

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80051-CIV-PAINE/JOHNSON

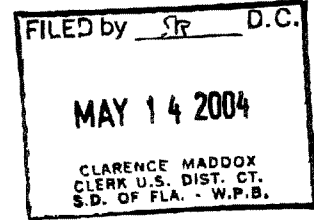
FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

SLIM DOWN SOLUTION, LLC, SLIM DOWN
SOLUTION, INC., S.S.T. MANAGEMENT, INC.,
THE KARA GROUP, LLC, RONALD ALARCON,
KATHLEEN ALARCON, MADERIA
MANAGEMENT, INC., POLYGLUCOSAMINE,
LTD., STEPHEN PIERCE,

Defendants.



**ORDER ON DEFENDANTS', RONALD ALARCON AND KATHLEEN ALARCON,
SUGGESTION OF BANKRUPTCY**

This matter is before the court upon Defendants' Ronald Alarcon and Kathleen Alarcon, Suggestion of Bankruptcy (DE 49).¹ Upon review of the Suggestion of Bankruptcy, the response and reply thereto, and the applicable authority, the court finds that this matter is exempt from the automatic stay as outlined below.

The Federal Trade Commission ("FTC" or "Plaintiff"), filed this action against the Defendants for false and unsubstantiated advertising claims in relation to Slim Down Solution, a purported fat-absorption and weight-loss product, and its alleged active ingredient D-glucosamine, in January 2003. The FTC's Complaint requests a permanent injunction and other relief against the Defendants. On February 12, 2004, Defendants Ronald Alarcon and Kathleen Alarcon filed a

¹While the Suggestion of Bankruptcy is not styled as a motion it effectively seeks affirmative relief from this court (a ruling that stays all further proceedings in this action).

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Suggestion of Bankruptcy stating that on December 16, 2003 they filed a joint voluntary petition for relief under the debt adjustment provision of Chapter 13 of the Bankruptcy Code. The Suggestion of Bankruptcy further states that pursuant to 11 U.S.C. §362(a), Bankruptcy Code, the filing of the Petition and Order of Relief operate as a stay of the commencement or continuance of these proceedings.

This case is exempt from the automatic stay pursuant to Section 362(b)(4) of the Bankruptcy Code. In pertinent part, Section 362(b)(4) provides that the filing of a bankruptcy petition does not operate as a stay of “ the commencement or continuation of an action or proceeding by a governmental unit... to enforce such governmental unit’s or organization’s police and regulatory power.” 11 U.S.C. § 362(b)(4). The exception to the automatic stay recognizes that the government must be able “to enforce its laws uniformly without regard to the debtor’s position in the bankruptcy court.” Brock v. Rusco Industries, Inc., 842 F.2d 270, 273 (11th Cir. 1988) (citations omitted). Consequently the government is permitted by suit to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police regulatory laws to proceed. S.Rep.No. 989, 95th Cong., 2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Admin. News 5787 5838.

The case law is clear that an action to enjoin illegal conduct falls squarely within the scope of the paragraph (b)(4) exception. In re Dolen, 256 B.R. 471, 481 (Bankr.M.D.Fla. 2001) (citations omitted) (Automatic stay did not preclude the FTC from prosecuting its action against the debtor in the district court. The FTC was allowed to engage in discovery, participate at trial to obtain an adjudication of its claims on the merits, and if the debtor was found to have engaged in illegal conduct, determine and fix restitution damages for that conduct). Courts have explicitly held that the exception to the automatic stay provision “extends to permit an injunction and enforcement of

an injunction, and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment." SEC v. Wolfson, 2004 WL 985948 (D. Utah 2004); CFTC v. CoPetro Marketing Group, Inc., 700 F.2d 1279, 1283 (9th Cir. 1983); SEC v. Brennan, 230 F.3d 65, 71 (2nd Cir.2000); Bilzerian v. SEC, 146 B.R. 871, 873 (Bankr. M.D.Fla. 1992).

As this case is an enforcement action brought by the FTC to enforce its police and regulatory powers, it is exempt from the stay.² As acknowledged by the FTC, the Section 362(b)(4) exemption precludes the collection of any monetary judgment entered in this case against the Alarcons outside of their bankruptcy case. Accordingly, it is

ORDERED AND ADJUDGED that this cause on action is EXEMPT from the automatic stay pursuant to Section 362(b)(4) of the Bankruptcy Code.

DONE AND ORDERED at West Palm Beach, Florida, this 14th day of May, 2004.

Gaucher C. Davis
UNITED STATES DISTRICT JUDGE

Cc: Karen Muio, Esq.
Carl A. Schmitt, Esq.
Darren Rice, Esq.
Jennifer Coberly, Esq.

²The FTC enforcement of a preliminary injunction is a valid exercise of its police and regulatory powers.