

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:

HEATHER PATRICE HOGROBROOKS-HARRIS,
Debtor.

Case No. 17-20334
Chapter 7

**OPINION AND ORDER CONFIRMING THAT THE AUTOMATIC STAY
IS NOT IN EFFECT AND THE DISCHARGE INJUNCTION DOES NOT PREVENT
ENFORCEMENT OF STATUTORY LIEN RIGHTS AGAINST REAL PROPERTY**

Heather Patrice Hogrobrooks-Harris (“Hogrobrooks-Harris”), proceeding *pro se*, commenced an adversary proceeding against Shelby County, Tennessee (“County”) and the City of Memphis, Tennessee (“City”), seeking to be relieved of taxes, penalties, and associated attorney’s fees.¹ In the main case, the County and the City filed a *Motion for Order Confirming*

¹ Adv. Proc. ECF No. 1, Adv. Proc. Number 21-00053.

*No Automatic Stay in Effect.*² Upon review of the record, filed documents, and consideration of the arguments from parties, the Court finds and concludes that automatic stay is not in effect and the discharge injunction does not bar the City and County from enforcing their statutory lien as described in section 67-5-2101(a) of the Tennessee Code.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 12, 2017, Hogrobrooks-Harris filed a voluntary petition under Chapter 7, and she was granted a discharge on September 25, 2017.³

On October 23, 2020, Hogrobrooks-Harris filed a *Motion to Reopen Chapter 7* case.⁴

On December 14, 2020, Hogrobrooks-Harris filed an Amended Petition and Schedules that disclosed property taxes and four parcels of real property purportedly existing in 2017 but unknown to Hogrobooks-Harris until late 2019.⁵ Specifically, Hogrobrooks-Harris added four parcels of real property in which she believed to hold potential ownership interests.⁶

On May 7, 2021, Hogrobrooks-Harris filed a Complaint seeking to be relieved from taxes, penalties, and associated attorney's fees associated with the several parcels of property.⁷ The adversary proceeding remains pending for the Court as of the date of this opinion and order.

² The ECF numbers are those in the main case. ECF No. 135.

³ ECF Nos. 1 and 73.

⁴ ECF No. 91.

⁵ ECF No. 99.

⁶ ECF No. 99.

⁷ Adv. Proc. ECF No. 1, Adv. Proc. Number 21-00053.

On August 19, 2022, the City and County filed a *Motion for Order Confirming No Automatic Stay in Effect*.⁸ On December 6, 2022, the Court conducted a hearing on the motion confirming no automatic stay in effect. The City and County argued the automatic stay is not in effect and the discharge injunction does not apply to the County's *in rem* proceedings because "with the entry of a Chapter 7 discharge, the automatic stay terminates as to property of the estate."⁹ The City and County further argued that the amendment of a debtor's schedules "does not reinstate the automatic stay."¹⁰ Finally, the City and County explained that they are not seeking to personally collect from Hogrobrooks-Harris any pre-petition debts regarding taxes and liabilities on the properties, but rather to exercise their state court remedies regarding the affected parcels of property.¹¹ Hogrobrooks-Harris argued that the bankruptcy rules allow debtors to amend their schedules at any time before a case is closed.¹² Hogrobrooks-Harris furthered argued that because she amended her schedules, the automatic stay is in effect. Finally, Hogrobrooks-Harris argued that the automatic stay is in effect because there is a pending lawsuit.¹³ The Court took this matter under advisement.

⁸ ECF No. 135.

⁹ Hearing on *Motion for Order Confirming No Automatic Stay in Effect*, Dec. 6, 2022, at 1:19 PM.

¹⁰ *Id.* at 1:20 PM.

¹¹ *Id.* at 1:24 PM.

¹² *Id.* at 1:32 PM.

¹³ *Id.* at 1:41 PM. Hogrobrooks-Harris explained that, because there is a current adversary proceeding, she should be afforded protection from the automatic stay because it is a pending lawsuit.

