

Dated: September 30, 2025
The following is ORDERED:



A handwritten signature in black ink, appearing to read "Denise E. Barnett".

Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTER DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

JO ALMA STINSON,
Debtor.

Case No.: 20-20291
Chapter 13

MEMORANDUM OPINION AND ORDER DENYING
(1) THE CITY OF MEMPHIS' MOTION FOR AUTOMATIC
STAY TO BE INAPPLICABLE PURSUANT TO 11 U.S.C. § 362(b)(4)
AND, IN THE ALTERNATIVE, RELIEF FROM THE AUTOMATIC
STAY, (2) CLARK & COMPANY INVESTMENT GROUP, LLC'S
MOTION TO TERMINATE AUTOMATIC STAY TO SATISFY THE
RECEIVER'S LIEN, AND (3) MS. STINSON'S MOTION TO INTERVENE

This case came before the Court on March 18, 2025, at 10:00 a.m., on (1) the City of Memphis's ("City's") *Motion for Order Determining Automatic Stay to be Inapplicable Pursuant to 11 U.S.C. § 362(b)(4) and, in the Alternative, for Relief from the Automatic Stay* ("Motion to Determine Automatic Stay Inapplicable");¹ (2) Clark and Company Investment Group, LLC's ("Clark & Company" or "Receiver's") *Motion to Terminate Automatic Stay for the Purpose of*

¹ City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60.

Transferring Real Estate Property to Satisfy the Receiver's Lien Under the Tennessee Neighborhood Preservation Act and for Abandonment ("Motion to Terminate Automatic Stay");² Jo Alma Stinson's ("Debtor's" or "Ms. Stinson's") *Response to Receiver's Motion to Terminate Automatic Stay*;³ and (4) Ms. Stinson's *Motion to Intervene In Pursuant to [Federal Rules of Civil Procedure, Rule 24(2)] and Debtor's Motion to Pursue the Tennessee's Homestead Exemption In Pursuant to Tennessee Code Annotated Section 26-2-301(a) Basic Exemption* ("Debtor's Motion to Intervene").⁴ At the hearing, the City of Memphis and Clark & Company were represented by counsel, and Ms. Stinson proceeded *pro se*.⁵ The narrow issue before the Court is the impact of the automatic stay on the City's and the Receiver's actions on property of the estate. This automatic stay issue arose when the Shelby County Environmental Court ("Environmental Court") raised concerns about Ms. Stinson's pending chapter 13 bankruptcy case.⁶ After years of proceeding against Ms. Stinson's real property, the City filed its motion to determine if the automatic stay was applicable, or alternatively, to seek relief from the automatic stay, contending that it was permissible for the City to take action in the Environmental Court to declare Ms. Stinson's real property a "public nuisance" pursuant to the Tennessee Code § 13-6-

² Receiver's Mot. to Terminate Automatic Stay, ECF No. 46.

³ Debtor's Resp. to Receiver's Mot. to Terminate Automatic Stay, ECF No. 49.

⁴ Debtor's Mot. to Intervene, ECF No. 50.

⁵ On December 20, 2023, a *Consent Order Concerning New Attorney for Debtor* was entered allowing for substitution of counsel, and McElroy and Associates became Ms. Stinson's counsel of record in her chapter 13 case. See ECF No. 39. On November 19, 2024, Mr. Joseph D. Fox ("Mr. Fox"), of McElroy and Associates, filed a *Motion to Withdraw as Counsel*. ECF No. 51 and Hearing on Mot. to Withdraw as Counsel on January 7, 2025 ("Hr'g on Jan. 7, 2025"), at 11:24 a.m. On January 13, 2025, the Court entered an *Order Granting Debtor's Motion to Withdraw as Counsel*. ECF No. 58.

⁶ Hr'g on Nov. 19, 2024, at 10:08 a.m. Mr. Fox stated that after the Receiver proceeded with the remediation of the Fleetwood real property and the Environmental Court issued the Receiver's Lien, Judge Patrick M. Dandridge "asked that [the parties] come and appear before his court to talk about the bankruptcy."

106(12) (the “Neighborhood Preservation Act” or the “NPA”) pursuant to subsection 362(b)(4) of the Bankruptcy Code.⁷ Ms. Stinson simply argued that proper rules and protocol were not followed by the Environmental Court in labeling her real property a public nuisance and that the Receiver was not entitled to its Receiver’s Lien on her real property.⁸ Without specifying a subparagraph of section 362 of the Code, the Receiver sought stay relief (presumably retroactively) to enforce its Receiver’s Lien.⁹ Upon review of the record and for the reasons discussed below, the Court finds and concludes that the City’s action to proceed against Ms. Stinson’s real property falls outside the ambit of subsection 362(b)(4) of the Code. Clark & Company’s motion to terminate the automatic stay is denied.

I. PROCEDURAL BACKGROUND

On January 13, 2020 (“Petition Date”), Ms. Stinson filed a chapter 13 petition, commencing her chapter 13 case.¹⁰ Ms. Stinson’s Schedule A/B showed five parcels of real properties and other personal properties.¹¹ The real property at issue, located on Fleetwood in Memphis, Tennessee (“Fleetwood”), was given a stated valued at \$38,114.00.¹² The real property was listed as a “[d]uplex or multi-unit building” where only Ms. Stinson had an interest and Ms. Stinson owned the property as an “[i]ndividual.”¹³ The real property was not declared exempt on

⁷ Hearing on City’s Mot. to Determine Automatic Stay Inapplicable on March 18, 2025 (“Hr’g on March 18, 2025”), at 11:19 a.m.

⁸ Hearing on Debtor’s Mot. to Terminate Automatic Stay on March 18, 2025 (“Hr’g on March 18, 2025”), at 10:41 – 10:43 a.m.

⁹ Hearing on Receiver’s Mot. to Terminate Automatic Stay on March 18, 2025 (“Hr’g on Mar. 18, 2025”), at 11:07 a.m.

¹⁰ Volunt. Pet., ECF No. 1.

¹¹ Volunt. Pet., ECF No. 1.

¹² Volunt. Pet., ECF No. 1.

¹³ Volunt. Pet., ECF No. 1.

Schedule C, and no creditors holding secured claims related to the Fleetwood real property were listed on Schedule D.¹⁴ On January 24, 2020, the Shelby County Trustee filed Proof of Claim 5-1 in the amount of \$713.38 for property taxes for the Fleetwood real property.¹⁵ On May 20, 2020, an *Administrative Order Allowing Claims* was entered, which included the \$713.38 owed to the Shelby County Trustee.¹⁶ On the Petition Date, Ms. Stinson filed her chapter 13 plan, which did not include secured creditors related to the Fleetwood real property.¹⁷ On May 13, 2020, Ms. Stinson's chapter 13 plan was confirmed.¹⁸ Paragraph 3 of the *Order Confirming Plan Combined with Related Orders*, reads:

All property shall remain property of the Chapter 13 estate under 11 U.S.C. §541(a) and 1306(a) and shall revert in the Debtor(s) only upon discharge pursuant to §1328(a), conversion of the case, or specific order of the Court which states otherwise. The debtor(s) shall remain in possession of and in control of all property of the estate not transferred to the Trustee, and shall be responsible for the protection and preservation of all such property, pending further orders of the Court.¹⁹

On the confirmed chapter 13 plan, paragraph 15, reads: "The percentage to be paid with respect to non-priority, general unsecured claims is: Set to 100.00%."²⁰

On October 31, 2024, the Receiver filed its *Motion to Terminate Automatic Stay* seeking termination of the automatic stay so that it could proceed with the transfer of Ms. Stinson's real

¹⁴ Volunt. Pet., ECF No. 1.

¹⁵ Proof of Claim No. 5-1.

¹⁶ Admin. Order Allowing Claims, ECF No. 22. *See also* Proof of Claim No. 5-1, Proof of Claim No. 8-1, and Proof of Claim No. 10-1.

¹⁷ Ch. 13 Plan, ECF No. 2.

¹⁸ Order Confirming Ch. 13 Plan, ECF No. 20.

¹⁹ Order Confirming Ch. 13 Plan, ECF No. 20.

²⁰ Order Confirming Ch. 13 Plan, ECF No. 20.

property to satisfy the Receiver's Lien.²¹ On November 18, 2024, Ms. Stinson filed her Response to Receiver's Motion to Terminate Automatic Stay contending that the Receiver's Lien was improper because "proper procedures and protocol were not followed."²² On November 18, 2024, Ms. Stinson filed a Motion to Intervene.²³

On February 24, 2025, the City filed its *Motion to Determine Automatic Stay Inapplicable* contending that the City's exercise of its police powers pursuant to the NPA and the City's actions were not subject to the automatic stay pursuant to subsection 362(b)(4) of the Bankruptcy Code.²⁴

On March 3, 2025, Ms. Stinson filed the *Notice to Court that Clark Co. & Investment Group's LLC Status Is Inactive*.²⁵ On March 4, 2025, at 10:00 a.m., the Court scheduled a hearing on the Receiver's Motion to Terminate Automatic Stay, Ms. Stinson's Response to the Receiver's Motion to Terminate Automatic Stay, and Ms. Stinson's Motion to Intervene. Because Ms. Stinson did not appear at the hearing, the Court continued all matters to March 18, 2025.²⁶

²¹ Receiver's Mot. to Terminate Automatic Stay, ECF No. 46.

²² Debtor's Resp. to Receiver's Mot. to Terminate Automatic Stay, ECF No. 49.

²³ Debtor's Mot. to Intervene, ECF No. 50 (Ms. Stinson made no cognizable legal arguments pertaining to her case, and this motion will be denied).

²⁴ City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60.

²⁵ Notice to Ct. that Clark Co. & Investment Group's LLC Status Is Inactive, ECF No. 63 (Counsel for the Receiver confirmed on the record that the company has been administratively dissolved).

²⁶ Hearing on Receiver's Mot. to Terminate Automatic Stay, Debtor's Resp. to Receiver's Mot. to Terminate Automatic Stay, and Debtor's Mot. to Intervene on March 4, 2025 ("Hr'g on Mar. 4, 2025"), at 12:21 p.m.

On March 14, 2025, Ms. Stinson filed a series of documents.²⁷ On March 18, 2025, at 10:00 a.m., the Court held a hearing on the Receiver’s Motion to Terminate Automatic Stay,²⁸ Debtor’s Response to Receiver’s Motion to Terminate Automatic Stay,²⁹ Debtor’s Motion to Intervene,³⁰ and the City’s Motion to Determine Automatic Stay Inapplicable.³¹ After taking into consideration the parties’ respective arguments and positions, the Court took the matter under advisement and ordered the parties to submit any post-hearing submissions within 28 days of the hearing date.³²

On April 15, 2025, the City filed its *Post-Hearing Submission in Support of Motion for Order Determining Automatic Stay to be Inapplicable Pursuant to 11 U.S.C. § 362(b)(4) and, in the Alternative, for Relief from the Automatic Stay* (“Post-Hearing Submission”).³³ On April 15, 2025, Ms. Stinson filed her response to the City’s Post-Hearing Submission.³⁴ The Receiver made no post-hearing submissions.

²⁷ Ms. Stinson’s filings consisted of: (1) Notice to the Ct. on Oath of the Hon. Mayor Paul Young, ECF No. 64; (2) Notice to the Ct. on Oath of the Honorable Tr. Sylvia Brown, ECF No. 65; (3) Mot. to Have the Correct Name of the Alleged Lien Holder Co. Identified According to Tenn. Sec’y of State and Hr’g Mot. to Publish an Audio Recording of Representative of Clerk’s Off. Stating that Debtor (Def.) Could Not See Her Case File in Env’t Ct. by a Verbal Order of Judge (Env’t Ct.) /A Violation of Const. L., ECF No. 66; (4) Mot. to the Ct./That Def., Att’y, and Cts. Have Improper Party That is Being Identified Before the Ct./Mot. to Publish Audio Recording as a Matter of L. Under the Fed. R. of Evidence, ECF No. 67; (5) Entry of Appearance – Self-Representation, ECF No. 68; Notice to the Ct. that Debtor is Not Waiving Her Const. Rts. to Have Const. Issues Heard by an Article 3 Judge, ECF No. 69; and (6) Notice to Ct. that Clark Co. & Investment Group’s LLC Status is Inactive, ECF No. 70.

²⁸ Receiver’s Mot. to Terminate Automatic Stay, ECF No. 46.

²⁹ Debtor’s Resp. to Receiver’s Mot. to Terminate Automatic Stay, ECF No. 49.

³⁰ Debtor’s Mot. to Intervene, ECF No. 50.

³¹ City’s Mot. to Determine Automatic Stay Inapplicable, ECF No. 60.

³² Hr’g on March 18, 2025, at 11:36 a.m.

³³ City’s Post-Hearing Submission, ECF No. 75.

³⁴ Debtor’s Resp. to City’s Post-Hearing Submission, ECF No. 79 (Ms. Stinson’s response did not address the narrow issues of the automatic stay that came before the Court).

II. FACTUAL BACKGROUND

A. Factual Background

In 2016, the City brought an *in personam* action against Ms. Stinson in the Environmental Court pursuant to the Neighborhood Preservation Act to declare Ms. Stinson's Fleetwood real property a public nuisance.³⁵ The real property was originally used by Ms. Stinson, her husband, and her family as a residence.³⁶ On September 7, 2016, the Environmental Court issued an Order of Compliance certifying the real property as a public nuisance and requiring the owner to present a development plan to abate the public nuisance within 30 days of entry of the order.³⁷ On September 7, 2016, the Environmental Court authorized the City to board up and secure the real property.³⁸

The City explained that between September 7, 2016 and August 5, 2021, there was no finding that Ms. Stinson successfully abated the public nuisance or obtained approval of a

The Court notes that post-hearing, Ms. Stinson made several post-hearing submissions. On March 20, 2025, Ms. Stinson filed a *Motion to Submit Evidence Pursuant to Federal Rules of Evidence, Rules 1001(1) [and] 1001(2)* ("Motion to Submit Evidence"). ECF No. 72. On March 26, 2025, the Court entered an *Order Denying, In Part, Debtor's Motion to Submit Evidence Pursuant to Federal Rules of Evidence, Rules 1001(1) and 1001(2)* ("Order Denying Debtor's Motion to Submit Evidence"), ruling that Ms. Stinson's Motion to Submit Evidence was construed as a post-hearing submission and that Debtor had until April 15, 2025, to submit all her post-hearing filings. ECF No. 73. On April 15, 2025, and April 16, 2025, Ms. Stinson filed several post-hearing submissions, which the Court reviewed for relevant information. Mot. to Submit Evidence Pursuant to Fed. R. of Evidence, Rules 1001(1) [and] 1001(2), Ex. B, at pp. 3-5, ECF No. 76; Notice to Reconsider Order Denying Transcript and Notice to Court, ECF Nos. 77 and 78; and Notice to the Ct., ECF No. 80. On April 18, 2025, the Court entered its second Order Denying Debtor's Motion to Submit Evidence. ECF No. 81.

³⁵ City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60 and City's Post-Hearing Submission, ECF No. 75. The City's order states August 12, 2016, but Exhibit 3 of the City's motion states September 7, 2016.

³⁶ Hr'g on Mar. 18, 2025, at 10:50 a.m.

³⁷ Receiver's Mot. to Terminate Automatic Stay, ECF No. 46, Ex. A, pp. 5-6; City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60, Ex. 1, pp. 50-51. The order was signed by Ms. Stinson (as acknowledged and agreed) and recorded in the Shelby County Register's Office. See ECF No. 60. Notably, to obtain an order of compliance, the Plaintiff must obtain a "certificate of public nuisance" "from either the municipal corporation, the code enforcement entity, or the [Environmental] Court" pursuant to Tenn. Code Ann. § 13-6-106. See ECF No. 46, Exhibits A and B, pp. 5-8.

³⁸ City's Mot. to Determine Automatic Stay Inapplicable, Ex. 1, pp. 9-10, ECF No. 60.

development plan to remediate the nuisance.³⁹ During that time, Ms. Stinson filed a voluntary petition for chapter 13 bankruptcy on January 13, 2020, to address past due property taxes.⁴⁰ Ms. Stinson listed the Fleetwood real property, but did not identify the City's action brought against the Fleetwood property.⁴¹

In August 2021, while Ms. Stinson's bankruptcy case was pending, the City's *in personam* action against Ms. Stinson was voluntarily dismissed without prejudice, and the City initiated an *in rem* proceeding against the Fleetwood real property on August 19, 2021.⁴² At the commencement of the *in rem* proceedings, the City filed a *lis pendens* on the real property.⁴³ On November 4, 2021, the Environmental Court issued an Order of Compliance declaring the real property a public nuisance and requiring the owner to present a development plan to abate the public nuisance within thirty (30) days of filing.⁴⁴ Notably, the compliance order required Ms.

³⁹ See City's Mot. to Determine Automatic Stay Inapplicable ("During this period, the *in personam* case was continued approximately thirty times with the Debtor failing to appear approximately twenty-four times."), ECF No. 60.

⁴⁰ Volunt. Pet., ECF No. 1 and Hr'g on Mar. 18, 2025, at 10:43 a.m.

⁴¹ Volunt. Pet., ECF No. 1.

⁴² Receiver's Mot. to Terminate Automatic Stay, Ex. B, pp. 7-8, ECF No. 46; City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60; and City's Post-Hearing Submission, ECF No. 75. The City voluntarily dismissed the lawsuit to file an *in rem* action pursuant to an amendment of the Neighborhood Preservation Act, Tenn. Code Ann. § 13-6-106. See ECF No. 60, Ex. 3, pp. 34-38. See also Hr'g on Mar. 18, 2025, at 11:15 a.m. The City's motion states that the City refiled its case on August 19, 2021 and that the first suit was dismissed without prejudice on August 24, 2021. See ECF No. 60. However, Exhibit 3 of the City's motion states that the first matter was dismissed without prejudice on August 19, 2021 and a new *in rem* action was filed that same day.

⁴³ Receiver's Mot. to Terminate Automatic Stay, Ex. B, p. 9 and City's Post-Hearing Submission, Ex. 2, p. 10, ECF No. 75.

⁴⁴ Receiver's Mot. to Terminate Automatic Stay, Ex. B, pp. 7-8, ECF No. 46 and City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60 ("Between November 4, 2021, and February 16, 2023, the was matter was continued eight times due to the Debtor's failure to appear.").

Stinson to “submit financial information demonstrating to the [Environmental] Court its financial ability to complete . . . abatement.”⁴⁵

The City argued that Ms. Stinson failed to comply with the Environmental Court’s Compliance Order, which ordered her to come up with a “development plan” to rehabilitate the real property and remedy its status as a public nuisance.⁴⁶ The City described the Fleetwood real property as a “blighted property,” “extremely rundown,” “dilapidated,” and “not suitable for occupancy” under the Neighborhood Preservation Act.⁴⁷

On April 6, 2023, the City filed a motion for an Order Establishing Non-Compliance and Authorizing Appointment of Receiver.⁴⁸ Later that month, the Environmental Court entered an Order Establishing Non-Compliance and Authorizing Appointment of Receiver.⁴⁹ On August 31, 2023, the Environmental Court found that the Fleetwood real property remained a public nuisance and appointed Clark and Company as receiver to take possession and control of the real property to abate the nuisance pursuant to Tenn. Code Ann. § 13-6-106(g).⁵⁰ The Receiver completed a partial abatement of the Fleetwood real property that included cleaning the premises, removing trash, overgrowth, and personal property from the interior and exterior of the real property to increase the marketability of the real property for auction.⁵¹ The Environmental Court set a hearing for June 20, 2024, to determine the satisfaction of the Receiver's Lien and

⁴⁵ Receiver’s Mot. to Terminate Automatic Stay, Ex. B, pp. 7-8, ECF No. 46.

⁴⁶ Hr’g on Mar. 18, 2025, at 11:13 a.m.

⁴⁷ Hr’g on Mar. 18, 2025, at 11:12 – 11:13 a.m.

⁴⁸ City’s Mot. to Determine Automatic Stay Inapplicable, Ex. 3, pp. 34-38, ECF No. 60.

⁴⁹ City’s Mot. to Determine Automatic Stay Inapplicable, ECF No. 60.

⁵⁰ Receiver’s Mot. to Terminate Automatic Stay, Ex. C, pp. 10-12, ECF No. 46.

⁵¹ Receiver’s Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46.

ordered that if the Receiver's Lien was not satisfied within 30 days, then the court would authorize a public auction sale of the Fleetwood real property set to occur on June 25, 2024.⁵² On June 11, 2024, the Environmental Court held a hearing to decide whether the Receiver's Lien was satisfied, and confirmed that the Receiver's Lien was not satisfied and authorized the Receiver to auction the Fleetwood real property in accordance with Tenn. Code Ann. § 13-6-106(j).⁵³

At the March 18, 2025, hearing the Receiver explained that its part in the Environmental Court proceedings began on August 31, 2023, when the Environmental Court appointed the Receiver to attend to the Fleetwood real property.⁵⁴ The Receiver claimed that the Environmental Court issued orders of compliances since 2016, ordering Ms. Stinson to address Code violations, citations, and to present a development plan that would bring the real property back into compliance.⁵⁵ Counsel for the Receiver explained that the role of a receiver was to attempt to rehabilitate the real property as a general contractor.⁵⁶ The Receiver added that it needed to present an application to the Environmental Court to be appointed to show financial capacity to

⁵² Receiver's Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46 and City's Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15.

⁵³ Receiver's Mot. to Terminate Automatic Stay, ECF No. 46.

⁵⁴ Hr'g on Mar. 18, 2025, at 10:58 a.m.; Receiver's Mot. to Terminate Automatic Stay, Ex. C, pp. 10-12, ECF No. 46; and City's Mot. to Determine Automatic Stay Inapplicable, Exs. 4 and D, pp. 34-41, ECF No. 60.

⁵⁵ Hr'g on Mar. 18, 2025, at 10:58 – 10:59 a.m.; Receiver's Mot. to Terminate Automatic Stay, Exs. A-E, pp. 5-16, ECF No. 46; City's Mot. to Determine Automatic Stay Inapplicable, Exs. 1-4, pp. 11-15; 50-51; 34-38, ECF No. 60; and City's Post-Hearing Submission, Exs. 1-3, pp. 4-31, ECF No. 75.

