REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 415

September Term, 1995

W. D. CURRAN & ASSOCIATES, INC.

v.

CHENG-SHUM ENTERPRISES, INC.

Wilner, C.J.,
Fischer,
Davis,

JJ.

Opinion by Davis, J.

Filed:
December 5, 1995

W. D. Curran & Associates, Inc. appeals from an order of the Circuit Court for Baltimore County that denied appellant's Motion to Extend Writ of Execution and granted appellee's, Cheng-Shum Enterprises, Inc.'s, Motion to Release Levy. Three questions are presented on this appeal, the first of which is a threshold matter. We restate the issues as follows:

I. Did the automatic bankruptcy stay, which arose as a result of appellee filing a petition for bankruptcy relief, preclude appellant from filing its *second* Motion to Extend Writ of Execution in the circuit court?

II. Did the levy automatically terminate upon the expiration of the 120-day extension period contained in the circuit court's August 10, 1994 order extending the writ of execution?

III. If the levy did not automatically expire, did the circuit court abuse its discretion in determining that appellant failed to show good cause for extending the levy further?

As we shall explain more fully below, we are compelled to reverse the judgment of the circuit court.

FACTS

Following a bench trial on October 19, 1993, in a breach of contract claim in the Circuit Court for Baltimore County (Kahl, J.), appellant obtained a judgment and a mechanic's lien against appellee for $46,021.88. This Court affirmed the circuit court's judgment in an unreported opinion filed March 16, 1995. *Cheng-Shum*

Enter. v. W. D. Curran & Assocs., No. 851, September Term, 1994 (Md. Ct. Spec. App. Mar. 16, 1995).

During the pendency of that appeal, appellant began procedures to collect its judgment. Pursuant to appellant's Request for Writ of Execution, the Sheriff of Baltimore County levied upon appellee's personal property on December 9, 1993. The parties state that the sheriff's schedule appraised the value of this personal property at approximately $15,000. The sale of the property was postponed pursuant to an agreement between the parties reached in late January, 1994. Under this agreement, appellee promised to pay appellant an initial sum of $10,000, followed by subsequent monthly payments of $2,500 until the judgment was satisfied. Appellee paid the initial $10,000, but apparently failed to make any monthly payments.

Much of what transpired next revolves around MARYLAND RULE 2-643(c)(6), which allows a judgment debtor to request the circuit court to release property from a levy where the levy has existed for 120 days without sale of the property, unless the circuit court for good cause extends the time. On March 8, 1994, approximately ninety days after the sheriff levied on the property, in an effort to preserve the levy, appellant filed a Motion to Extend Writ of Execution (hereinafter, "first Motion to Extend") beyond the 120-day period contained in MARYLAND RULE 2-643(c)(6). On March 11, 1994, however, appellee filed a bankruptcy petition for Chapter 11

relief in the United States Bankruptcy Court for the District of Maryland.

Appellant then turned to the bankruptcy court for relief, filing a motion requesting relief from the automatic stay so that appellant could proceed on the Writ of Execution. The record is unclear regarding when this motion was filed. In any event, after a hearing on July 8, 1994, the bankruptcy court (Derby, J.) ultimately issued an order on July 19, 1994, modifying the automatic stay so that appellant "may present to the Circuit Court of Maryland for Baltimore County its Motion to Extend Writ Of Execution and request the relief granted therein[.]" (hereinafter, "order modifying stay"). The bankruptcy court, however, denied appellant's request for permission to sell the property under the Writ of Execution.

Accordingly, appellant obtained an order from the circuit court (Kahl, J.) dated August 10, 1994, ordering "that the Writ of Execution levied in the above captioned matter shall be extended beyond the 120 day period contained in Rule 2-643(c)., *for an additional 120 days from the [e]xpiration thereof*." (Emphasis added)[1]Court to hold that waiting three months before filing the second Motion to Extend is tantamount to a lack of good cause, while simultaneously arguing that appellant was not even authorized to file the second Motion to Extend. In any event, neither Rule 2-

[1] The italicized language was not in the proposed order submitted to the judge but was added by him

643(c)(6) nor Maryland case law requires a judgment creditor to file a motion to extend a levy when the 120-day period comes to an end. In this case, however, appellant "played it safe" and decided to request an extension prior to a potential motion to release from appellee. We shall not, therefore, condemn appellant for not taking such non-mandatory measures immediately after the issuance of Judge Kahl's order extending writ of execution.

