

Dated: September 01, 2023
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

Kekeya Anita Reynolds,

Debtor.

Case No. 23-22086

Chapter 13

Kekeya Anita Reynolds,

Plaintiff

vs.

Partners for Payment Relief DE IV, LLC
by Fay Servicing, LLC

Defendant.

Adv. Proc. No. 23-00105

OPINION AND ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER

This adversary proceeding came before the Court on August 29, 2023, at 9:30 a.m. on Kekeya Anita Reynolds' ("Mrs. Reynolds") *Motion for Temporary Restraining Order* and Partners for Payment Relief DE IV, LLC by Fay Servicing, LLC's (Creditor's") *Response in*

*Opposition to Motion for Temporary Restraining Order.*¹ Mrs. Reynolds sought to enjoin the Creditor from foreclosing on her real property, located at 4237 Durango Lane, Memphis, Tennessee, 38109 (the “Property”).

On May 1, 2023, Mrs. Reynolds filed her Chapter 13 case together with schedules, and statements, and a proposed Chapter 13 plan.² On June 13, 2023, Plaintiff filed a *Verified Motion to Impose Automatic Stay*.³ On July 14, 2023, the Court entered an *Order Denying Debtor’s Verified Motion to Impose Automatic Stay* because the motion was not filed within thirty (30) days of the filing of the petition.⁴ The automatic stay is currently not in effect.

On August 16, 2023, Mrs. Reynolds filed a complaint seeking injunctive relief against the Creditor.⁵ On August 21, 2023, Mrs. Reynolds filed a *Motion for Temporary Restraining Order*.⁶ On August 24, 2023, Creditor filed its *Opposition Response to Motion for Temporary Restraining Order*.⁷ On August 25, 2023, the Court issued a Notice of Hearing for the Motion for Temporary Restraining Order for August 29, 2023, at 9:30 a.m.

¹ Ad. Proc. Nos. 2 and 7.

² The ECF numbers are those in the main case. ECF Nos. 1 and 2.

³ ECF No. 26.

⁴ ECF No. 33.

⁵ Ad. Proc. No. 1.

⁶ Ad. Proc. No. 2. In the underlying proceeding, on August 21, 2023, the Court issued a Summons and Notice of Pretrial Conference set for October 17, 2023.

⁷ Ad. Proc. No. 7.

According to Mrs. Reynolds' Schedule A/B, she listed the Property at issue, a 2014 Jeep Patriot, and other miscellaneous items such as furniture, electronics, and clothes.⁸ Schedule C lists the Property as homestead, currently valued at \$63,100 and \$35,000 claimed exempt under TCA § 26-2-301(a).⁹ Schedule C also lists the 2014 Jeep Patriot at 90,000 miles valued at \$10,700.¹⁰ Mrs. Reynolds did not claim an exemption as to the vehicle. The Creditor filed its secured claim (Proof of Claim 13-1) in the amount of \$41,374.52, with no amount listed as to the "value of property." On Schedule I, it shows Mrs. Reynolds is employed as a tax support adviser and has been at her job the last two months.¹¹ Her gross income is \$3,390.27.¹² Mrs. Reynolds did not list her husband's income on the schedules, but on line 8h of Schedule I - "other monthly income," it states, "husband's cash jobs," which generates \$1,000 per month.¹³ Schedule I shows a combined monthly income of \$4,630.92.¹⁴ Schedule J lists expenses at \$2,400, and on line 23c of Schedule J, a monthly net income of \$2,230.92.¹⁵

According to Mrs. Reynolds' Form 122C-1 "Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period," Mrs. Reynolds checked the box which

⁸ ECF No. 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

states, “disposable income is not determined under 11 U.S.C. § 1325(b)(3).¹⁶ This form shows that Mrs. Reynolds is a below-median debtor with a commitment period of three (3) years.¹⁷

On August 29, 2023, the Court conducted a hearing on the motion for temporary restraining order, and evidence was presented through the testimony of Mrs. Reynolds and her non-filing spouse (“Mr. Reynolds”).

Mr. and Mrs. Reynolds were married in 2010 and have three children.¹⁸ Two of their children currently live with them at the Property.¹⁹ When Mrs. Reynolds first filed for bankruptcy in 2007, her case was dismissed because she was experiencing mental health problems due to the loss of her mother.²⁰ These issues continued on for years and contributed to many of her other cases getting dismissed.²¹ Due to her mental health problems, Mrs. Reynolds received disability income from 2010 through 2022.²² Mrs. Reynolds stopped receiving disability income in November 2022.²³ Though Mrs. Reynolds was receiving disability income, her husband held various jobs.²⁴

¹⁶ ECF No. 5

¹⁷ *Id.* On Official Form 122C-1, Debtor declared total average monthly income of \$4,386, which calculates to annual income of \$52,632. Debtor listed a household of four (4). The median family income for a household of four in the State of Tennessee is \$95,976. With Debtor’s household income of \$52,632, the Debtor is a “below median debtor” pursuant to 11 U.S.C. § 1325(b)(3).

¹⁸ Hearing on *Motion for Temporary Restraining Order*, Aug. 29, 2023, at 11:08 a.m.

¹⁹ *Id.*

²⁰ *Id.* at 10:51 a.m.

²¹ *Id.* at 10:52 a.m.

²² *Id.* at 10:53 a.m.

²³ *Id.*

²⁴ *Id.* at 10:58 a.m.

Mrs. Reynolds currently has stable employment, and Mr. Reynolds is currently working, and finishing up classes to receive his commercial driver's license and will soon be employed with this new license.²⁵ Mr. and Mrs. Reynolds anticipate their combined income will be enough to make the Chapter 13 plan payments, which include the mortgage arrearage and the ongoing mortgage payments.²⁶ Mrs. Reynolds currently works as a tax support advisor and earns a gross income of \$1,600 bi-weekly.²⁷ Both Mrs. and Mrs. Reynolds explained that if Creditor is allowed to proceed with its foreclosure the Reynolds family will be homeless.²⁸ Mrs. Reynolds further explained that her Chapter 13 plan payments are being made to the Chapter 13 trustee, which shows that her current Chapter 13 case will be successful.²⁹ The Chapter 13 trustee further confirmed that Mrs. Reynolds' Chapter 13 plan payments are current through August 2023.³⁰ Finally, on direct-examination, Mr. Reynolds testified that he will assist his wife in making her plan payments.³¹ Mr. Reynolds has made a separate account and budgeting money to help pay for the mortgage.³²

²⁵ *Id.* at 11:09 a.m.

²⁶ *Id.* at 11:20 a.m.

²⁷ *Id.* at 10:59 a.m.

²⁸ *Id.* at 11:01 a.m.

²⁹ *Id.*

³⁰ *Id.* at 10:45 a.m.

³¹ *Id.* at 11:09 a.m.

³² *Id.* at 11:10 a.m.

At the hearing, Creditor presented no evidence, other than cross-examination of Mr. and Mrs. Reynolds.³³ During cross-examination, Mrs. Reynolds stated that she sometimes receives \$400 in SNAP benefits per month.³⁴ She further stated she has not consistently received SNAP benefits, due to the other benefits she received.³⁵ Additionally, Mrs. Reynolds testified that the 2014 Jeep Patriot listed on her schedules is the family's only car and it is insured.³⁶ On cross-examination of Mr. Reynolds, Mr. Reynolds stated that he has always had a job and receives cash for jobs off and on.³⁷

At the conclusion of the evidentiary hearing, Mrs. Reynolds's counsel argued she has satisfied the requirements for temporary restraining order. Mr. and Mrs. Reynolds are both employed and have strategically structured their life to do everything they can to save their house from being foreclosed. Mrs. Reynolds finally has stable employment, and Mr. Reynolds is working to get a stable job, though he is still financially providing for his family. The likelihood that Mrs. Reynolds will successfully receive a discharge is high because of her new and improved circumstances. Mrs. Reynolds asserts there is less harm to the Creditor because of the amount of equity in the home and Mrs. Reynolds is making her plan payments.