⁵⁶ Hr'g on Mar. 18, 2025, at 11:01 a.m.

be able to complete the rehabilitation project.⁵⁷ As the duly appointed receiver, the Receiver was entitled to undertake “partial abatement” of the property.⁵⁸

The Receiver applied for a Receiver’s Lien of \$26,890.00, which the Environmental Court approved on May 16, 2024.⁵⁹ Counsel for the Receiver explained that once a receiver is appointed, the Environmental Court “does not steer anybody to apply” for the real property that is up for auction and that the court only maintains those applications to notify counsel for the receiver who would be eligible to satisfy the Receiver’s Lien.⁶⁰ The Receiver explained that the Environmental Court approved the Receiver’s Lien after the Receiver conducted a “full assessment” of the Fleetwood real property.⁶¹ The Receiver’s assessment revealed that the Fleetwood real property had “no utilities, [no] running water, [and] no heating element.”⁶² Asbestos was discovered on the real property and it was noted that “dumping” was a problem because the real property was vacant “for over a decade.”⁶³ At the Fleetwood real property, the

⁵⁷ Hr’g on Mar. 18, 2025, at 10:59 a.m. and 11:01 a.m.

⁵⁸ Hr’g on Mar. 18, 2025, at 11:01 a.m. At the hearing, counsel for the Receiver defined “partial abatement” of a real property as “secur[ing] the structure to clean it out if there [are] high weeds of grass to get the property grounds clean and just a myriad of things that would satisfy the Environmental Court to get it in a position [to] move forward to what we are asking the Bankruptcy Court now to be able to transfer the property to a qualified buyer that the City will approve in order to facilitate the complete rehabilitation of the real property.”

⁵⁹ Hr’g on Mar. 18, 2025, at 11:01 a.m. and 11:04 a.m.; Receiver’s Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46; and City’s Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15, ECF No. 60.

⁶⁰ Hr’g on Mar. 18, 2025, at 11:01 a.m. At the hearing, counsel for the Receiver added that the receiver’s lien could also be satisfied prior to the auction.

⁶¹ Hr’g on Mar. 18, 2025, at 11:04 a.m.; Receiver’s Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46; and City’s Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15, ECF No. 60.

⁶² Hr’g on Mar. 18, 2025, at 11:04 a.m.

⁶³ Hr’g on Mar. 18, 2025, at 11:04 a.m. and 11:32 a.m.

Receiver removed dry walls that were damaged, “cleaned up” the interior contents of the real property, and “cut the grass.”⁶⁴

Counsel for the Receiver explained that there were two ways in which a receiver could get paid.⁶⁵ First, the owner of the real property could redeem the property by paying the amount of the lien after a Receiver’s Lien is authorized by the Environmental Court.⁶⁶ Second, if the owner is able to get the real property back or if the lien is not satisfied, then the Receiver’s Lien moves to a public auction to satisfy the lien pursuant to the Neighborhood Preservation Act.⁶⁷

In its Post-Hearing Submission, the City made two primary arguments—(1) The designation of the real property as a “public nuisance” was within the jurisdiction of the Environmental Court and that “the only issue before the Court [was] whether the commencement of the current action in Environmental Court by the City is excluded from the automatic stay pursuant to 11 U.S.C. § 362(b)(4),” and (2) the City’s action should be excepted from automatic stay in order for the City to proceed under the Neighborhood Preservation Act against the Fleetwood real property.⁶⁸ The City also attached numerous exhibits to its Post-Hearing Submission⁶⁹ and claimed that it traveled to the Fleetwood real property following the hearing

⁶⁴ Hr’g on Mar. 18, 2025, at 11:04 a.m.

⁶⁵ Hr’g on Mar. 18, 2025, at 11:07 a.m.

⁶⁶ Hr’g on Mar. 18, 2025, at 11:07 a.m.

⁶⁷ Hr’g on Mar. 18, 2025, at 11:07 a.m.

⁶⁸ City’s Post-Hearing Submission, ECF No. 75. The Receiver never filed a post-hearing brief or memoranda.

⁶⁹ City’s Post-Hearing Submission, Exs. 1-3, pp. 4-31, ECF No. 75. The exhibits contained the following—civil warrants filed by the City with the Environmental Court as an *in personam* action on September 7, 2016 and as an *in rem* action on October 7, 2021; the *Order Requiring the Defendant(s) to Appear and for Publication*; the *Order Certifying Public Nuisance, Requiring Boarding and Securing of the Property, Barring Transfer, and Requiring the Submission of a Plan for Abatement of the Public Nuisance*; the City’s *NPA Referral from Rehab*; photographs of the real property taken on May 13, 2016, July 13, 2021, and on March 18, 2025; the *Abstract of Lien Lis Pendens*; the *Order of Publication*; the *Order of Compliance*, and the *Certificate of Public Nuisance*.

and took pictures of the real property.⁷⁰ Based on the pictures, the City claimed that the Fleetwood real property remained in “blighted and uninhabitable condition.”⁷¹

B. Positions of the Parties

1. The City’s Position—The Automatic Stay is Inapplicable Pursuant to 11 U.S.C. § 362(b)(4).

The City argued for the Court to determine whether the City’s enforcement of the Neighborhood Preservation Act in the Environmental Court’s *in rem* proceeding was excepted from the automatic stay pursuant to 11 U.S.C. § 362(b)(4).⁷² The City argued that when Ms. Stinson filed for bankruptcy in January 2020, the Fleetwood real property was not listed as her principal residence and was not exempt.⁷³ The City explained that the Environmental Court proceeding was refiled as an *in rem* proceeding on August 2021.⁷⁴ After Ms. Stinson, again, failed to present to the Environmental Court a mitigation or development plan on her real property, the Receiver was appointed by the Environmental Court and pursued partial remediation of the real property.⁷⁵ The City argued that the City’s *in rem* action did not impede

⁷⁰ City’s Post-Hearing Submission, Ex. 3, at pp. 27-31, ECF No. 75.

⁷¹ City’s Post-Hearing Submission, ECF No. 75.

⁷² Hr’g on Mar. 18, 2025, at 11:19 a.m.; City’s Mot. to Determine Automatic Stay Inapplicable, ECF No. 60 and City’s Post-Hearing Submission, ECF No. 75.

⁷³ Hr’g on Mar. 18, 2025, at 11:13 a.m. *See also* Volunt. Pet., ECF No 1.

⁷⁴ Hr’g on Mar. 18, 2025, at 11:13 a.m. and City’s Post-Hearing Submission, Ex. 3, pp. 7-9, ECF No. 75. At the hearing, Mr. Coury stated August 2021, but the record shows that a summons was filed on October 7, 2021.

⁷⁵ Hr’g on Mar. 18, 2025, at 11:13 a.m. At the hearing, counsel for the Receiver explained that partial remediation prepared the real property for the qualified buyer who would be appointed if the owner did not redeem at the Receiver’s auction to complete the abatement of the real property. This included cleaning any debris, resecuring or securing the real property, and removing any hazardous entry or exit points, *See* Hr’g on Mar. 18, 2025, at 11:30 a.m.

Ms. Stinson's ability to reorganize under her chapter 13 bankruptcy case,⁷⁶ and Ms. Stinson only needed to file proof of her financial management course completion to obtain her chapter 13 discharge.⁷⁷

*2. The Receiver's Position—The Automatic Stay Should Be
Lifted to Satisfy the Receiver's Lien Pursuant to Tenn. Ann. Code § 13-6-106.*

The Receiver argued for relief from the automatic stay to allow it to proceed with the auction and transfer the Fleetwood real property.⁷⁸ The Receiver stated that despite the Environmental Court's order approving the Receiver's Lien, Ms. Stinson continued to maintain the real property and incur costs that she had not received permission from the Environmental Court to incur.⁷⁹ The Receiver further explained it was lawfully appointed as the Receiver by the Environmental Court and that it was entitled to enforce the Receiver's Lien of \$26,890.00, which was approved by the Environmental Court pursuant to the Neighborhood Preservation Act.⁸⁰ The

⁷⁶ Hr'g on Mar. 18, 2025, at 11:19 a.m. and Order and Notice of Hr'g to Show Cause Why this Case Should Not be Closed Without Entry of Discharge for Failure to Provide Required Documents, ECF No. 83.

⁷⁷ Hr'g on Mar. 18, 2025, at 11:19 a.m. and Order and Notice of Hr'g to Show Cause Why this Case Should Not be Closed Without Entry of Discharge for Failure to Provide Required Documents, ECF No. 83.

⁷⁸ Hr'g on Mar. 18, 2025, at 11:01 a.m. and Receiver's Mot. to Terminate Automatic Stay, ECF No. 46.

⁷⁹ Hr'g on Mar. 18, 2025, at 11:04 a.m.

⁸⁰ Receiver's Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46; City's Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15; and Hr'g on Mar. 18, 2025, at 11:01 a.m. – 11:07 a.m.

Receiver added that because a receiver is appointed by the Environmental Court, it “[did not] have anything to do with the case being brought by the [City].”⁸¹

3. Ms. Stinson’s Position—The City and the Receiver Did Not Follow Proper Protocol in Designating Her Real Property a Public Nuisance.

Ms. Stinson argued that both the City and the Receiver failed to follow proper protocol in designating her real property a public nuisance.⁸² Debtor claimed that her real property was “never blighted” because both she and her family continued to maintain the real property by making sure that the “yard was cut” and “clean[ed] out” the real property.⁸³ Debtor also argued that her real property had “nothing to be abated” because the City “boarded up” her real property.⁸⁴ Debtor claimed that the real property was her “home” and she believed that the City was bypassing the bankruptcy court by filing the *in rem* proceeding in Environmental Court when her case was already in bankruptcy.⁸⁵

III. DISCUSSION⁸⁶

There are three issues before the Court. First, whether the Fleetwood real property was property of the estate during Ms. Stinson’s chapter 13 bankruptcy. Second, whether 11 U.S.C. § 362(b)(4) is applicable to the City’s actions under the Neighborhood Preservation Act. Third, whether the Court should grant the Receiver’s Motion to Terminate Automatic Stay to allow for

⁸¹ H’rg on Mar. 18, 2025, at 11:01 a.m.

⁸² Hr’g on Mar. 18, 2025, at 10:41 a.m.

⁸³ H’rg on Mar. 18, 2025, at 11:20 a.m.

⁸⁴ H’rg on Mar. 18, 2025, at 11:24 a.m.

⁸⁵ H’rg on Mar. 18, 2025, at 11:20 a.m. and 11:32 a.m.

⁸⁶ The Court has subject-matter jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G). The following shall constitute the court’s findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

the transfer of the Fleetwood real property in satisfaction of the Receiver's Lien pursuant to the Neighborhood Preservation Act. Further, implicit in the oral and written information that Ms. Stinson presented to the Court, is the issue of whether the Receiver's action violated the automatic stay.

***A. The Fleetwood Real Property Was
Property of the Chapter 13 Bankruptcy Estate.***

First, the Court addresses whether the Fleetwood real property was property of the estate during Ms. Stinson's chapter 13 bankruptcy. The automatic stay is one of the most fundamental protections provided by the bankruptcy laws. It provides a debtor "a breathing spell" from creditors, stopping all collection efforts and foreclosure attempts by creditors once a bankruptcy petition has been filed.⁸⁷ The legislative history of section 362 indicates that Congress appreciated this important role of the stay:

"[t]he automatic stay . . . provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that."⁸⁸

Subsection 362(a) provides a broad list of actions enjoined by the automatic stay.⁸⁹

Specifically, subsection 362(a)(1)-(5) protects against:

⁸⁷ H.R. REP. NO. 595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5963, 6296-97. *See also In re Glenn*, 616 B.R. 429, 433 (Bankr. S.D. Ala. 2020) (explaining that "the automatic stay is fundamental to the reorganization process.") (citations omitted).

⁸⁸ H.R. REP. NO. 595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5963.

⁸⁹ 11 U.S.C. § 362(a) (2025) provides in its entirety:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title[.]⁹⁰

No action should be taken (or continued) against property of the estate unless an exception to the automatic stay applies, stay relief is granted, or the property is no longer part of the bankruptcy estate.

When Ms. Stinson commenced her chapter 13 case on January 13, 2020, an estate was created by operation of law.⁹¹ This estate consists of all property of a debtor, no matter where it is

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- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
 - (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
 - (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
 - (4) any act to create, perfect, or enforce any lien against property of the estate;
 - (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
 - (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
 - (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
 - (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

⁹⁰ 11 U.S.C. § 362(a)(1)-(5) (2025).

⁹¹ 11 U.S.C. § 541(a)(1) (2025) and 11 U.S.C. § 1306(a)(1) and (b) (2025).

located or by whom it is possessed or held, and whether the property is real or personal.⁹² Hence, under section 362(a) an automatic stay was triggered when Ms. Stinson filed her voluntary chapter 13 petition, which halts all actions that pertain to any property considered property of the estate, including the Fleetwood real property. The automatic stay remains in effect until stay relief is granted, a discharge is entered, or Ms. Stinson's bankruptcy case is dismissed or otherwise closed.⁹³ The Fleetwood real property is property of the chapter 13 estate and is protected by the automatic stay. The Fleetwood real property was also property of the estate when the City commenced its *in rem* action against the Fleetwood real property on October 7, 2021, and when the Receiver sought and obtained a Receiver's Lien on May 16, 2024.⁹⁴

B. The City's Motion to Determine the Automatic Stay Inapplicable Pursuant to 11 U.S.C. § 362(b)(4) is Denied.

Second, the Court now determines whether 11 U.S.C. § 362(b)(4) is applicable to the City's actions under the Neighborhood Preservation Act. Because the Fleetwood real property is property of the bankruptcy estate and is protected by the automatic stay, actions against the real property is appropriate if relief from the stay is granted or the automatic stay is not applicable.

⁹² 11 U.S.C. § 541(a)(1) (2025) and 11 U.S.C. § 1306(a)(1) and (b) (2025).

⁹³ 11 U.S.C. § 362(a) and (c)(1)-(2) (2025), and Order Confirming Ch. 13 Plan, ECF No. 20.

⁹⁴ 11 U.S.C. § 362(a) (2025). *See also* Receiver's Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46; City's Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15, ECF No. 60; and City's Post-Hearing Submission, Ex. 2, pp. 7-9, ECF No. 75.

Generally, unless it is otherwise provided for in a confirmed chapter 13 plan, "the debtor shall remain in possession of all property of the estate." 11 U.S.C. § 1306(b) (2025). *See, e.g., In re Moore*, 602 B.R. 40, 47 (Bankr. E.D. Tenn. 2019) (quoting "Congress intended to expand property of the estate in chapter 13 cases[.]" (citations omitted)). Here, paragraph 3 of the *Confirmation Order* plainly states that "all property shall remain property of the Chapter 13 estate" until a discharge is entered or the Court orders otherwise, relying on and citing to subsections 541(a), 1306(a), and 1328(a) of the Bankruptcy Code. Property of the estate under 11 U.S.C. § 541(a)(1) includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (2025). Section 1306 of the Bankruptcy Code provides that in addition to the properties described in section 541, property of the chapter 13 estate includes property "that the debtor acquires after the commencement of the case but before the case is closed, dismissed or converted[.]" 11 U.S.C. § 1306(a)(1) and (b) (2025).

The City moved for the Court to determine the automatic stay to be inapplicable pursuant to 11 U.S.C. § 362(b)(4), or in the alternative, for relief from the automatic stay against the Fleetwood real property.⁹⁵

Subsection 362(b)(4) provides that the automatic stay does not prohibit a governmental unit⁹⁶ from commencing or continuing an action to enforce the governmental unit's "police and regulatory power."⁹⁷ Subsection 362(b)(4) provides, in relevant part, that:

[U]nder paragraph (1), (2), (3), or (6) of subsection (a) of this section, 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, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.⁹⁸

This exception prevents bankruptcy courts from becoming a refuge for debtors to commit statutory infractions by allowing a governmental unit to pursue regulatory, police, or criminal actions without the necessity of seeking relief from the automatic stay.⁹⁹ To restrain action by a governmental unit, the debtor bears the burden of proving that the governmental unit's actions fall outside the scope of the exception. There is no dispute that the City is a governmental unit.¹⁰⁰

⁹⁵ City's Mot. to Determine Automatic Stay Inapplicable, ECF No. 60 and City's Post-Hearing Submission, ECF No. 75. Although the title of the City's motion includes the sentence "[and] in the Alternative, for Relief from the Automatic Stay," both the City's motion and the City's post-hearing submission only focused on relief under subsection 362(b)(4).

⁹⁶ The Bankruptcy Code defines "governmental unit" to include the "United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." 11 U.S.C. § 101(27) (2025).

⁹⁷ 11 U.S.C. § 362(b)(4) (2025).

⁹⁸ *Id.*

⁹⁹ *In re Mansfield Tire and Rubber Co.*, 660 F.2d 1108, 1112 (6th Cir. 1981) (citations omitted) (citing the legislative history of subsection 362(b)(4)).

¹⁰⁰ The City explained that it met the definition of a "governmental unit" as defined under 11 U.S.C. § 101(27). The Court agrees.

To determine whether a governmental action is within the scope of subsection 362(b)(4), courts have developed two tests—the pecuniary purpose test and the public policy test.¹⁰¹ While application of the two tests varies across circuits, most courts apply them independently.¹⁰² The Sixth Circuit has adopted both tests,¹⁰³ and generally, applies “one of two tests” in determining whether a governmental action was excepted by subsection 362(b)(4).¹⁰⁴

1. The Pecuniary Purpose Test.

In the Sixth Circuit, under the pecuniary purpose test, “the court asks whether the governmental proceeding relates *primarily* to the protection of the government’s pecuniary interest in the debtors’ property and not to matters of public safety and health. Proceedings which relate to matters of public safety are excepted from the stay.”¹⁰⁵

The City commenced its *in personam* action against Ms. Stinson on September 7, 2016, and filed an *in rem* action against the Fleetwood real property on October 21, 2021.¹⁰⁶ The Neighborhood Preservation Act was recently amended, effective April 23, 2024,¹⁰⁷ and the

¹⁰¹ See *In re Commerce Oil Co.*, 847 F.2d 291, 295 (6th Cir. 1988) (Recognizing two tests for determining whether an action by a governmental unit falls within subsection 362(b)(4)—the pecuniary purpose test and the public policy test); *In re Montalvo*, 537 B.R. 128, 137 (Bankr. D.P.R. 2015) (citations omitted) (explaining that courts have developed two “interrelative fact intensive tests”—the pecuniary purpose test and the public policy test); *In re Gandy*, 327 B.R. 796, 803 (Bankr. S.D. Tex. 2005) (citations omitted) (defining the pecuniary interest test and the public policy test).

¹⁰² See, e.g., *In re Thomas*, 355 B.R. 166, 172 (N.D. Ca. 2006) (citation omitted) (explaining that in the Ninth Circuit, a governmental action under 362(b)(4) must meet “either” test).

¹⁰³ *In re Smith-Goodson*, 144 B.R. 72, 74 (Bankr. S.D. Ohio 1992) (citing *In re Commerce Oil Co.*, 847 F.2d at 295 and *N.L.R.B. v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986)) (explaining that the Sixth Circuit has adopted “two tests”—the pecuniary purpose test and the public policy test—in determining whether a governmental action falls outside or within subsection 362(b)(4)).

¹⁰⁴ *N.L.R.B.*, 804 F.2d at 942.

¹⁰⁵ *In re Smith-Goodson*, 144 B.R. at 74 (citing *N.L.R.B.*, 804 F.2d at 942).

¹⁰⁶ City’s Post-Hearing Submission, Exs. 1-2, pp. 4-9, ECF No. 75.

¹⁰⁷ Tenn. Ann. Code § 13-6-101-108 (2025).

City's actions in this case took place prior to the changes made to the statute.¹⁰⁸ Prior to April 2024, Tennessee Code § 13-6-102(15) included the following language, in its entirety:

(15) "Receiver's lien" means a first priority lien in favor of the receiver against the subject parcel that, with regard to the subject parcel, upon approval of the court, secures:

(A) Any and all direct and indirect expenses and costs incurred by the receiver, including reasonable attorney's fees and costs;

(B) Any and all outstanding municipal fines, penalties, expenditures, and assessments;

(C) Any and all amounts attributable to state and local taxes and assessments, including any and all outstanding amounts secured by delinquent property tax liens; and

(D) A fee, payable to the receiver, equal to ten percent (10%) of the total of the amounts provided under subdivision (15)(A), but in no event less than two thousand five hundred dollars (\$2,500)[.]¹⁰⁹

Under this statutory scheme, the City could have had a monetary gain when it filed its *in rem* action, as the City would have needed to secure payment of any fines, penalties, expenditures, assessments, or taxes owed.¹¹⁰ Ms. Stinson's chapter 13 plan provided payment of pre-petition property taxes, but the status of any post-petition taxes was not clear from the record.¹¹¹ Although a receiver's lien is a "first priority lien," the City had a pecuniary interest in successfully appointing a receiver.¹¹²

With the amendment to the NPA that became effective April 23, 2024, a provision was added to Tenn. Ann. Code § 13-6-106(i)(1)(D), stating:

(i)(1) If the court deems a plan submitted by a receiver to be sufficient and appropriate, the court may empower the receiver to:

¹⁰⁸ City's Post-Hearing Submission, Ex. 1-2, pp. 4-9, ECF No. 75.

¹⁰⁹ Tenn. Code Ann. § 13-6-102(15) (2025). Subsections (B) and (C) were deleted by the 2024 Pub. Acts. C. 796, § 2, eff. Apr. 23, 2024. Hence, the former statute would have been applicable at the time of the case.

¹¹⁰ *Id.*

¹¹¹ Order Confirming Ch. 13 Plan, ECF No. 20.

¹¹² Tenn. Code § 13-6-102(15) (2021).

[. . .]

(D) Pay all outstanding municipal fines, penalties, expenditures, and assessments and all amounts attributable to state and local taxes and assessments, including all outstanding amounts secured by delinquent property tax liens; provided, that, within thirty (30) days of being appointed, a receiver is required to fully satisfy all outstanding amounts secured by delinquent property tax liens[.]¹¹³

The City may also benefit monetarily under the amended NPA (including Tennessee Code § 13-6-102(15)), in successfully getting a receiver appointed. Thus, the City had a pecuniary interest in getting a receiver appointed and having a receivers' lien in place, under both versions of the Neighborhood Preservation Act.

2. The Public Policy Test.

In the Sixth Circuit, under the “public policy test,” “[C]ourts must distinguish between proceedings that adjudicate private rights and those that effectuate public policy. Those proceedings that effectuate a public policy are excepted from the stay.”¹¹⁴ The Sixth Circuit has broadly held that subsection 362(b)(4) applies if a government action promotes public policy, but does not apply if the action seeks to advance private interests.¹¹⁵

The City argued that the automatic stay was inapplicable pursuant to subsection 362(b)(4) in enforcing the Environmental Court’s “public nuisance” compliance order as defined under the

¹¹³ Tenn. Ann. Code § 13-6-106(i)(1)(D) (2025).

¹¹⁴ *In re Smith-Goodson*, 144 B.R. at 74 (citing *In re Commerce Oil Co.*, 847 F.2d at 295).

