

So Ordered.



Frederick P. Corbit

Dated: November 2nd, 2016

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

CHRISTINA M. RILEY,

Debtor.

Case No. 16-01441-FPC13

NOT FOR PUBLICATION

ORDER GRANTING CREDITOR'S
MOTION RE: RELIEF FROM
CO-DEBTOR STAY

THIS MATTER came before the court on October 18, 2016 for a hearing on creditor Washington Trust Bank's Motion for Order Granting Relief from the Co-Debtor Stay ("Motion") [ECF No. 38].¹ At the hearing, the court heard argument of debtor's counsel, Gregory Heline, and creditor's counsel, Christopher Varallo. At the conclusion of the hearing, the court took the matter under advisement. After reviewing the record, the arguments presented, and the applicable law, this matter is ready for decision. This court has original and exclusive jurisdiction of this bankruptcy case pursuant to 28 U.S.C. § 1334(a). Creditor's Motion is a core proceeding under 28 U.S.C. § 157(b)(2). For the reasons set forth below, the court

¹ Debtor filed an objection to the Motion [ECF No. 44] and creditor filed a response [ECF No. 48].

1 **GRANTS** creditor's Motion.²

2 The parties do not dispute the following facts:

3 1. Christina Riley (debtor) and Ronald L. Riley are married, although only
4 Christina Riley filed for Chapter 13 bankruptcy protection on April 29, 2016 [ECF
5 No. 1].

6 2. In 2009, debtor and Mr. Riley both signed, executed, and delivered to
7 Washington Trust Bank a Personal Credit Card Application requesting a Visa credit
8 line in the amount of \$15,000.00 (the "Agreement").

9 3. Debtor and Mr. Riley (co-debtor) are in default under the Agreement.

10 4. Washington Trust Bank timely filed a claim (No. 2; amended) in the
11 amount of \$15,353.33.

12 5. Debtor's Chapter 13 Plan, as confirmed [*see* ECF Nos. 4, 25 and 32],
13 does not propose to pay unsecured claims in full.³

14 6. Washington Trust Bank desires to collect sums owing to it by codebtor,
15 but it is prevented from doing so by reason of the co-debtor stay imposed by
16 § 1301(a) of the Bankruptcy Code.

17
18 _____
19 ² Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code,
11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

20 ³ It appears that debtor's base Plan proposes to pay this creditor only \$35.88 throughout the life of
the Plan. [ECF No. 27].

1 **GROUNDS FOR RELIEF FROM THE CODEBTOR**
2 **STAY IN A CHAPTER 13 CASE**

3 The codebtor stay is governed by § 1301(a) and comes into effect
4 automatically when a Chapter 13 petition is filed.⁴ However, pursuant to § 1301(c),
5 relief from the codebtor stay must be granted, on request of a party in interest and
6 after notice and a hearing, to the extent that the chapter 13 plan filed by the debtor
7 does not fully pay the claim held by the creditor. § 1301(c)(2); *see also In re*
8 *Jacobsen*, 20 B.R. 648, 650 (B.A.P. 9th Cir. 1982) (explaining a “court must grant
9 relief to the extent that the debtor does not propose to pay, under the plan, the
10 amount owed to the creditor”); *In re Hult*, 2004 WL 4960363, at *6 (Bankr. D.
11 Idaho Feb. 18, 2004) (finding that “relief from the ‘co-debtor stay’ is possible if the
12 debtor’s plan does not propose to pay the creditor’s claim”).

13 In this case, the debtor does not dispute that her proposed plan does not
14 provide for full payment of the amount owed to Washington Trust Bank. However,
15 the debtor still argues that the court should deny creditor’s Motion. Debtor argues
16 that even though her husband and codebtor did not file for bankruptcy protection, his

17 _____
18 ⁴ 11 U.S.C. § 1301: “Stay of Action against codebtor,” states:

19 (a) Except as provided in subsections (b) and (c) of this section, after the order for
20 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 debt with the debtor, or that secured such debt,
unless

1 income should be protected under the Bankruptcy Code and that she should get the
2 full use and benefit of his income. The court does not find this argument persuasive.

3 Debtor does not provide any argument or legal basis as to why § 1301(c)(2) is
4 not directly on point as to the facts in this case. Rather, the debtor confuses the issue
5 by focusing on § 524 (a)(3) “Effect of Discharge.” Debtor insists that because
6 Washington is a community property state that § 524(a)(3) is the relevant statute and
7 not § 1301(c). Debtor argues that § 524(a)(3) – a statute that on its face deals with
8 the effects of discharge – actually “acts as an injunction against the creditor *during*
9 the chapter 13 bankruptcy” [ECF No. 54] (emphasis added). The court does not
10 dispute that Washington is a community property state. However, the court does not
11 agree with debtor that because Washington is a community property state, that
12 somehow § 524(a)(3) rather than § 1301(c)(2) is the relevant statute.

13 In this case, the debtor’s plan does not propose to pay Washington Trust
14 Bank’s claim in full. Therefore, pursuant to § 1301(c)(2), Washington Trust Bank is
15 entitled to relief from the codebtor stay in order to pursue, in accordance with
16 applicable nonbankruptcy law, collection of the balance of the claim from the
17 codebtor.

18 ///END OF ORDER///