

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

SHAMROCK MANUFACTURING, INC.,

CASE NO. 03-10824

Debtor.

Chapter 11

**ORDER GRANTING MAZAK CORPORATION'S
MOTION FOR RELIEF FROM STAY**

Marion E. Wynne, Counsel for Mazak Corporation
C. Michael Smith, Counsel for Shamrock Manufacturing, Inc.

This matter came before the Court on the motion for relief from the automatic stay filed by Mazak Corporation (“Mazak”). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Having considered the pleadings, arguments of counsel and stipulation of facts, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Mazak is a judgment creditor of Charles W. Sullivan and others pursuant to a judgment on a jury verdict dated September 18, 1998.¹ On or about February 4, 2002, Mazak, as a judgment creditor, filed an action in the Circuit Court of Baldwin County, Alabama (CV-2002-115) against Charles W. Sullivan, Josephine Sullivan, Sullivan Machine and Tool Company, and the Debtor, Shamrock Manufacturing, Inc. (“Shamrock”). The complaint alleged that while the

¹The judgment was recorded September 23, 1998 in Real Property Book 885, page 1854 of the records of the Judge of Probate of Baldwin County, Alabama. See also Certificate of Judgment dated October 4, 2000, recorded October 5, 2000 as Instrument number 595766 in the records of the Judge of Probate of Baldwin County, Alabama.

previous action was pending, the Sullivans transferred their own assets as well as the assets of Sullivan Machine and Tool Company to Shamrock for little or no consideration. As a result of the transfers, the Sullivans are insolvent, and Shamrock now owns and operates the business that the Sullivans formerly owned and operated. Mazak's complaint contains four counts: (1) recovery an AJV 25/405 vertical machining center; (2) fraudulent conveyance; (3) attachment of Mazak's judgment to Shamrock's assets by disregarding the corporate entity known as Shamrock Manufacturing; and (4) conspiracy by the Sullivans to render themselves insolvent against Mazak's judgment.

Mazak had conducted discovery in the state court action and was preparing to file a motion for summary judgment. Charles W. Sullivan filed a Chapter 11 in this Court on October 18, 2002, which is currently pending. On December 23, 2002, Judge Mahoney of this Court granted Mazak relief from the automatic stay as to Charles Sullivan. Josephine Sullivan has not filed a bankruptcy petition.

Shamrock filed a chapter 11 petition on February 11, 2003. Mazak filed a claim in the bankruptcy on April 11, 2003. In its schedules, Shamrock listed secured debt of \$6,453.13, priority claims of \$26,977.28 and unsecured claims of \$325,675.39. Of the unsecured debt, \$121,278.90 is owed to Josephine Sullivan, the sole shareholder of Shamrock, and \$90,000.00 to Charles W. Sullivan. Many of Shamrock's assets were purchased from third parties, and not from Sullivan Machine and Tool Company or obtained from Charles Sullivan. Shamrock was incorporated in May 1993. In November 1993, Shamrock purchased several pieces of equipment at auction from Teledyne Continental Motors. In December 1995, Shamrock redeemed certain property of Sullivan Machine and Tool which was in the process of being repossessed. In May

1996, Shamrock purchased a 1996 Chevrolet C3500 pick up truck from a third party. In April 1997, Shamrock purchased at auction a forklift and miscellaneous office equipment from Trump Industries. In August 2000, Shamrock purchased a 1996 GMC Savanna van from a third party.

CONCLUSIONS OF LAW

Mazak seeks to have the automatic stay lifted to proceed with the state court action against Shamrock. Under 11 U.S.C. §362(d)(1), the court shall grant relief from the stay “for cause”.

The District Court has previously held that the factors for determining when the automatic stay should be lifted are equitable in nature. *In re Salisbury*, 123 B.R. 913, 915 (S.D. Ala. 1990).

The *Salisbury* court outlined the following factors to be considered in determining whether or not cause exists for lifting the automatic stay:

- 1) the likelihood, if any, that the Debtor will suffer great prejudice if the stay is lifted;
 - 2) whether the hardship the moving parties may suffer if the stay remains in effect will outweigh any prejudicial effect to the Debtor or the estate if relief from the stay is granted;
 - 3) the likelihood that the creditor will prevail on the claim pending in the state court.
- (Citations omitted).

