

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

IN RE: E.N. & LETICIA FAULKNER

**5:01-bk-50944 E
CHAPTER 13**

**ORDER GRANTING MOTION FOR RELIEF FROM STAY AND
SUSTAINING TRUSTEE'S OBJECTION TO CLAIM**

On July 26, 2002, the Court heard a Motion for Relief From Automatic Stay, or in the alternative, Motion to Dismiss, filed by Construction Services of El Dorado, L.L.C. (“**Construction Services**”). The Court also heard an Objection to Claim filed by the standing Chapter 13 Trustee, Jo-Ann L. Goldman (the “**Trustee**”), objecting to the claim filed by Construction Services in this bankruptcy case. Construction Services appeared through its attorney, Ian Vickery. Robert L. Depper, Jr., Esq., appeared on behalf of the debtors, who were also present. The Trustee was also present. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (G), and the Court has jurisdiction to enter a final judgment in this case.

FACTUAL BACKGROUND

Debtor E.N. Faulkner is the sole shareholder of Fordyce Concrete, Inc. (“**Fordyce**”). On February 1, 2001, Construction Services obtained a judgment against Fordyce in the Circuit Court of Dallas County, Arkansas in the amount of \$105,000.00. Execution on the judgment was issued, writs executed and enforcement attempted. However, on May 20, 2001, the Debtors filed an incomplete voluntary bankruptcy petition, and the Sheriff of Dallas County refused to execute on the judgment due to the automatic stay. Debtors filed a chapter 13 plan (the “**Plan**”) on June 18, 2001. Debtors listed Constructive Services as an unsecured creditor on their chapter 13 bankruptcy

schedules referencing the Dallas County judgment. The Debtors also listed corporate assets belonging to Fordyce on their bankruptcy schedules. Constructive Services subsequently filed a proof of claim in the case alleging that its debt was secured by the recorded judgment against Fordyce.

Construction Services objected to the confirmation of Debtors' Plan, and by agreement of the Debtors, Trustee and Construction Services, the objection was to be sustained by an order allowing Debtors 20 days to modify their plan to provide for payments to Construction Services as a secured creditor. Although Construction Services was directed to submit an order to this effect, it is conceded that the order was never submitted because another secured creditor, Regions Bank, refused to sign the order allowing the proposed modification. Accordingly, because no order was submitted, the Court dismissed Constructive Services' objection as moot on November 15, 2001. The Debtors' Plan has not been confirmed.

THE TRUSTEE'S OBJECTION TO CLAIM

The Trustee objects to Constructive Services' secured claim because the judgment rendered in the Dallas County court was against Fordyce and not the Debtors, individually. The Trustee maintains that the debt is unsecured as to the Debtors and should be treated as such in the bankruptcy. All parties concede that the debt owed to Constructive Services is not a personal debt of either Debtor, but rather, a business debt of Fordyce. The Debtors did not personally guarantee the debt owed to Constructive Services by Fordyce. Accordingly, the Court finds that the Trustee's objection is sustained and Constructive Services' claim in this bankruptcy case is unsecured.

CONSTRUCTION SERVICES MOTION FOR RELIEF

Construction Services maintains that their debt should not be included in this bankruptcy case because it is corporate debt of Fordyce, not a debt of the individual Debtors. As such, Construction Services asserts that the automatic stay should not apply to the enforcement of its judgment against Fordyce. Construction Services further argues that the assets securing its judgment are depreciating and being wasted in the production of income used to pay other creditors through the Debtor's Plan. Alternatively, if the debt is allowed to be included in Debtor's individual bankruptcy, Construction Services maintains that it should be granted relief from stay to enforce its judgment against Fordyce. Construction Services asserts that the Debtors are mixing personal and corporate assets in an attempt to get the benefit of the automatic stay as well as the benefits flowing from their corporate ownership while not paying certain corporate debts. Additionally, Construction Services argues that the Debtors filed bankruptcy to pay certain secured creditors whose claims they personally guaranteed.¹ Finally, Construction Services also argues that if its debt is treated as unsecured, the Debtors have too much unsecured debt to qualify for chapter 13 relief in any case.²

The Debtors argue that as a matter of practicality, the judgment is a judgment against Debtors because they will be denied the source of income with which they are funding the Plan if

¹At least two secured creditors, Regions Bank and Smackover Bank, are currently being paid by the Trustee; the Debtors are personally liable for Fordyce's debts to these creditors.

²11 U.S.C. § 109(e) provides, in part:

Only . . . an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts that aggregate less than \$290,525 and non-contingent, liquidated, secured debts of less than \$871,550 may be a debtor under chapter 13 of this title.

Construction Services is allowed to execute its judgment. In other words, the Debtors are asserting that the enforcement of Construction Services' judgment against Fordyce will shut the company down and make the chapter 13 no longer feasible. The Debtors also ask the Court to consider that while Fordyce could have filed a chapter 11 bankruptcy to discharge its debts, filing a chapter 13 will ensure that more creditors get paid because the administrative expenses are lower.

Individuals may not forestall the collection of corporate debts by filing a chapter 13 bankruptcy case; a corporation is a separate entity, and if its debts are to be discharged, they must be discharged in a separate bankruptcy case filed by the corporation. Only individuals may file for bankruptcy protection under chapter 13. 11 U.S.C. § 109(e). An individual debtor may not discharge another entity's debts in his or her bankruptcy case. *See* 11 U.S.C. § 524(a) (a discharge voids personal liability of debtor). Likewise, the automatic stay does not operate to prevent a corporate debtor from executing a judgment on a corporate debt. Specifically, section 362(a)(2) of the bankruptcy code stays the enforcement of a judgment obtained before the commencement of the bankruptcy case against the debtor or against property of the estate. Corporate assets are not property of an individual debtor's bankruptcy estate. "A corporation has a separate legal existence from its shareholders, and the corporation, not its shareholders, owns the corporate assets and owes the corporate debts." *See In re Russell*, 121 B. R. 16, 17 (Bankr. W.D. Ark. 1990). *See also In re Hoffman*, 70 B.R. 155, 160 (Bankr. W.D. Ark. 1986) (stating property of corporation is not property of the estate of the debtor).

In this case, the Debtors effectively attempted to discharge a corporate debt for which they are not personally liable by listing Construction Services' debt on their petition as an unsecured creditor. By doing so, it appeared that the automatic stay prevented the enforcement of this debt,

and Construction Services was forced to seek relief from stay to enforce its rights. Because Construction Services has a judgment against Fordyce, and not the individual Debtors, the automatic stay arising from the Debtors' chapter 13 bankruptcy filing does not apply to the enforcement of Construction Services' judgment against Fordyce. Therefore, Construction Services' Motion for Relief is granted.

CONCLUSION

For the reasons stated herein, Construction Services' Motion for Relief from Automatic Stay is **GRANTED** and the Trustee's Objection to Claim is **SUSTAINED**.

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATED: _____

cc: Mr. Bob Depper, attorney for Debtors
Mr. Ian Vickery, attorney for Construction Services
Ms. Jo-Ann Goldman, Chapter 13 Trustee
U.S. Trustee