



## *DISCUSSION*

The salient issues are whether the Notice of Bankruptcy filed on behalf of one defendant stays the proceedings against both Defendants; and if not, whether default judgment should be granted against the non-appearing co-Defendant under these circumstances.

The filing of a bankruptcy petition operates as a stay of all proceedings against the debtor.<sup>1</sup> Therefore, this action is stayed, pending the bankruptcy proceeding, at least as to Defendant, Lonnika Haile. Defendant Julie Ann Haile co-signed the auto loan with the debtor-in-bankruptcy. No showing has been made as to whether Defendant Lonnika Haile filed for bankruptcy under Chapter 7 or Chapter 13 of the Bankruptcy Code. Under a Chapter 7 liquidation action, non-filing co-debtors are not entitled to the automatic stay protection. Under Chapter 13, however, where the goal is the rehabilitation and adjustment of debts, co-debtors may receive the protection of the automatic stay.<sup>2</sup>

The policy behind the co-debtor stay is “to protect a debtor...by insulating him from indirect pressures from his creditors exerted through friends or relatives that may have cosigned an obligation of the debtor.”<sup>3</sup> While it does not eliminate the co-debtor’s legal obligation to pay the debt, a Chapter 13 stay prohibits creditors from continuing with collection actions during the pendency of the Chapter 13 bankruptcy.

Since the Court is not aware of under which Bankruptcy Chapter the co-Defendant filed, it cannot grant default judgment against the other co-Defendant without risk of possibly violating the automatic stay.

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<sup>1</sup> 11 U.S.C. §362(a). A bankruptcy petition “operates as a stay, applicable to all entities, of...the commencement or continuation...of a judicial...action or proceeding against a debtor that was or could have been commenced before the commencement of the case...or to recover a claim against the debtor that arose before the case.”

<sup>2</sup> 11 U.S.C § 1301: “[A]fter an order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such a debt with the debtor.”

<sup>3</sup> H.R.Rep. No. 595, 95th Cong., 1st Sess.

Finally, regardless of the nature of the bankruptcy proceeding, when the motion for default was made, this action had not been severed. A granted motion to sever the action as to the co-Defendants should be filed and granted prior to any further proceeding against the non-protected co-Defendant.

***CONCLUSION***

Plaintiff's Motion for Default Judgment is **DENIED**.

**IT IS SO ORDERED** this 1st day of November, A.D. 2012.

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Kenneth S. Clark, Jr.  
Judge