

Dated: December 22, 2022
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
Willie Beatrice White
Debtor

Case No. 22-24255
Chapter 13

**OPINION AND ORDER REGARDING MOTION FOR RELIEF FROM
AUTOMATIC STAY AND MOTION TO STRIKE TESTIMONY AND TO CITE
CYNTHIA MURDEN FOR CONTEMPT OF COURT**

Cynthia Murden of LR Johnson, LLC (“Movant”), the purported owner of 1804 Foster Avenue, Memphis, Tennessee 38114, seeks an order modifying the automatic stay in order to proceed with an eviction proceeding between Movant and Willie B. White (“Debtor,” “Ms. White” or “Respondent”) in the General Sessions Court of Shelby County, Tennessee.

The Court held a hearing on the Motion for Relief from Automatic Stay (“Stay Motion”) [DE 10] on November 9, 2022. Cynthia Murden (“Ms. Murden”) testified on behalf of Movant. Debtor then filed a Motion to Strike Testimony and to Cite Cynthia Murden for Contempt of Court (“Contempt Motion”). [DE 30] The Court held a subsequent hearing on the Contempt Motion on December 7, 2022. The record was left open to allow Debtor’s counsel to file an Affidavit regarding the authentication of certain documents attached to the Contempt Motion.¹ [DE 50] The Court took these matters under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (G). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. This memorandum of decision constitutes the Court’s findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 9014 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, testimony of witnesses, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court denies Movant’s Stay Motion and sanctions Ms. Murden for perjury.

**DISCUSSION OF BACKGROUND FACTS AND
PROCEDURAL HISTORY OF THIS CASE**

Ms. White has lived at 1804 Foster Avenue, Memphis, Tennessee 38114 (the “Property”) for 38 years, renting the Property pursuant to an oral month-to-month lease as a tenant at will.

¹ The Court allowed Ms. Murden’s and LR Johnson, LLC’s counsel seven (7) days to object to the affidavit. No objection was filed.

Laverne Johnson, Ms. Murden’s mother, owned the Property and lived there with Ms. White until her death on July 28, 2022.

Prior to Laverne Johnson’s death, on or about June 24, 2022, Laverne Johnson allegedly executed a quitclaim deed transferring the Property to LR Johnson, LLC. The quitclaim deed failed to have a proper acknowledgement. The acknowledgment noted that Gertrude Thomas appeared before the notary, and the remaining notary acknowledgement was cut off beside the notary’s signature. *See* Trial Exhibit 3, Shelby County Register of Deeds Instrument No. 22084459. The quitclaim deed was filed on the day of Laverne Johnson’s death. *Id.* Subsequently, on or about August 26, 2022, the quitclaim deed was “re-recorded” with a new acknowledgment identifying Laverne Johnson as the person who executed the quitclaim deed. *See* Shelby County Register of Deeds Instrument No. 22096196. Furthermore, the quitclaim deed at issue in this Court is the subject of a Probate Court action (the “Probate Action”) in which certain siblings of Ms. Murden suggest, among other things, that the quitclaim is defective and the signature of Laverne Johnson is not genuine. *See In re Laverene [sic] Johnson*, Shelby County, Tennessee Probate Court No. PR-23580.²

While this Court finds the quitclaim deed highly suspect, this is not the subject of the dispute before this Court. Instead, this Court heard testimony from Ms. Murden that LR Johnson, LLC is the owner of the Property. Ms. Murden testified that Ms. White had an oral lease with Laverne Johnson and she was paying monthly rent of \$725 to Laverne Johnson. Once LR Johnson, LLC became the purported owner of the Property (and after the death of Laverne Johnson), Ms.

² Also at issue is whether LR Johnson, LLC was a properly formed limited liability company on June 24, 2022 – the date of the alleged transfer - because the Tennessee Secretary of State did not recognize the company until July 29, 2022 (the day after the death of Laverne Johnson and the day after the first quitclaim deed was recorded).

Murden testified *under oath* that she sent notice to Ms. White on August 4, 2022 that “due to [the] transfer of ownership the new rental rate as of September 1, 2022, will be \$1850”. See Trial Exhibit 1.