³³ In the Creditor's *Response in Opposition to Motion for Temporary Restraining Order*, Creditor asked the Court to take judicial notice of Mrs. Reynolds' prior filings. Mrs. Reynolds's prior bankruptcy filings are not disputed, and she testified to the circumstances regarding the dismissals of her prior bankruptcy cases.

³⁴ Hearing on *Motion for Temporary Restraining Order*, at 11:05 a.m.

³⁵ *Id.*

³⁶ *Id.* at 11:06 a.m. (Mrs. Reynolds stated her car insurance is \$180 per month. On re-direct, Mrs. Reynolds stated that she plans to surrender her 2014 Jeep Patriot to do everything she can to pay keep her house, and that her Chapter 13 plan is amended to reflect the vehicle will be surrendered.).

³⁷ *Id.* at 11:14 a.m.

Creditor argues that there are discrepancies in Mrs. Reynolds' schedules and testimony, regarding the household income, and that she will be unable to make plan payments and pay the ongoing mortgage.³⁸ Creditor further argues that Mr. and Mrs. Reynolds do not have sufficient income to pay her mortgage and have not maintained the property.³⁹ The factor that weighs most heavily against Mrs. Reynolds, according to the Creditor, is the number of cases she filed, especially the cases that were filed to prevent a foreclosure sale.⁴⁰ Creditor asserts that the number of unsuccessful cases is evidence that the cases were filed in bad faith.⁴¹ Even though Mrs. Reynolds made plan payments in her current case, the Creditor argues this is not sufficient evidence that her case will be successful based on Mrs. Reynolds' history of filing in the bankruptcy court.⁴² Finally, Creditor contends that Mrs. Reynolds had not been making mortgage payments, paying taxes, and maintaining the property over the years and that because of these factors, the Creditor is more likely to be harmed if the Court enjoins the foreclosure. The Court took this matter under advisement.

Rule 7065, which incorporates Federal Rule of Civil Procedure 65, governs injunctions and restraining orders.⁴³ "A temporary restraining order is a temporary order entered in an action, often without notice, upon a summary showing of its necessity to prevent immediate and irreparable injury, pending a fuller hearing and determination of the rights of the parties or the

³⁸ *Id.* at 11:24 a.m. (At the hearing, the Creditor noted that the Mr. Reynolds income is not reported on the Mrs. Reynolds' schedules.).

³⁹ *Id.* at 11:24 a.m. and 11:26 a.m.

⁴⁰ *Id.* at 11:26 a.m. (The Plaintiff has 10 prior cases and never received a discharge.).

⁴¹ *Id.* at 11:29 a.m.

⁴² *Id.* at 11:23 a.m.

⁴³ Fed. R. Bankr. P. 7065; Fed. R. Civ. P. 65.

court's jurisdiction upon a motion for preliminary injunction.”⁴⁴ The purpose of a temporary restraining order is to “preserve the status quo until the motion for a preliminary injunction can, after notice, be brought on for hearing and decision.”⁴⁵ “The Sixth Circuit has specified four factors that are particularly important in determining whether a preliminary injunction is proper.”⁴⁶ To be successful on a motion for temporary restraining order, the movant must clearly and convincingly demonstrate (1) the likelihood of success on the merits, (2) whether the injunction will save the plaintiff from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction.⁴⁷

The Court concludes that Mrs. Reynolds has clearly and convincingly satisfied the elements for a temporary restraining order. Mrs. Reynolds argued that she will likely be successful on the merits because she believes her plan is ready for confirmation. Through Mrs. Reynolds' testimony, she has proven to the Court that she currently has stable employment and there is consistency in making her Chapter 13 plan payments, which is likely to result successfully in her Chapter 13 case. Mrs. Reynolds lacked a stable job for many years in bankruptcy and experienced personal trials that contributed to her instability to ever receive a discharge. She asserted in her motion and through testimony she plans to surrender her vehicle and amend her Chapter 13 plan to increase the mortgage arrearage based on the proof of claim

⁴⁴ *In re Shelly's Inc.*, 87 B.R. 931, 935 (Bankr. S.D. Ohio 1988) (citing various Sixth Circuit decisions) (outlining the requirements of a temporary restraining order).

