

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
TAYLOR BURROUGHS,) Case No. 18-01387
)
Debtor.)

ORDER CONDITIONALLY GRANTING MOTION FOR RELIEF FROM STAY

This case is before the court on the motion for relief from stay (doc. 13) filed by Belle Cassady Hearn in this chapter 7 bankruptcy filed by the debtor Taylor Burroughs in 2018. For the reasons discussed herein, the court grants the motion and modifies the stay on certain conditions.

Hearn “seeks relief from stay in order to determine liability and damages, involved in a forthcoming State Court Action [for] damages arising out of an accident involving [Hearn] and the Debtor.” (Mot., doc. 13). The debtor filed a response (doc. 17), arguing that Hearn was “not entitled to file [a] claim against the Debtor personally.” She has also represented that “she was not insured at the time of the accident, which occurred in 2017” (*See id.*). Hearn’s counsel has informed the court that Hearn will pursue damages against her uninsured motorist (UM) carrier in the state court action. If Hearn recovers a judgment against her UM carrier for less than her UM limits, she cannot recover against the debtor. *See generally Cooper v. Aplin*, 523 So. 2d 339 (Ala. 1988). The tort claim thus does not appear likely to affect the bankruptcy case.

A bankruptcy court must consider several factors in deciding whether to grant relief from stay to pursue a state court action, including the debtor’s cost of defense or other potential burden to the debtor. *See, e.g., In re Cummings*, 221 B.R. 814, 818-19 (Bankr. N.D. Ala. 1998). In the usual situation where a creditor seeks relief from stay to pursue a state court action, the debtor has liability insurance coverage and the insurance company is providing a defense.

Bankruptcy courts routinely grant relief from stay to allow the state court action to proceed and the creditor to recover only from the debtor's liability insurance, not the debtor individually or the bankruptcy estate. In this case, though, the debtor does not have any liability insurance coverage, and the court's review of the debtor's bankruptcy schedules convinces it that the debtor does not have the financial means to defend herself in the state court action.

The Alabama Supreme Court recently held that an uninsured tortfeasor's bankruptcy does not bar the plaintiff from recovering against his own UM carrier. In *Easterling v. Progressive Specialty Insurance Co.*, No. 1150833, 2017 WL 4081097 (Ala. Sept. 15, 2017), the insured sued his UM carrier and the tortfeasor in Alabama state court. Prior to trial, the tortfeasor filed for chapter 7 bankruptcy. The UM carrier argued that "the automatic stay and ultimate discharge of a tortfeasor's personal liability for damages via bankruptcy proceedings effectively foreclose[d] the legal obligation to pay debts." *See id.* at *3 (citation, quotation marks, and ellipses omitted). The Alabama Supreme Court disagreed and found that the bankruptcy discharge did not prevent the plaintiff from establishing he was "legally entitled to recover"¹ from the debtor and thus the plaintiff's UM carrier; the plaintiff was merely barred by the discharge from collecting against the debtor. *See id.* at *4-5. "Any injunction against proceeding directly against the debtor, therefore, in no way extends to [the plaintiff]'s own insurer." *See id.* at *5. Thus, the automatic stay currently in effect here and the debtor's potential discharge do not affect the potential liability of Hearn's UM carrier for UM benefits to Hearn.

The Alabama Supreme Court in *Easterling* noted several cases in which bankruptcy courts allowed a debtor to remain a "nominal" defendant in a civil action for UM benefits even after discharge. *See id.* It is difficult to see how that would work here, where the debtor as a

¹ *See* Ala. Code § 32-7-23 (discussing uninsured motorist coverage).

practical matter does not have the means to defend herself in state court. However, Alabama UM law provides a straightforward solution. Under Alabama law, a UM carrier named in a lawsuit has the right “to elect *either* to participate in the trial (in which case its identity and the reason for its being involved are proper information for the jury), *or* not to participate in the trial (in which case no mention of its or its potential involvement is permitted by the trial court).” *See Lowe v. Nationwide Ins. Co.*, 521 So. 2d 1309, 1310 (Ala. 1988) (emphasis in original). If the carrier opts out, “it may, in its discretion, hire an attorney to represent the uninsured motorist defendant.” *See Driver v. Nat’l Sec. Fire & Cas. Co.*, 658 So. 2d 390, 395 (Ala. 1995). Hearn’s UM carrier thus has the option of defending the debtor in the state court action if it does not want the jury to know of its involvement.

Accordingly, the court grants Ms. Hearn’s motion for relief from stay on the condition that her UM carrier hires an attorney to represent and defend the debtor Taylor Burroughs in the state court action. Subject to that condition being met, the stay is modified to permit Ms. Hearn to pursue her claims against the debtor Burroughs to judgment or settlement to the extent of available insurance coverage. Ms. Hearn remains stayed from collecting against the debtor Burroughs individually, her assets, or assets of the bankruptcy estate other than through the bankruptcy court. However, if the UM carrier does not provide an attorney to represent and defend the debtor Burroughs in the state court suit, the automatic stay remains in effect as to her during the pendency of her bankruptcy case. In either situation, Ms. Hearn’s state court claim(s) against her UM carrier are not affected by the automatic stay and may proceed.

Dated: June 26, 2018


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE