U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
MELVIN ROY HASSELL and	§	**Case No. 02-37307 HDH-7**
NELDA JO HASSELL	§	
Debtors	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. Melvin Roy Hassell and Nelda Jo Hassell ("Debtors") filed a voluntary Chapter 11 proceeding on or about August 26, 2002. Their case was converted, for cause, by Judge Robert C. McGuire, on October 21, 2002.

2. Early during the pendency of this bankruptcy case, United States District Court Judge A. Joe Fish entered a judgment in favor of the Internal Revenue Service (the "IRS") and against Debtors for taxes, and declaring the transfer of their home as a fraudulent transfer. Judge McGuire annulled the automatic stay as to the entry of that judgment. The Debtors appealed to the Fifth Circuit, which affirmed the judgment. Debtors have filed certain motions with the appeals court and stated before this Court that they intend to seek *en banc* review by the circuit court. However, no stay of the judgment of Judge Fish has been granted.

3. The IRS filed a motion for relief from the stay with this Court to allow it to proceed with its rights under the judgment of Judge Fish. The IRS seeks, *inter alia*, to collect from the Debtors' home, which Judge Fish declared had been fraudulently transferred by the Debtors.

4. Debtors opposed the pending motion for relief by claiming that lifting the stay at this time would constitute a denial of due process to the Debtors and is unfair under law.

5. Debtor Mr. Hassell has stated to this Court on several occasions that he was not given a chance to make his case before Judge Fish. A review of the matter before Judge Fish, and filings in the appeal indicate that Mr. Hassell has made similar arguments to Judge Fish and to the Fifth Circuit. Those arguments were made to the District Court, and were in fact made to and overruled by the Fifth Circuit. The Bankruptcy Court does not have the power to undo a valid judgment of a United States District Court, particularly when such judgment has been affirmed by the Appeals Court.

6. Debtors have for several years been involved in contentious litigation with the IRS. In this Court, the Debtors have been uncooperative in discovery, have launched personal attacks on government counsel, and have begun to advance theories of tax protest, questioning the federal income tax, the authority of the IRS to collect taxes, and the authority of a Department of Justice lawyer to represent the IRS. Those arguments are frivolous and have been rejected by this Court.

7. No party, other than the Debtors, filed a response to the IRS' motion for relief from stay. The Chapter 7 Trustee indicated that he did not oppose the motion. Debtors are clearly insolvent. Though the Court reviewed the objection and considered the arguments made by the Debtors, it notes that the Debtors have little standing to contest the motion. Either the house is the Debtors' exempt property, and therefore should not enjoy the protection of the automatic stay, or the house is non exempt property, the Debtors have lost their interest, and the house should be returned to the estate, subject to the claims of creditors, such as the IRS.

8. Cause for lifting of the automatic stay can take many forms. The home is not worth the amount of taxes in the case. The bankruptcy case has lingered for several years. The Debtors have been found by the United States District Court to have participated in a fraudulent transfer to thwart the efforts of the IRS. The interest of the United States in these proceedings is not adequately protected.

9. Both Debtors appear to be in poor health. They will be given a short period of time to try to reach an agreement with the IRS concerning these matters, to seek a stay of this order from another court, or to make alternative housing arrangements. The stay will be lifted effective March 8, 2004.

10. Any conclusion of law may also be deemed a finding of fact.

Conclusions of Law

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

2. This is a core matter under 28 U.S.C. § 157 and 11 U.S.C. § 362.

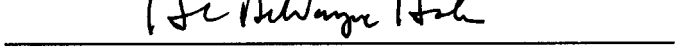
3. Under Bankruptcy Code Section 362 (d), "cause" exists to modify the automatic stay to allow the IRS to proceed before Judge Fish to collect its judgment. Such cause includes the litigation tactics of the Debtors, the lack of adequate protection, the lack of objections by the Trustee or creditors, the delay by the Debtors in this case, and the efforts by the Debtors to thwart the collection activities by the IRS.

4. The automatic stay of Section 362 will be lifted effective March 8, 2004. After that day the IRS may seek appropriate orders from Judge Fish to enforce the judgment obtained in his court.

5. Counsel for the IRS shall prepare an order consistent with these findings and conclusions.

6. Any finding of fact may also be deemed a conclusion of law.

SIGNED: 2-10-04



Harlin D. Hale
United States Bankruptcy Judge