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Bankruptcy

Franchisor's Motion to Annul Automatic Stay is Denied Based Upon Consideration of Debtor's Other Creditors

In *In re All American Properties, Inc.*, 2010 Bankr. LEXIS 687 (Bankr. M.D. Pa. Mar. 10, 2010), a franchisor sought to annul the automatic stay following a former franchisee's bankruptcy filing. Franchisor Petro Franchise Systems had sued its franchisee for trademark infringement. Petro obtained an injunction prohibiting the franchisee from using Petro's trademarks and brands. The franchisee ignored the injunction order and continued to operate the infringing business.

After a hearing on an order to show cause for the franchisee's non-compliance with its orders, the court entered another injunction order that, among other things, awarded money damages to Petro and enjoined the franchisee from violating the noncompete agreement. Before this order was actually entered by the court, the franchisee filed for bankruptcy.

Petro sought to annul the automatic stay in bankruptcy to validate the injunction order. To do so, a movant must demonstrate "cause" to receive relief or annulment of the stay. The bankruptcy judge noted that unsecured creditors often are granted relief from the automatic stay when two factors are present: (1) the debtor has engaged in "morally culpable conduct" that the moving party is seeking to undo in another forum; and (2) the movant is not pursuing assets of the estate. While the bankruptcy court judge found the franchisee's conduct to be "reprehensible" and in "flagrant disregard" of the federal court's orders, the judge noted that the interests of the franchisee's other creditors would be harmed by an annulment of the automatic stay, which would allow Petro to obtain a sizable judgment against the franchisee to the detriment of its other creditors. While the bankruptcy court reluctantly denied Petro's motion to annul the automatic stay, it left open the possibility of a subsequent motion if the issues concerning the other creditors could be addressed adequately.