

DOCKET NUMBER: 95-10284

ADV. NUMBER:

JUDGE: M. A. Mahoney

PARTIES: Donald Eugene Gustafson, Poly Art Foam Fabricators, Inc.

CHAPTER: 13

ATTORNEYS:

DATE: 5/18/95

KEY WORDS:

PUBLISHED: No

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

DONALD EUGENE GUSTAFSON,

Case No. 95-10284-MAM-13

Debtor.

**ORDER DENYING RELIEF FROM STAY
TO POLY ART FOAM FABRICATORS, INC.**

This matter came before the Court upon the motion of Poly Art Foam Fabricators, Inc. (“Poly Art” or “Movant”) for relief from the automatic stay pursuant to 11 U.S.C. § 362.

The Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and the Order of Reference from the District Court. Proper notice of the hearing was given and appearances were as noted in the record. For the reasons discussed below, relief from stay is denied. However, the Movant is free to continue their state court proceeding against Ellen Gustafson, d/b/a Ellen’s Place.¹

On December 15, 1994, Poly Art was awarded a judgment for the sum of \$1,869.00 by the District Court of Mobile County, Alabama in a case styled *Poly Art Foam Fabricators, Inc. v. Ellen and Gus Gustafson d/b/a Ellen’s Place*, Case No. DV-94-1345-MC.

On February 9, 1995, Donald Eugene Gustafson, aka Gus Gustafson (“Debtor”), filed a voluntary petition for protection under Chapter 13 of the Bankruptcy Code. On the petition, the Debtor listed the nature of the bankruptcy as “non-business/consumer.” Poly Art is listed on the Debtor’s Schedule F as holding a fixed and liquidated unsecured nonpriority claim. Neither Ellen Gustafson nor Ellen’s Place is a debtor in this proceeding or any other current bankruptcy case.

¹Ellen’s Place is a restaurant in Mobile County, Alabama.

Poly Art is seeking relief from the automatic stay to proceed with the collection of the state court judgment against codebtor Ellen Gustafson. Although Poly Art is not attempting to collect this judgment against the Debtor in the underlying bankruptcy case, the Debtor objects to the relief on the basis of what is commonly known as the “codebtor stay.” 11 U.S.C. § 1301. Relief from the stay is not necessary in this case.

In limited cases, the Bankruptcy Code enlarges the shield of the automatic stay to protect third parties. This is not one of those instances. 11 U.S.C. § 1301(a) is extended only to debtors of consumer debt. The statute states in part:

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence, or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt . . . (emphasis added)

11 U.S.C. § 1301(a).

“‘Consumer debt’ means debt incurred by an individual primarily for a personal, family, or household purpose.” 11 U.S.C. § 101(8). At trial, both the Debtor and Poly Art stated that the state court judgment was the result of work performed by the Movant at Ellen’s Place restaurant. Specifically, Poly Art insulated the exterior of a commercial freezer at the business owned by Gus and Ellen Gustafson.

The longstanding application of § 1301 is limited to debt incurred primarily for consumer purposes. If, as is the case here, the debt is not consumer oriented, then § 1301 is not applicable. *In re La Flamme*, 13 B.R. 278 (Bankr. N.D. Ga. 1981). *See also In re Stein*, 18 B.R. 768 (Bankr. S.D. Ohio 1982). Because the obligation to Poly Art is not in the nature of a consumer debt, Ellen Gustafson d/b/a Ellen’s Place does not enjoy the protection of the automatic stay. Given this, Poly Art’s motion is moot, and they are free to pursue any remedies they deem appropriate.

In light of the above circumstances, I conclude that the § 1301 co-debtor stay does not prevent collection of the state court judgment by Poly Art against Ellen Gustafson d/b/a Ellen's Place.

Therefore, Poly Art Foam Fabricators, Inc.'s motion for relief from stay is denied as to Ellen Gustafson d/b/a Ellen's Place concerning the state court judgment.

Dated: May 18, 1995

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE