



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: October 15, 2019**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

AUDREY D. YOUNGBLOOD,

CASE NO. 19-02780-NPO

DEBTOR.

CHAPTER 13

**ORDER GRANTING IN PART AND DENYING
IN PART THE MOTION TO LIFT AUTOMATIC STAY
AS TO DEBTOR AND CO-DEBTOR AND FOR ABANDONMENT
SHOULD SUCH BE DETERMINED AND FOR A COMFORT ORDER
ESTABLISHING THE APPLICABILITY OF THE AUTOMATIC STAY**

This matter came before the Court for hearing on October 7, 2019 (the "Hearing"), on the Motion to Lift Automatic Stay as to Debtor and Co-Debtor and for Abandonment Should Such Be Determined and for a Comfort Order Establishing the Applicability of the Automatic Stay (the "Motion") (3d Bankr. Dkt. 16)¹ filed by Trustmark National Bank ("Trustmark") and the Debtor's Response (3d Bankr. Dkt. 20) filed by Audrey D. Youngblood (the "Debtor") in the Third Bankruptcy Case. At the Hearing, Bryce Kuntz represented the Debtor, James E. Renfroe

¹ Citations to the record are as follows: (1) citations to docket entries in the bankruptcy case filed on June 20, 2016 (No. 16-01985-EE) (the "First Bankruptcy Case") are cited as "(1st Bankr. Dkt. ____)"; (2) citations to docket entries in the bankruptcy case filed on November 28, 2018 (No.18-04543-NPO) (the "Second Bankruptcy Case") are cited as "(2d Bankr. Dkt. ____)"; and (3) citations to docket entries in the above-referenced bankruptcy case (the "Third Bankruptcy Case") are cited as "(3d Bankr. Dkt. ____)";

represented Trustmark, and Tylvester O. Goss represented James L. Henley, Jr., the chapter 13 trustee (the “Trustee”). The Court, being fully advised in the premises, finds the following:

Jurisdiction

This Court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). Notice of the Hearing was proper under the circumstances.

Facts

1. The First Bankruptcy Case filed on June 20, 2016, was a chapter 7 bankruptcy in which the Debtor received a discharge. (1st Bankr. Dkt. 31). The First Bankruptcy Case was closed on December 8, 2016.

2. The Debtor filed a voluntary petition for relief under chapter 13 in the Second Bankruptcy Case on November 28, 2018. (2d Bankr. Dkt. 1). In the Second Bankruptcy Case, the Debtor’s plan included payments to Trustmark on the mortgage and arrears. (2d Bankr. Dkt. 24 at 3). On April 15, 2019, the trustee in the Second Bankruptcy Case filed a Motion and Notice to Dismiss Debtor for Non-Payment (the “Motion to Dismiss”) (2d Bankr. Dkt. 32) and Trustmark joined the Motion to Dismiss. (2d Bankr. Dkt. 36). The Debtor filed a Motion to Suspend Plan Payments (2d Bankr. Dkt. 34) due to a change in employment. Trustmark filed an Objection to Motion to Suspend Plan Payments (2d Bankr. Dkt. 37), alleging that the Motion to Suspend Plan Payments did not provide Trustmark with adequate protection. The parties entered into an Agreed Order Granting Trustee’s Motion to Dismiss (2d Bankr. Dkt. 50) on May 21, 2019. The Second Bankruptcy Case was closed on August 5, 2019. (2d Bankr. Dkt. 56).

3. The Debtor filed the voluntary petition for relief under chapter 13 (the “Petition”) in the Third Bankruptcy Case on August 2, 2109. (3d Bankr. Dkt. 1). The Debtor listed her

residence as the real property located at 301 Amberwood Court, Pearl, Mississippi 39208 (the “Property”). (3d Bankr. Dkt. 1 at 2). On the Debtor’s Schedule A/B: Property, the Debtor listed an equitable interest in the Property. (3d Bankr. Dkt. 4 at 3). In the Petition, the Debtor indicated she previously filed the First Bankruptcy Case and Second Bankruptcy Case in the Southern District of Mississippi. (3d Bankr. Dkt. 1 at 3).

4. On September 10, 2019, Trustmark filed the Motion (3d Bankr. Dkt. 16 at 1–2) asking the Court to determine the applicability of the automatic stay to the Property and to impose a 180-day bar on the Debtor. (3d Bankr. Dkt. 16 at 2).

Discussion

A. Standing

At the Hearing, Trustmark raised the issue of the Debtor’s standing if the Property is property of the bankruptcy estate. Five circuit courts have concluded that “Chapter 13 debtors have standing to bring claims in their own name on behalf of the bankruptcy estate.” *See Smith v. Rockett*, 522 F.3d 1080, 1083 (10th Cir. 2008); *Crosby v. Monroe County*, 394 F.3d 1328, 1331 n. 2 (11th Cir. 2004); *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513, 515–16 (2d Cir. 1998); *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1209 n.2 (3d Cir. 1992). For cases holding that a chapter 13 debtor has standing under FED. R. BANKR. PRO. 6009, the debtor can bring actions on behalf of the estate. 10 COLLIER ON BANKR. P 6009.01 (16th 2019); *see* 10 COLLIER ON BANKR. P 6009.03 (16th 2019). The Court holds that the Debtor has standing to raise the objection on behalf of the bankruptcy estate.

