

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PEPPER LITTLE

Plaintiff,

v.

CURTIS ROBINSON

Defendant

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CIVIL NO. 00-231-P

ORDER

Before me in this civil suit brought *pro se* by Pepper Little is a motion to quash witness subpoena filed on January 24, 2001, by Roger G. Innes. (Docket No. 14.) Also pending is *pro se* Defendant Curtis Robinson's motion to dismiss, likewise filed on January 24, 2001. (Docket No. 15.) Attached to the Robinson motion to dismiss is documentation that Little filed a Chapter 7 bankruptcy petition in Phoenix, Arizona, on January 17, 2001. I conclude that I will ***STAY all pending matters in this case*** in light of the filing of Little's bankruptcy petition.

Clearly it is for the presiding bankruptcy court to make all determinations as it relates to Little's bankruptcy case in general and the operation of the United States Bankruptcy Code's automatic stay in particular. *See* 11 U.S.C. § 362. However, I am confronted here with two *pro se* litigants, and one complaining 'witness,' and feel duty bound to make an immediate determination as to the propriety of going forward with this case in light of Little's bankruptcy petition.

The filing of Little's bankruptcy petition created a "bankruptcy estate." 11 U.S.C. §541(a) (defining the bankruptcy estate). Little's cause of action against Robinson is part of the

bankruptcy estate. *Id.* §541(a)(1) (providing that all the debtor’s legal and equitable interests at the time of the petition are part of the bankruptcy estate); *Howe v. Richardson*, 193 F.3d 60, 61 (1st Cir. 1999) (observing that debtor’s three legal claims became property of the estate upon the filing of the bankruptcy petition).¹ Section 362(a)(3) of Bankruptcy Code prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).

The litigation before me is an exercise of control over property of Little’s bankruptcy estate. Robinson’s motion to dismiss directly implicates the stay. *In re Gen. Associated Investors Ltd. P’ship*, 159 B.R. 551 (Bankr. D. Ariz. 1993) (concluding that a motion to dismiss filed by a defendant in a state tax court suit initiated by a plaintiff *cum* debtor violated the stay). However, even less overt aspects of this litigation are likely precluded by the stay, like Innes’s motion to quash Little’s subpoena **and** enforcement of Little’s outstanding subpoenas. *In re United Imps. Corp.*, 200 B.R. 234 (Bankr. D. Neb. 1996) (concluding that the filing of a bankruptcy petition by a defendant in a federal civil suit preempts further judicial action in the district court in the absence of an order lifting the stay, observing that provisions in the district court’s discovery order were unenforceable and post-bankruptcy-petition motions were *void ab initio*).

For the foregoing reasons, all matters in this case will continue to be stayed until the *pro se* parties to this dispute obtain an order from the United States Bankruptcy Court lifting the stay

¹ I note that this is not the most typical scenario involving the intersection of civil litigation and a bankruptcy petition. It is not uncommon that the debtor is a defendant in a pending civil suit, or two, at the time he or she files bankruptcy. The stay clearly operates under those circumstances to give the debtor some breathing room, if only temporary, from “the commencement or continuation” of actions against the debtor to collect on a pre-petition claim. 11 U.S.C. § 362(a)(1); *see also id.* (a)(6) (precluding a party from acting to “collect, assess, or recover a [pre-petition] claim against the debtor”).

for the purposes of prosecuting or defending this suit or file with this court alternative, legally cognizable proof that this asset is no longer sheltered by the automatic stay.

SO ORDERED

Dated this 29th day of January, 2001.

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court

District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 00-CV-231

LITTLE v. ROBINSON

Filed: 08/14/00

Assigned to: Judge GEORGE Z. SINGAL

Demand: \$0,000

Nature of Suit: 190

Lead Docket: None

Jurisdiction: Diversity

Cause: 28:1332 Diversity-Breach of Contract

PEPPER LITTLE

PEPPER LITTLE

plaintiff

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CURTIS ROBINSON

DALE L. STATES

defendant

[term 10/03/00]

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