Additionally, we reject appellee's argument that, in deciding whether good cause existed, the circuit court was free to consider the fact that the bankruptcy court denied appellant's request to proceed with the execution of the writ. We fail to see how this is a factor that could demonstrate appellant's lack of good cause. From the bankruptcy court's decision to maintain the status quo and not to modify the stay in this regard, it is impossible to draw any inference that appellant lacked good cause for not selling the property. If anything, just the opposite inference could be drawn from the bankruptcy court's order modifying stay. Significantly, that order, in addition to denying appellant's request to proceed with the writ and allowing appellant to request the circuit court to extend the writ, ordered that appellee "continue to maintain adequate insurance on all of its machinery and equipment and leasehold equipment . . . and . . . shall cause its insurance company to issue an endorsement naming [appellant] as an additional insured on said policy to the extent of its secured claim herein." This portion of the order modifying stay, therefore, clearly

indicates that the bankruptcy court intended that appellant's interest in the property remain protected.

We further reject appellee's argument that appellant's "receipt of $10,000 from [appellee] against property appraised by the Sheriff for only $15,000 . . . was sufficient in itself for the trial court to believe that [appellant] received full value for its writ and to deny the extension." Appellee seems to suggest that, by paying appellant an amount of money equal to the full value of the levied property, appellant is entitled to have the property released. In this regard, appellee contends that it is unfair for appellant to receive $10,000 in cash *and* be permitted to retain its levy on the property. This, according to appellee, allows appellant "a second bite at the apple."

This argument evidences a fundamental misunderstanding of appellee's position as a judgment debtor. Obviously, if appellee paid appellant the full amount of the *judgment* with costs and interests, there would not be good cause to extend the writ, and the property would have to be released. *See* MD. RULE 2-643(a) ("Property is released from a levy when the judgment has been entered as satisfied . . ."") & (c)(1) ("the court may release some or all of the property from a levy if it finds that . . . the judgment . . . has been satisfied). Appellee, however, has not satisfied the judgment. Rather, appellee has (to the extent of $10,000) only partially satisfied the judgment. Just because appellee made a $10,000 payment that may happen to approximate what

appellee believes to be the actual value of the levied property does not mean that the property should then be released from the levy. Appellee cannot have its property released from a levy merely by paying the creditor an amount of money equal to the value of the property, where that amount is short of satisfying the full judgment amount.

Finally, we reject appellee's argument that good cause was absent because the circuit court could have found (based on appellee's counsel's assurances during the motions hearing) that appellant's position as a creditor would have allegedly suffered only slightly as a result of the release of the property. In its brief, appellee states in a footnote that appellant, "as the majority unsecured creditor, would suffer little actual loss." Simply stated, appellant's position as compared to appellee's other creditors is not relevant to whether appellant had a good cause reason for not selling property within 120 days of the property being levied. Additionally, the harm that appellant may suffer as a result of changing appellant's position as a lien creditor and allowing appellee to use the property in its reorganization is more appropriately a matter of concern for the bankruptcy court.

Based on the foregoing, we hold that the circuit court abused its discretion in failing to determine that good cause existed to extend the levy under the circumstances of this case. The judgment is, therefore, reversed and the case remanded to the circuit court with instructions to reinstate the levy on the property in

accordance with our holding. For future guidance, we note that in the event appellant fails to proceed diligently with the Writ of Execution and cause the levied property to be sold within a reasonable time after having become legally authorized to do so (for whatever reason, including but not limited to termination of the bankruptcy proceedings, or modification of the automatic stay), appellee may present the circuit court with a motion to release the property from the levy pursuant to Rule 2-643(c)(6). Consistent with this opinion and our opinion in *Joshi*, the circuit court must grant such a motion, unless appellant successfully demonstrates good cause for a further extension. We finally note that our holding only relates specifically to the release of the property from the levy under Rule 2-643(c)(6).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLEE.