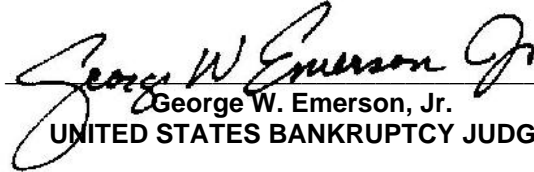




**Dated: June 30, 2017**  
**The following is SO ORDERED:**

  
George W. Emerson, Jr.  
UNITED STATES BANKRUPTCY JUDGE

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

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In re

WILLIAM THOMAS NEWTON,

Case No.17-25049-GWE

Debtor.

Chapter 13

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**ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

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These matters are before the Court on the application of J. Bradford Currie, Executor of the estate of Francis Crittenden Currie (“Movant”) for an order of relief from the automatic stay of 11 U.S.C. § 362 and the Debtor’s response thereto. The hearing of this matter took place on June 29, 2017, at which time the Court took the matter under advisement.

William Thomas Newton (“Debtor”) filed this Chapter 13 voluntary petition on June 8, 2017. Prior to the filing of the petition, Debtor and Movant were engaged in protracted litigation in the Chancery Court of Shelby County, Tennessee (“Chancery Court Litigation”). The Chancery Court Litigation resulted from Movant’s attempt to collect obligations owed by Debtor’s mother, Mary Ann Newton, which were secured by real property located at 324 S. Mendenhall Road, Memphis, Tennessee (the “Real Property”), that became due upon her death.

The Chancery Court litigation resulted in summary judgment being granted to Movant. The Chancery Court found that on August 26, 2013, the day Mary Ann Newton died, the total amount of principal and accrued interest that was owed by Mary Ann Newton to Movant was \$1,166,384.16. This amount became due upon her death, pursuant to the various loan documents that were executed by Mary Ann Newton and Francis Crittenden Currie during their lifetimes. *See* Pl's. Ex. A-1.

The Chancery Court further found that the sole recourse Movant was entitled to, pursuant to the agreements between the parties, was foreclosure upon the real property. *Id.* Debtor appealed the Chancery Court's order, which granted summary judgment to Movant, to the Court of Appeals of Tennessee and on October 18, 2016, the appeal was dismissed because neither Debtor nor his brother, who filed the appeal on behalf of Mary Ann Newton's estate, were licensed attorneys capable of representing the estate. Pl's. Ex. A-2, A-3.

Following dismissal of the appeal, Movant began the foreclosure process, publishing a Notice of Sale, with the final publication date being January 13, 2017, and with the sale to be held on January 20, 2017. Pl's. Ex. A-4. On January 18, 2017, just prior to the foreclosure sale being conducted, Debtor and his brother filed a verified petition for injunctive relief in the Chancery Court alleging, among other things, that Mary Ann Newton's estate was never served with the Notice of Sale. Pl's Ex. A-5. The Chancery Court issued a restraining order that same day, and enjoined the foreclosure. On February 1, 2017, a full hearing was conducted in Chancery Court on the verified petition, at which time the verified petition for injunctive relief was dismissed, with the Chancery Court directing Movant to prepare an order to be submitted before the Chancery Court on February 3, 2017, at 10:30 a.m.

Chapter 13 Case No. 17-21032-PJD was filed by the Debtor on February 2, 2017. Movant filed a motion for relief from the automatic stay in that case, and the motion was granted by the

bankruptcy court. On March 23, 2017, the order granting relief from the stay as to Movant was entered on the court's docket. Pl's Ex. A-6. On March 30, 2017, an order dismissing Case No. 17-21032 was entered on the court's docket, based on the Debtor's failure to attend either setting of the meeting of creditors in that case.

On April 7, 2017, following dismissal of Chapter 13 Case No. 17-21032, a final order disposing of all post-trial issues was entered in Chancery Court and on May 10, 2017, Movant again commenced foreclosure proceedings against the Real Property, ultimately scheduling the foreclosure for June 9, 2017. Pl's Ex. A-7, A-8. On June 8, 2017, Debtor filed this Chapter 13 Case, No. 17-25049, and as a result, the foreclosure sale was not conducted. Movant filed its application for relief from the automatic stay in this case on June 9, 2017.

Pursuant to 11 U.S.C. § 362(a)(3), the filing of a bankruptcy petition operates as a stay of any and all actions that pertain to property of the estate and stops all attempts by creditors to possess, collect, recover, or create and perfect a lien on property of the estate. These prohibited actions include nonjudicial foreclosures. *See, e.g., Select Portfolio Servicing, Inc., v. Love (In re Love)*, 353 B.R. 216, 219 (Bankr. W.D. Tenn. 2006).

The automatic stay "gives the honest debtor an opportunity to protect his assets for a period of time so that the resources might be marshalled to satisfy outstanding obligations." *Laguna Assocs. Ltd. P'ship v. Aetna Casualty & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F. 3d 734, 737 (6th Cir. 1994). However, § 362(d) allows the stay to be lifted "for cause," including lack of adequate protection of an interest in property, or lack of equity in property that is not necessary to an effective reorganization. The term "cause" is not defined by the Bankruptcy Code. "Accordingly, courts have discretion to determine what constitutes 'cause' on a case-by-case basis." *In re Elkins*, Case No. 16-51491, 2016 WL 6892728 at \*3, citing *Trident Assocs. Ltd. P'ship v.*

*Metro Life Ins. Co. (In re Trident Assocs. Ltd. P'ship)*, 52 F. 3d 127, 131 (6th Cir. 1995) and *Laguna Assocs.*, at 737.

Lack of good faith in filing a petition is cause for lifting the automatic stay. *Id.* at 738. In determining good faith in the filing of a petition for relief, the Court looks to a multitude of factors, including:

(1) the debtor has one asset; (2) the pre-petition conduct of the debtor has been improper; (3) there are only a few unsecured creditors; (4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court; (5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford; (6) the filing of the petition effectively allows the debtor to evade court orders; (7) the debtor has no ongoing business or employees; and (8) the lack of possibility of reorganization. *Id.* at 738.

This list is not exhaustive, and the Court is mindful that a totality of the circumstances are to be examined when making such a determination. At the hearing of this matter, Debtor testified on his own behalf.

Several of the indicia of bad faith are present in this case. This is Debtor's second bankruptcy case filed in 2017. This case was filed the day before Movant's scheduled foreclosure sale of the Real Property. The Debtor and his brother have been unsuccessful in defending against the foreclosure, including having a petition for injunctive relief dismissed by the Chancery Court. The Debtor and Movant have proceeded in Chancery Court to a final judgment, and Debtor lost.

The stay was lifted by court order in Debtor's previous Chapter 13 case, which was dismissed after Debtor failed to appear at either setting of his § 341 meeting of creditors, and after the stay was lifted as to the Real Property. Allowing the stay to continue in effect in this case would allow Debtor to evade orders entered in both Chancery Court and in his previous bankruptcy case.

The Debtor has thus far failed to file schedules and statements in this case, despite having filed schedules and statements in a previous case less than five (5) months ago. Debtor's only source of income listed in Chapter 13 Case No. 17-21032 (his previous Chapter 13 case) was social security income, which, after expenses, allowed Debtor excess income of \$352.00 per month. Debtor's expenses did not include any payments toward Movant.

Debtor testified, at the hearing of this matter, that he continues to have \$2,200.00 in social security income as his only regular income. Debtor also testified that his income is not limited to his social security income, and that he has "potential income." The Chapter 13 Trustee reported, at the hearing on this matter, that Debtor made no plan payments in his previous Chapter 13 case, and has also made no payments in this, his current Chapter 13 case.

Further, in his previous case, Debtor filed a plan of reorganization which listed the obligation to Movant, in the "HOME MORTGAGE" section, as "Dispute. Disallow. Not owe debt." Debtor proposed no monthly payment to Movant. (Chapter 13 Case No. 17-21032, ECF No. 2). Debtor also testified that he is not residing at the Real Property, and that the utilities to the Real Property have been turned off due to nonpayment.

There is no hope for any reorganization that includes paying the obligation owed to Movant. Movant is owed \$1,166,384.16 and the obligation is only secured by the Real Property. Debtor's schedule D in the prior case listed the Real Property's value at \$272,100.00. Debtor admitted at the hearing on this matter that he knew that he had signed his previous Chapter 13 petition under oath, and had stated that the Real Property was worth \$272,100.00. Debtor did not testify that there had been a change or increase in the value of the property, rather, he testified that the property had different values for different purposes. Debtor testified that, in his opinion, the property would be

worth \$11,000,000.00, if developed.

When considering the above factors, the evidence before the Court is more than sufficient to support a finding that this bankruptcy petition was filed in bad faith. Given Debtor's lack of good faith in filing this petition, the Court also finds that "cause" exists to grant Movant relief from the automatic stay under 11 U.S.C. § 362(d)(1).

Further, the Court also finds that Movant is entitled to relief from having this order stayed by Fed. R. Bankr. Proc. 4001(a)(3) and so "orders otherwise" that movant is immediately entitled to enforce its rights in the Real Property. Movant would be further prejudiced by the stay of this Order, after having its foreclosure sale thwarted by Debtor's bad faith in filing this petition, by the filing and subsequent dismissal of Debtor's previous Chapter 13 petition, and by the injunctive relief obtained by the Debtor in Chancery Court. The Debtor's entitlement to the stay of the effectiveness of this Court's order, which Rule 4001(a)(3) normally provides, is essentially an equitable remedy which would be barred by Debtor's unclean hands. *In re Eclair Bakery, Ltd.*, 225 B.R. 121, 143, n. 42 (Bankr. S.D. N.Y. 2000). Because the Debtor has filed this petition in bad faith, the Court is authorized to order that Debtor is not entitled to relief from the effectiveness of this order under Rule 4001(a)(3). The automatic stay of 11 U.S.C. § 362 is hereby lifted as to the Real Property, effective immediately.

IT IS SO ORDERED.

Cc: Debtor  
Counsel for Debtor  
Movant  
Attorney for Movant  
Chapter 13 Trustee