Four days later on August 8, 2022, LR Johnson, LLC filed a Forcible Entry and Detainer suit in the General Sessions Court of Shelby County, Tennessee (the “FED Action”). See *Cynthia Murden/LR Johnson, LLC v. Willie B. White and Occupants*, Shelby County General Sessions Detainer Warrant No. 2146361. Ms. White filed a counterclaim against Movant for violation of the Tennessee Landlord Tenant Act.³

On October 3, 2022, the Debtor filed for relief under Chapter 13 of the Bankruptcy Code. On Schedule G of her Bankruptcy Petition Debtor listed a month-to-month executory contract with the Estate of Laverene Johnson relating to the Property. Debtor’s Chapter 13 Plan provides that she intends to assume her executory contract with the Estate of Laverene Johnson. [DE 16] Debtor lists as a financial asset her counterclaim against Cynthia Murden and LR Johnson, LLC. See DE 1, Schedule A/B, Part 4, Question 33.

Within days of Debtor’s Bankruptcy Petition being filed, Movant filed its Stay Motion seeking modification of the automatic stay in order to proceed with its FED Action. [DE 10] A hearing on the Stay Motion was held on November 9, 2022. Within days of the hearing, Debtor filed her Contempt Motion which the Court set for hearing on December 7, 2022.

DISCUSSION AND CONCLUSIONS

The Court has reviewed the record as a whole in this matter and will address the two pending motions before it.

³ Allegations include, among other things, wrongfully changing the locks, wrongfully turning utilities off, wrongfully removing personal property.

Stay Motion

The Debtor possesses the Property as a tenant at will under Tennessee law and the applicable state law permits Movant to terminate the tenancy, increase rent or otherwise change the terms of the lease with one month's notice. TENN. CODE ANN. § 66-28-512. The month-to-month tenancy provided by the oral lease is property of the estate subject to the protections of the automatic stay. *See* 11 U.S.C. §§ 362(a)(3), 541(a) and 1306; *Brattleboro Housing Auth. v. Stoltz (In re Stoltz)*, 197 F.3d 625, 629 (2d Cir. 1999) (“Unexpired leasehold interests...constitute property of the bankrupt estate.”) (citation omitted); *Schewe v. Fairview Estates (In re Schewe)*, 94 B.R. 938, 942 (Bankr. W.D. Mich. 1989).

Section 362(a)(1) and (3) stay attempts to secure possession of property of the estate as follows:

[A] petition filed under section 301, 302, or 303 of this title...operates as a stay, applicable to all entities, of –

(1) the commencement or continuation...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...

(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.

11 U.S.C. § 362(a)(1) and (3). With respect to residential leases, eviction and unlawful detainer proceedings are not stayed only in those narrow instances where the landlord secured a prepetition judgment of possession or proves that the tenant has “endangered property or illegally used or allowed to be used a controlled substance on the property.” 11 U.S.C. § 362(b)(22) and (23). There is no evidence in the record demonstrating that the residential lease exceptions to the automatic stay apply.

To this end, any acts to terminate the oral lease may be pursued only after entry of an order granting relief from stay.⁴ See, e.g., *Coates v. Peachtree Apartments (In re Coates)*, 108 B.R. 823, 826 (Bankr. M.D. Ga. 1989) (“[E]ven a month-to-month tenancy at will is property of the estate which debtor's landlord cannot terminate until the landlord obtains relief from the automatic stay.”) (citation omitted); *In re Schewe*, 94 B.R. at 946 (holding that the automatic stay precluded lessor's termination of month-to-month tenancy); *Sanden v. Chautauqua Capital Corp. (In re Chautauqua Capital Corp.)*, 135 B.R. 779, 782 (Bankr. W.D. Pa. 1992) (“The Bankruptcy Code offers no basis for extending the leases beyond their stated termination dates, except that the automatic stay of § 362 requires that relief from such stay be obtained before a lessor may take action with respect to a debtor's rights in the property.”); *Elder-Beerman Stores, Corp. v. Thomasville Furniture Indus. Inc. (In re Elder-Beerman Stores Corp.)*, 195 B.R. 1019, 1024 (Bankr. S.D. Ohio 1996) (“[W]hile parties may otherwise be permitted to terminate an agreement under state contract law, in bankruptcy such a termination would be in violation of the stay, and the parties must seek permission of the court to act.”) (citation omitted).

11 U.S.C. § 362(d) provides that:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay...

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property... if
 - (A) the debtor does not have an equity in such property; and
 - (B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d).

⁴ Parties attempting to terminate an unexpired lease or executory contract by notice without relief from stay appear to violate 11 U.S.C. § 362(a)(3). See *In re Mattoon*, No. 1:22-bk-10384-SDR, 2022 WL 2080184 (Bankr. E.D. Tenn. June 9, 2022).