II. DISCUSSION

The issue before the Court is whether the City and County may proceed with enforcement of their statutory property tax liens to collect prepetition property taxes. They may. The automatic stay is no longer in affect upon entry of the Hogrobrooks-Harris' discharge, and the discharge injunction (which remains in place) does not bar the City and County from proceeding with collection efforts against the four parcels of real property at issue before the Court.¹⁴ The City and County are proceeding *in rem*¹⁵ (not *in personam*¹⁶), and there is no bar against enforcement of their statutory property tax liens to collect prepetition property taxes.

Section 362(a) of the Bankruptcy Code governs the automatic stay.¹⁷ The automatic stay is a fundamental protection for debtors during their bankruptcy cases.¹⁸ The automatic stay

¹⁴ When a debtor files a chapter 7 petition, the bankruptcy estate is created, subject to administration by the chapter 7 trustee. *In re Smith*, 310 B.R. 320, 322 (Bankr. N.D. Ohio 2004) (explaining property of the estate). Property of the estate includes “any interest, whether legal or equitable, held by a debtor in property of any kind as of the petition date.” *Id.* Property of the estate, “generally limits the scope of property of the estate to the debtor’s interest in property as of the commencement of the case.” *See generally* 11 U.S.C. § 541(a); *Payne v. Winston Motors (In re Payne)*, 88 B.R. 818, 821 (Bankr. E.D. Tenn. 1988) (explaining the scope of property of the estate).

Here, Hogrobrooks-Harris claims tenuous interests in the parcels of real property added to her Amended Schedules filed on December 14, 2020. The record is not clear if Hogrobrook-Harris holds any interest in any of the real properties. On July 16, 2021, the Court entered an *Order on Trustee’s Notice of Proposed Abandonment of Property of the Estate* (ECF No. 130), allowing the Chapter 7 trustee to abandon any interest in real property. This Court is not making any findings regarding the extent or nature of Hogrobrooks-Harris’s interest in the affected parcels of real property. Regardless of Hogrobrooks-Harris’s interest (if any) in the real property, the discharge injunction would not bar the County and City from taking action to enforce their statutory lien against the real property.

¹⁵ The term “*In rem*” affects the property that is the subject of the lien and does not “establish personal liability of the property owner and is not effective beyond the particular property itself.” *In re Joseph*, 584 B.R. 696, 704 (Bankr. E.D. Ky. 2018) (explaining “*in rem*” judgments).

¹⁶ The term “*In personam*” “imposes personal liability or obligations on one person in favor of another.” *Hanson v. Denckla*, 357 U.S. 235, 246, n.12 (1958) (explaining “*in personam*” judgments).

¹⁷ Section 362(a) reads: “[A] petition filed under section 301, 302, or 303 of this title . . . , operates as a stay applicable to all entities[.]” 11 U.S.C. § 362(a) (2022).

¹⁸ *In re Smith*, 636 B.R. 521, 528 (Bankr. E.D. Tenn. 2021) (explaining the importance and purpose of the automatic stay).

prohibits creditors from pursuing or continuing any action against debtors for prepetition debts and property of the estate.¹⁹ The automatic stay remains in effect until entry of a discharge.²⁰ Once the Court enters a discharge order, “the automatic stay terminates and is replaced by the discharge injunction, which ‘operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.’”²¹

Upon entry of the discharge, the discharge injunction acts to shield the debtor from any personal liability.²² The discharge injunction protects the debtor from creditors’ collection efforts of debts that were discharged in bankruptcy.²³ However, “it is a fundamental practice of bankruptcy law that valid liens, including tax liens, survive a bankruptcy discharge.”²⁴ Creditors

¹⁹ See 11 U.S.C. § 362(a) (2022); *Smith*, 636 B.R. at 528.

²⁰ 11 U.S.C. § 362(c)(2)(C) states:

[T]he stay of any other act under subsection (a) of this section continues until the earliest of

...

(C) If the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied[.]