⁴⁵ *Id.*

⁴⁶ *Id.* at 934.

⁴⁷ *Id.*; *See generally, In re Regency Realty Associates*, 179 B.R. 717, 719 (Bankr. M.D. Fla. 1995) (citations omitted) (“It does not need any special emphasis to point out that a temporary restraining order or a preliminary injunction are extraordinary and drastic remedies which may be granted only upon a clear and convincing showing that the movant has carried its heavy burden on each element required by F. R. Civ. P. 65 as adopted by F.R.B.P. 7065.”).

filed by the Defendant.⁴⁸ At the hearing, the Mrs. Reynolds also testified that with her stable job she will have sufficient income to make plan payments. Though Mr. Reynolds is a non-filing spouse, he has demonstrated to the Court his desire to assist with plan payments and save for mortgage payments. Finally, it is important to note that Mrs. Reynolds has been making her Chapter 13 plan payments, and her case is a few weeks away from being confirmed. She is taking necessary steps to save her home and hopefully have a confirmed plan that will allow the Chapter 13 trustee to disburse funds to the Creditor. This change in Debtor's financial circumstances is very persuasive to the Court Mrs. Reynolds will likely be successful in her Chapter 13 case (and there is success merits of her injunctive relief).

Mrs. Reynolds resides in her home with her husband and children. In her motion and through testimony, she asserted that her family has lived in the home since 2006. This is the family's only home. If the foreclosure sale were to continue, the family will be without a home. It is clear from the testimony and facts that enjoining the sale will save Mrs. Reynolds from irreparable injury.

The Court agrees with Mrs. Reynolds that the Creditor is less likely to suffer harm if the foreclosure were enjoined. The evidence and testimony show that Mr. and Mrs. Reynolds have sufficient funds to pay their mortgage given their change of employment. The fact that there is equity of about \$20,000 in the home provides an "equity cushion" for the Creditor. If this were a case where no payments were made to the Chapter 13 trustee, there was no equity in the property, and neither spouse was employed, the Court could understand the harm to the Creditor. That is not the case here. The Creditor's reliance of the number of prior filings by Mrs. Reynolds

⁴⁸ Plaintiff's Motion for Temporary Restraining Order.

that demonstrates her inability to be successful in her Chapter 13 case is misplaced. At the hearing, Mrs. Reynolds explained why all her prior cases were dismissed. A common theme among the dismissals was a lack of consistent employment to make plan payments. A debtor's failure to have a steady job with a consistent income is not an uncommon reason for their case to be dismissed. Mrs. Reynolds' employment has changed, and her income is now stable. From the testimony and evidence presented, the Creditor is less likely to suffer any harm from the enjoinder of the foreclosure.

Finally, the public interest will be served by the injunction. The temporary restraining order will prevent the Reynolds family from being without a home.

Based on the Court's review of the motion, responses, and arguments, the Court concludes the Motion for Temporary Restraining Order should be granted. Accordingly, pursuant to 11 U.S.C. § 105 and Bankruptcy Rule 7065, it is **ORDERED**:

1. The Plaintiff's Motion for Temporary Restraining Order as to Partners for Payment Relief DE IV, LLC by Fay Servicing, LLC's is **GRANTED**, effective immediately.

2. Partners for Payment Relief DE IV, LLC by Fay Servicing, LLC's and its officers, agents, employees, and attorneys are restrained from foreclosing on real property located at 4237 Durango Lane, Memphis, TN 38109 until further order of this Court.

3. A *Notice of Pretrial Conference*, in underlying complaint, is set for October 17, 2023, at 10:30 AM.

Cc: Debtor
Debtor's Attorney
Creditor's Attorney
Creditor
Chapter 13 Trustee