¹¹⁵ See *Chao v. Hosp. Staffing Servs., Inc.*, 270 F.3d 374, 389 (6th Cir. 2001) (explaining that “the existence of the public policy test naturally presumes that some suits by governmental units, even though they would effectuate certain declared public policies, will nevertheless be regarded as largely in furtherance of private interests.”); *In re Commerce Oil Co.*, 847 F.2d at 296 (holding that the Tennessee statute was not based on “the state’s ownership of a pecuniary interest” and that the governmental unit was acting on the state’s “regulatory power to effectuate public policy.”); *N.L.R.B.*, 804 F.2d at 942 (concluding that the public policy test was satisfied because NLRB was not proceeding on behalf of any private interests).

Neighborhood Preservation Act.¹¹⁶ Subsection 13-6-102(12) of the Neighborhood Preservation Act defines “public nuisance”:

- (12) “Public nuisance” means any building that is:
- (A) A menace to the public health, welfare, or safety;
 - (B) Structurally unsafe, unsanitary, or not provided with adequate safe egress;
 - (C) A fire hazard, dangerous to human life, or no longer fit and habitable;
 - (D) A nuisance, as defined in § 29-3-101; or
 - (E) Otherwise determined by the court or a municipal corporation to be a violation of any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to any subject parcel[.]¹¹⁷

Hence, the question before the Court is whether the City’s action under the Neighborhood Preservation Act promotes both public interests and private interests. And if so, whether private interests significantly outweigh the public benefits from enforcement.

The City’s *in rem* proceeding in the Environmental Court promotes both a public and private interest. The Sixth Circuit has stated:

When an action furthers both public and private interests and the private interests do not significantly outweigh the public benefit from enforcement, courts should defer to the legislature’s decision to vest enforcement authority in the executive and recognize such actions as within ‘such governmental unit’s police and regulatory power,’ as that term is used in § 362(b)(4).¹¹⁸

The Court finds that the NPA and the City’s action in this case do promote private interests. Entities and persons who would obtain any pecuniary gain are appointed Receivers,¹¹⁹ qualified buyers from auctions,¹²⁰ and owners of “residential property affected by residential

¹¹⁶ City’s Mot. to Determine Automatic Stay Inapplicable, ECF No. 60 and Hr’g on Mar. 18, 2025, at 11:19 a.m.

¹¹⁷ Tenn. Ann. Code § 13-6-102(12) (2025).

¹¹⁸ *Chao*, 270 F.3d at 390.

¹¹⁹ Tenn. Ann. Code § 13-6-102(c)(1), (i)(1)-(2), (j)(1)-(6), and (k)(2) (2025).

¹²⁰ Tenn. Ann. Code § 13-6-13-6-106(j)(3) (2025).

rental property or residential property not maintained to community standards of residential property in the area[.]”¹²¹ In other words, each time the City acts to declare a piece of real property a public nuisance, such action results to serve a private interest.

Because the Neighborhood Preservation Act promotes private interests, the next question before the Court is whether private interests significantly outweigh the public benefit from enforcement. The City cited *In re Smith-Goodson* (and similar cases) to support its position that courts have construed enforcement of environmental laws to fall within the parameters of subsection 362(b)(4).¹²² However, *In re Smith-Goodson* is distinguishable. In *In re Smith-Goodson*, the bankruptcy court concluded that the City of Dayton’s notice to the chapter 13 debtors requiring their real property be brought into compliance with city ordinances was exempt from the automatic stay pursuant to subsection 362(b)(4).¹²³ The City of Dayton served a “Notice of Violations and Orders for Compliance” on the chapter 13 debtors, ordering the debtors to abate the “public nuisance” and that the City of Dayton could intervene if the debtors did not address “each of [the] violations as indicated.”¹²⁴ In its analysis of the “public policy test,” the court held that the City of Dayton’s actions moved “with the public policy of maintaining certain

¹²¹ Tenn. Ann. Code § 13-6-104(a)-(d) (2025).

¹²² In its motion, the City cited to *In re Javens*, 107 F.3d 359 (6th Cir. 1997); *Penn Terra Ltd. v. Dep’t of Env’t Res. Com. Of Pa.*, 733 F.2d 267 (3rd Cir. 1984); *In re Gandy*, 327 B.R. 796 (Bankr. S.D. Tex. 2005); *In re New York Trap Rock Corp.*, 153 B.R. 642, 645 (Bankr. S.D.N.Y. 1993); *In re Smith-Goodson*, 144 B.R. 72 (Bankr. S.D. Ohio 1992); and *In re Lenz Oil Serv., Inc.*, 65 B.R. 292 (Bankr. N.D. Ill. 1986). City’s Mot. to Determine Automatic Stay Inapplicable, ECF No. 60.

¹²³ *In re Smith-Goodson*, 144 B.R. at 75.

¹²⁴ *Id.* at 73.

standards with respect to housing, fire prevention, and nuisances, and not taken to vindicate or adjudicate the rights of private individuals.”¹²⁵

While the factual background of *In re Smith-Goodson* is very similar to the current case, the Court draws a distinction between the two cases. The court in *In re Smith-Goodson* found that the City of Dayton’s actions did not serve a pecuniary interest because the debtors in *Smith-Goodson* provided no evidence addressing their concerns of “possible sanctions for violating the city’s ordinances.”¹²⁶ Here, the purpose of the Neighborhood Preservation Act was to provide a framework for holding property owners accountable for the neglect of vacant, abandoned, or deteriorated properties to address public nuisances and blight.¹²⁷ While noble goals, the Court finds that the City’s actions against the Fleetwood real property serves a private benefit. The City sought and obtained the appointment of the Receiver which, in turn, obtained an order approving a Receiver’s Lien against the Fleetwood real property (with the only remaining action being foreclosing the lien to transfer the real property).¹²⁸ The City’s *in rem* action does not satisfy the public policy test in this case. In sum, subsection 362(b)(4) does not apply to the City’s action under the Neighborhood Preservation Act.

The City’s alternative request seeking relief from the automatic stay is not well taken. Granting the City’s alternative request for stay relief would be tantamount to providing relief

¹²⁵ *Id.* at 74.

¹²⁶ *Id.*

¹²⁷ Tenn. Ann. Code § 13-6-101-108 (2025).

¹²⁸ Receiver’s Mot. to Terminate Automatic Stay, Ex. C-D, pp. 10-15, ECF No. 46; City’s Mot. to Determine Automatic Stay Inapplicable, Ex. 3 and D, pp. 13-15 and 34-38, ECF No. 60; and City’s Post-Hearing Submission, ECF No. 75.

from the automatic stay retroactively and remedying actions that were taken against property of the estate.

C. The Receiver Took Action to Create, Perfect, and Enforce a Lien in Violation of the Automatic Stay and Provided No Legal Basis to Grant Stay Relief.

Third, is whether the Court should grant the Receiver's Motion to Terminate Automatic Stay to allow for the transfer of the Fleetwood real property in satisfaction of the Receiver's Lien pursuant to the Neighborhood Preservation Act. The Receiver moved to petition the Court to terminate the automatic stay to transfer the Fleetwood real property and enforce the Receiver's Lien of \$26,890.00 pursuant to the Neighborhood Preservation Act.¹²⁹ The Receiver's Motion to Terminate the Automatic Stay should be denied.

1. The Receiver Failed to Provide Any Legal Basis for Relief Under 11 U.S.C. § 362.

Subsection 362(d) allows for creditors to obtain relief from the automatic stay should no exceptions under 362(b) apply.¹³⁰ For relief under subsection 362(d), the movant generally bears

¹²⁹ Receiver's Mot. to Terminate Automatic Stay, ECF No. 46 and Hr'g on Mar. 18, 2025, at 11:07 a.m.

