *Id.* at 4-6.

1 ServisFirst asserts a request for declaratory judgment and a claim for intentional tortious interference with business relationships against Hanover. Doc. 128 at 10-12. Hanover asserts a request for declaratory judgment, and claims for conversion and tortious interference with a business expectancy and with contracts against ServisFirst. Doc. 73 at 13-17.

"Section 362(a) operates to stay only actions against bankruptcy petitioners and their property," and generally "does not apply ... to actions not directed against the debtor or the property of the debtor." *In re TXNB Internal Case*, 483 F.3d 292, 301 (5th Cir. 2007) (citing *Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001)); see also *Picco v. Glob. Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990) (holding district courts "retain jurisdiction to determine the applicability of the stay to litigation pending before them, and to enter orders not inconsistent with the terms of the stay") (citing *Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 1069 (5th Cir. 1986)). Neither ServisFirst's claims against Hanover nor Hanover's counterclaims seek the recovery of property belonging to the Hardings or Enterprises. See docs. 73, 128. Instead, both parties seek a declaration from the court that they have a superior security interest over the other. See docs. 73 at 13-14; 128 at 10-11. Determining which of these two creditors has a priority interest over the property is not akin to saying that party can ignore the pending bankruptcy action or is not bound by the court's determination as to the asset in question. See *Orix Credit All., Inc. v. First Fla. Bank, N.A.*, 147 B.R. 594 (M.D. Fla. 1992) (noting that bankrupt debtor was subject to stay under 11 U.S.C. § 362, but not applying stay in action to determine priority of creditors' liens on collateral owned by debtor). Indeed, the court's ruling on the pending motions for summary judgment would not allow either party to obtain that property or enforce a lien on that property while the bankruptcy case is pending. Instead, that party, like any other creditor, would have to state its case for the assets in bankruptcy court. Accordingly, the motion to stay, doc. 126, is **DENIED**.

*2 **DONE** the 3rd day of May, 2018.

All Citations

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