B. Automatic Stay

In general, the filing of a bankruptcy petition operates as a stay of any action against the debtor to collect a debt or enforce a lien, with certain exceptions. 11 U.S.C. § 362(a). “This stay

goes into effect without any action required by the bankruptcy court. . . . Unless a court grants relief from the stay, the stay continues until the property at issue is no longer property of the bankruptcy estate or until the bankruptcy case is closed or dismissed.” *Sosebee v. Steadfast Ins. Co.*, 701 F.3d 1012, 1025 (5th Cir. 2012). Generally, § 362(c) governs the termination of stays in bankruptcy cases.

Through the BAPCPA² amendments, Congress created a specific statutory scheme to address repetitive filings that afforded decreasing access to the protection of the automatic stay with each successive bankruptcy case pending within a year. *See* 11 U.S.C. § 362(c)(3), (4). With respect to real property, Congress further provided a specific method to bar the imposition of the stay in a later case in instances where the bankruptcy court granted relief from the stay in a prior case after “find[ing] that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either” the transfer of ownership of the property or multiple bankruptcy filings affecting the property. *See* 11 U.S.C. § 362(d)(4). And even then, Congress denied the protection of the automatic stay for only two years and allowed an exception for a debtor “based upon changed circumstances or for other good cause shown.” 11 U.S.C. § 362(b)(20).

The progressive limitation of the automatic stay under § 362(c)(3) applies to the Debtor because the Debtor had a chapter 13 case pending within the one-year period prior to filing the Third Bankruptcy Case. Pursuant to § 362(c)(3), the filing of a second case within one year results in the termination of the stay as to the debtor on the 30th day after the filing of the later case unless the stay is extended. 11 U.S.C. § 362(c)(3). The majority of courts conclude that this provision “applies only to the debtor and the debtor’s property” and not to property of the estate. *In re*

² Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. No. 109-8, 119 Stat. 23 (2005).

Williford, No. 13-31738, 2013 WL 3772840, at *2 (Bankr. N.D. Tex. 2013). The majority reasons that the plain reading of § 362 as a whole shows that Congress clearly sought to distinguish between actions taken against property of the debtor and actions taken against property of the estate. *In re Jones*, 339 B.R. 360, 364 (Bankr. E.D.N.C. 2006) (citing *In re Paschal*, 337 B.R. 274 (Bankr. E.D.N.C. 2006)). This Court has adopted the majority view and has held that where § 362(c)(3) applies, the automatic stay provided by § 362(a) terminates on the 30th day as to actions against the debtor and the debtor's property but continues to operate as to actions taken against property of the estate. *See In re Smith*, No. 09-02318-NPO (Dkt. 43) (Bankr. S.D. Miss. Mar. 25, 2010). Other courts in the Fifth Circuit have followed this weight of authority that § 362(c)(3) only terminates the stay as to the debtor and the debtor's property. *See, e.g., In re Scott-Hood*, 473 B.R. 133, 136–140 (Bankr. W.D. Tex. 2012).

Here, the Property is property of the bankruptcy estate.³ Though Trustmark maintained in its Motion that there is no automatic stay in the Third Bankruptcy Case, the Court finds that § 362(c)(3)(A) did not terminate all of the protections of the stay but only actions against the Debtor or property of the Debtor that is not property of the estate on September 2, 2019. Accordingly, the automatic stay of § 362(a) continues to operate after September 2, 2019 as to actions taken against property of the estate until the Third Bankruptcy Case is closed or dismissed or until further order of this Court.

³ Neither the Debtor nor Trustmark raised the issue that the Property is not property of the estate. The record shows that the Debtor listed the Property as property of the estate on the bankruptcy schedules for both the Second Bankruptcy Case and the Bankruptcy Case. Property of the estate is defined by § 541 as “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Here, the Debtor claims an equitable interest in the Property. Therefore, the Debtor has at least an “arguable interest” in the Property. *Brown v. Chestnut (In re Chestnut)*, 422 F.3d 298, 302–04 (5th Cir. 2005) (holding that an arguable property interest is property of the estate).

Trustmark also seeks relief from the co-debtor stay under § 1301(c). The Debtor does not indicate that another individual holds an interest in the Property. (3d Bankr. Dkt. 4 at 3). The Debtor did not file jointly in any of the bankruptcy cases commenced in the Southern District of Mississippi. The co-debtor was not discussed at the Hearing. While Trustmark attaches documents to its Motion identifying the co-debtor, Trustmark has failed to meet its burden of showing that grounds for relief from the co-debtor stay exist. 8 COLLIER ON BANKR. P 1301.03 (16th 2019).

Conclusion

IT IS, THEREFORE, ORDERED that the Motion is granted in part and denied in part. The Motion is granted and the automatic stay terminated on September 2, 2019 with respect to the Debtor and the property of the Debtor. The Motion is denied and the automatic stay with respect to the property of the estate did not terminate on September 2, 2019. The automatic stay remains in effect as to the Property until the Third Bankruptcy case is closed or dismissed or until further order of this Court.

IT IS FURTHER ORDERED that all other relief requested in the Motion not specifically granted is denied.

##END OF ORDER##