¹³⁰ Subsection 362(d) provides in its entirety:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

the burden to show that it is entitled to relief.¹³¹ Once the moving party establishes that “cause” exists under subsection 362(d)(1), the burden shifts to the opposing party on all other issues.¹³² Bankruptcy courts must determine on a case-by-case basis whether discretionary relief under subsection 362(d) is warranted.¹³³ The Receiver never argued this position. Granting the Receiver’s motion for stay relief would be providing relief from the automatic stay retroactively and sanctioning the Receiver’s actions taken against a property of the estate.

*2. The Receiver Violated the
Automatic Stay Pursuant to 11 U.S.C. § 362(a).*

Finally, is whether the Receiver’s actions violated the automatic stay. The Fleetwood real property became property of the estate when Ms. Stinson commenced her chapter 13 bankruptcy on January 13, 2020.¹³⁴ Consistent with the Order Confirming the Plan and subsection 362(c)(1)-(2), the Fleetwood real property remains property of the estate until an order is entered granting stay relief, the case is dismissed, a discharge is entered, the case is closed, or the property is no

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- (i) may, in the debtor’s sole discretion notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
 - (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or
- (4) with respect to a stay of an act against real property under subsection(a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
- (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
 - (B) multiple bankruptcy filings affecting such real property.

¹³¹ *Matter of Holly’s, Inc.*, 140 B.R. 643, 683 (Bankr. W.D. Mich. 1992). *See also* 11 U.S.C. § 362(g) (2025).

¹³² *Id.*

¹³³ *In re Poissant*, 405 B.R. 267, 271 (Bankr. N.D. Ohio 2009).

¹³⁴ 11 U.S.C. § 541(a)(1) (2025) and 11 U.S.C. § 1306(a)(1) and (b) (2025).

longer property of the estate.¹³⁵ The Fleetwood real property was protected by the automatic stay when the Receiver submitted its application to be appointed the receiver for the Fleetwood real property, and filed for and obtained a Receiver's Lien of \$26,890.00.¹³⁶

No exceptions under subsection 362(b) apply.¹³⁷ The Court finds that the Receiver was acting to enforce a judgment lien of \$26,890.00.¹³⁸ Specifically, the Receiver violated subsection 362(a)(4), which operates to stay acts that "create, perfect, or enforce any lien against property of the estate."¹³⁹ On the March 18, 2025, hearing, the Receiver argued that the automatic stay should be lifted to enable the Receiver to auction the Fleetwood real property, transfer the real property, and enforce its Receiver's Lien.¹⁴⁰ Ms. Stinson filed her chapter 13 bankruptcy on January 13, 2020.¹⁴¹ The Receiver filed its application to be appointed as the Receiver to the Environmental Court on August 31, 2023.¹⁴² The Receiver filed a Motion for the Authorization of Receiver's Lien of \$26,890.00 and the Environmental Court entered an order approving the Receiver's Lien on May 16, 2024.¹⁴³ None of the above events were permitted to occur under subsection 362(b)(4). As subsection 362(b)(4) specifically excludes the creation of a lien, the

¹³⁵ 11 U.S.C. § 541(a)(1) (2025) and 11 U.S.C. § 1306(a)(1) and (b) (2025).

¹³⁶ 11 U.S.C. § 362(a) (2025).

¹³⁷ The Receiver cannot invoke subsection 362(b)(4). Even if there was a plausible argument that subsection 362(b)(4) applies, 362(b)(4) applies to subsections 362(a)(1), (2), (3), and (6). Because subsection 362(a)(4) is excluded from subsection 362(b)(4), the Receiver could not take action to create and enforce lien.

¹³⁸ Receiver's Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46 and City's Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15, ECF No. 60.

¹³⁹ 11 U.S.C. § 362(a)(4) (2025).

¹⁴⁰ Hr'g on Mar. 18, 2025, at 11:07 a.m.

¹⁴¹ Volunt. Pet., ECF No. 1.

¹⁴² Receiver's Mot. to Terminate Automatic Stay, Ex. C, pp. 10-12, ECF No. 46.

¹⁴³ Receiver's Mot. to Terminate Automatic Stay, Ex. D, pp. 13-15, ECF No. 46 and City's Mot. to Determine Automatic Stay Inapplicable, Ex. D, pp. 13-15.

Receiver was not permitted to file its Motion for the Authorization of Receiver's Lien because Ms. Stinson was already in bankruptcy, the Fleetwood real property was property of her chapter 13 estate, and the Fleetwood real property was protected by the automatic stay.¹⁴⁴

D. Ms. Stinson's Motion to Intervene is Denied.

On November 18, 2024, Ms. Stinson filed her Motion to Intervene.¹⁴⁵ There was no cognizable relief requested in Ms. Stinson's motion.¹⁴⁶ Accordingly, the Motion to Intervene should be denied.

III. CONCLUSION AND ORDER

The Court finds and concludes that the Fleetwood real property constitutes property of the estate and is protected by the automatic stay. The City and Receiver should have first sought relief from the automatic stay prior to acting against property of estate (the Fleetwood real property) and moving forward in the Environmental Court proceeding under the Neighborhood Preservation Act. Subsection 362(b)(4) is not applicable to the City's actions. The Court cannot grant stay relief, retroactively, to sanction actions taken against the property of the estate and to allow the parties to complete a process that was taken without obtaining stay relief.

The Court's focus was primarily on the automatic stay and protecting property of the estate, and in no way should be construed as evaluating the substance, merit, or statutory scheme of the Neighborhood Preservation Act.

For the reasons stated above, the Court finds and concludes that the City's *Motion for Order Determining Automatic Stay to be Inapplicable Pursuant to 11 U.S.C. § 362(b)(4) and, in*

¹⁴⁴ 11 U.S.C. § 362(b)(4) (2025).

¹⁴⁵ Debtor's Mot. to Intervene, ECF No. 50.

¹⁴⁶ Debtor's Mot. to Intervene, ECF No. 50.

the Alternative, for Relief from the Automatic Stay should be denied. The Receiver's *Motion to Terminate Automatic Stay for the Purpose of Transferring Real Estate Property to Satisfy the Receiver's Lien Under the Tennessee Neighborhood Preservation Act and for Abandonment* should be denied. Ms. Stinson's *Motion to Intervene* should be denied.

Accordingly, it is **ORDERED**:

1. The City of Memphis's *Motion for Order Determining Automatic Stay to be Inapplicable Pursuant to 11 U.S.C. § 362(b)(4) and, in the Alternative, for Relief from the Automatic Stay* is **DENIED**.
2. Clark and Company Investment LLC's *Motion to Terminate Automatic Stay for the Purpose of Transferring Real Estate Property to Satisfy the Receiver's Lien Under the Tennessee Neighborhood Preservation Act and for Abandonment* is **DENIED**.
3. Ms. Stinson's *Motion to Intervene* is **DENIED**.
4. The City and Receiver are directed to file with or otherwise provide a copy of this *Memorandum Opinion and Order* to the Environment Court so that appropriate steps may be taken regarding this Court's ruling regarding the automatic stay and property of the estate.

Copies to be served on:

Debtor: Jo Alma Stinson, 57 W Brooks Road, Memphis, TN 38109.

Attorney for the City of Memphis: Michael P. Coury, Glanker Brown PLLC, Suite 400, 6000 Poplar Avenue, Memphis, TN 38119; Email: mcoury@glankler.com.

Attorney for Clark and Company Investment, LLC: Victoria Young Robinson, Young Robinson Law, 1840 Pyramid Place, Suite 252, Memphis, TN 38132; Email: victoria@youngrobinson.com.

Chapter 13 Trustee: Sylvia F. Brown, 200 Jefferson Ave., Suite #1113, Memphis, TN 38103; ecf@ch13sfb.com.

United States Trustee: Office of the U.S. Trustee, One Memphis Place, 200 Jefferson Avenue, Suite 400, Memphis, TN 38103; ustpregion08.me.ecf@usdoj.gov.