Salisbury, 123 B.R. at 915; see also *In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001).

The Court must first determine if Shamrock will suffer great prejudice if the stay is lifted. Shamrock’s objection to lifting the automatic stay focuses on prejudice to its creditors rather than prejudice to Shamrock. Shamrock maintains that none of Shamrock’s creditors are parties to the state court actions even though their rights would be significantly affected given that Mazak is seeking to have a lien imposed against all of Shamrock’s property to secure a debt against Charles Sullivan. According to Shamrock, many of its assets were purchased from entities other than Charles Sullivan and Sullivan Machine and Tool, and therefore, should not be used to secure a judgment against Charles Sullivan. Shamrock fears the risk of inconsistent rulings and

the inefficient use of judicial resources if the state court awards Mazak a lien on Shamrock's assets.

Shamrock will be forced to deal with the issues raised in Mazak's state court complaint whether in the Circuit Court of Baldwin County, Alabama or in the bankruptcy court. Therefore the Court finds no prejudice to Shamrock if the stay is lifted and the state court action is allowed to proceed. Shamrock's concerns that its other creditors' rights may be prejudiced by the judgment lien against Shamrock's assets can be dealt with by limiting the relief from stay as to that cause of action. Count two of the complaint for fraudulent conveyances asks the state court to void the conveyances from the Sullivans and Sullivan Machine & Tool Company to Shamrock and declare a lien on the conveyed property. The Court finds that the automatic stay should be lifted to allow the state court to determine whether the property was fraudulently conveyed, and if so, to impose a judgment lien on the fraudulently conveyed property only. Count three of the complaint calls for the state court to disregard the corporate entity (Shamrock) and allow all judgments and claims of Mazak to attach to Shamrock's assets. Again, the Court finds that the stay should be lifted to allow the state court to decide whether the corporate entity should be disregarded and to impose a judgment lien only to any assets transferred to Shamrock by the judgment debtors. Shamrock provided the Court with a list of property that it acquired from sources other than the Sullivans or Sullivan Machine and Tool Company. The Court finds no risk of inconsistent rulings or the inefficient use of judicial resources by allowing the state court to resolve these state law issues with these limitations.

The second prong of *Salisbury* requires the Court to consider the likelihood of harm to the moving party if the stay is not granted. As outlined in its stipulation of fact, Mazak has been

working to collect on its judgment for approximately one year. Staying the state court action and requiring Mazak to pursue these issues in this Court will cause further delay and could result in Mazak's having to duplicate its efforts. The state court routinely handles fraudulent conveyance actions and issues related to judgment liens. Mazak has already obtained relief from the automatic stay to pursue the action against Charles Sullivan.

As for the final *Salisbury* factor, the Court does not have enough information about the evidence in the state court action to determine the likelihood that Mazak will succeed on the merits of the case. However, the facts stated in Mazak's motion and stipulation of fact indicate that the action has merit.

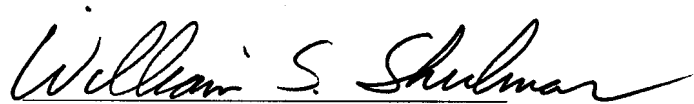
The *Salisbury* factors as applied to the present case indicate that the stay should be lifted under 11 U.S.C. § 362(d)(1) for cause to allow the case to proceed to trial and to determine the issues in the complaint. The Court sees no great prejudice to Shamrock in allowing the action to proceed with certain limitations, and Mazak would be harmed by further delay in prosecuting its case. Therefore, the Court finds that the Mazak's motion for relief from stay should be granted.

It is hereby

ORDERED that the motion for relief from the automatic stay filed by Mazak Corporation is **GRANTED**, and the automatic stay is lifted to allow the state court action (CV-20020115) in Baldwin County, Alabama to proceed to judgment on all counts with the following condition: if the state court finds in favor of Mazak on issues in the complaint dealing with the attachment of the lien to Shamrock's assets, the judgment lien may only attach to any assets transferred to Shamrock by the judgment debtors; and it is further

ORDERED that Mazak Corporation shall not attempt to collect on any judgment rendered in its favor against the Debtor without seeking further permission from this Court.

Dated: July 14, 2003


WILLIAM S. SHULMAN
CHIEF U.S. BANKRUPTCY JUDGE