²¹ 11 U.S.C. § 524(a)(2) states:

[A] discharge in a case under this title

...

(2) Operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived[.]

In re Waldo, 417 B.R. 854, 888 (Bankr. E.D. Tenn. 2009) (explaining the effect of a discharge injunction).

²² 11 U.S.C. § 524(a)(2).

²³ *In re Waldo*, 417 B.R. at 889 (“Accordingly, once the discharge has been entered by the court, creditors holding pre-petition claims or causes of action against the debtor may not attempt to hold him personally liable, and ‘the debtor will not be pressured in any way to repay it.’”).

²⁴ *U.S. v. Toler*, 666 F.Supp.2d 872, 882 (S.D. Ohio 2009) (explaining enforcement of tax liens once a debtor receives a discharge).

seeking to collect on tax liens are permitted to take *in rem* action against the debtor, but not *in personam*.²⁵ “Actions that merely seek to enforce a creditor’s surviving lien are not considered to be actions to collect a debt ‘as a personal liability of the debtor’ within the meaning of the section 524(a)(2) discharge injunction.”²⁶

The City and County correctly argued that the automatic stay is not in effect because Hogrobrooks-Harris received a discharge in her chapter 7 case. When Hogrobrooks-Harris received a discharge on September 25, 2017, the stay was no longer in effect, and the discharge injunction created a governing relationship between any potential creditors that were discharged in bankruptcy. When Hogrobrooks-Harris reopened her chapter 7 case to amend her schedules, she was not protected by the automatic stay because the stay was no longer in effect.²⁷ There is no legal support for Hogrobrooks-Harris’ position that amending schedules after a discharge revives the automatic stay.²⁸ Section 362(c)(2)(C) of the Code makes clear that, when Hogrobrooks-Harris received a discharge, the automatic stay was no longer in effect.

Hogrobrooks-Harris and creditors (that were included in her chapter 7 case) are now operating under the discharge injunction. The discharge injunction does not preclude the City and County to exercise their statutory lien rights against the four parcels of

²⁵ *Id.*

²⁶ *In re Johnson*, 439 B.R. 416, 428 (Bankr. E.D. Mich. 2010) (explaining the function of a creditor’s lien once a discharge injunction has been entered).

²⁷ At the hearing on the *Motion for Order Confirming No Automatic Stay in Effect*, Hogrobrooks-Harris explained that in her Chapter 7 case, a creditor was given relief from stay after she received a discharge. The creditor filed a motion for relief before the discharge, and an order was entered granting relief from the automatic stay post-discharge after several continuances. Hogrobrook-Harris’s reliance on this procedural anomaly to support her position is misplaced.

²⁸ *See, e.g., In Trevino*, 78 B.R. 29, 37-38 (Bankr. M.D. Pa. 1987) (discussing and concluding that the reopening of a chapter 7 case after entry of discharge does not revive the automatic stay under section 362(a) of the Bankruptcy Code).

property. The City and County are not seeking to collect property taxes directly from Hogrobrooks-Harris, but rather to assess and collect pre-petition property tax obligations owed to the City and County against the real properties pursuant to section 67-5-2101(a), of the Tennessee Code.²⁹

III. CONCLUSION AND ORDER

The Court concludes that the automatic stay is not in effect because the Hogrobrooks-Harris received her discharge, and the discharge injunction does not preclude the City and County from taking *in rem* action against the real property. It is

ORDERED:

1. The automatic stay is not in effect.
2. The discharge injunction does not bar City's and County's collection efforts for prepetition property taxes against the affected real properties.
3. The City and Court may proceed with their enforcement of the statutory lien for pre-petition property taxes as described in section 67-5-2101(a) of the Tennessee Code.

²⁹ Tenn. Code Ann. § 67-5-2101(a) states: "The taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed."

cc: Debtor
Attorney for City of Memphis
Attorney for Shelby County
Chapter 7 Trustee
All Creditors on the Matrix