Movant asserts that the automatic stay should be modified for cause pursuant to 11 U.S.C. § 362(d)(1). Movant argues “cause” exists because it filed the FED Action in Shelby County General Session Court on August 8, 2022, and that Debtor owes \$2,537.50 plus late fees, attorney fees and costs. While Movant filed the FED Action pre-petition, no judgment for possession has been awarded. The only other reason cited in support of the Stay Motion is that Debtor owes pre-petition rent.⁵

“Cause” to terminate or modify the automatic stay is not defined under the Bankruptcy Code except that it may include “lack of adequate protection.” 11 U.S.C. §§ 362(d)(1), 361(1) and (3). In this case, the Debtor’s Chapter 13 Plan provides for the assumption of the lease (though the ownership of the Property and person entitled to receive the rental payment is subject to the Probate Action). Movant did not argue the lack of adequate protection but instead focused on the argument that cause for termination of the automatic stay is the pending litigation (i.e. the FED Action), and because of this, the Court must consider the following factors in deciding whether to terminate the automatic stay: (1) judicial economy; (2) trial readiness; (3) the resolution of preliminary bankruptcy issues; (4) the creditor’s chance of success on the merits; and (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors. *Garzoni v. K-Mart Corp. (In re Garzoni)*, 35 Fed. Appx. 179, 181 (6th Cir. 2002) (citation omitted).

Here, the balancing of the applicable factors weigh in favor of denying the Stay Motion. The Court heard no evidence that the FED Action was ready for trial or how granting relief would benefit judicial economy. Traditionally, FED actions are almost immediately ready for trial, but in

⁵ Movant did not articulate any argument that it properly terminated the month-to-month tenancy pre-petition. However, evidence was presented as to a purported termination of the lease pre-petition. The Court finds that the Movant did not properly send the notice of increase in rent nor notice of termination until October 12, 2022 (post-petition). *See infra*.

this case, Debtor has filed a counterclaim against Movant and the underlying ownership of the Property is subject to the Probate Action. Judicial economy and trial readiness favor denial of the Stay Motion. Given the Probate Action between the heirs of Laverne Johnson, the FED Action judge, like this Court, will have to grapple with who is the true owner of the Property—something that should be determined by the Probate Court. *See Hayduk v. Burke (In re Burke)*, 592 B.R. 834, 843 (Bankr. E.D. Tenn. 2018) (bankruptcy court would not “interfere with ‘the administration of a decedent’s estate’”) (citation omitted). Judicial economy is better served by preventing duplication of litigation in three forums when it is the heirs of Laverne Johnson that need to litigate in Probate Court to determine the proper owner of the Property.

The Court also finds there are limited preliminary bankruptcy issues in this case because Debtor’s Chapter 13 Plan provides for the assumption of the lease with the Estate of Laverne Johnson (and there is no pending objection to said Plan or the assumption of the lease by either Movant or the Estate of Laverne Johnson).

The Court next finds that Movant’s chance of success on the merits weighs against Movant. Given the evidence presented during the hearing before this Court, the Court finds Movant’s motives questionable, her creditability completely lacking and evidence that she, *multiple times*, perjured herself weighs greatly against the Movant. *See infra*.

Furthermore, the potential cost of the defense of the FED Action, given the pending dispute over ownership, favors denial of the Stay Motion. The bankruptcy estate should not bear the burden of getting caught in the crosshairs of the dispute between the heirs of Laverne Johnson.

Finally, the preliminary issue for all the tribunals is a determination as to who owns the Property. This issue must be determined in the Probate Action which is a “specialized tribunal” with more expertise than this Court in interpreting probate law. *See In re Burke*, 592 B.R. 834.

For these reasons, the Court denies Movant's Stay Motion.

Contempt Motion

Perjury is "false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *U.S. v. Dunnigan*, 507 U.S. 87, 94 (1993) (citations omitted).

Ms. Murden testified *under oath* that she sent notice to Ms. White on August 4, 2022 that "due to [the] transfer of ownership the new rental rate as of September 1, 2022, will be \$1850." See Trial Exhibit 1. The Court reviewed the exhibits submitted by both Movant and Ms. White's counsel regarding this notice. The Court finds that the notice posted on Ms. White's door did NOT have the notice of change in rental rate. Compare Trial Exhibit 1 with Trial Exhibit 4.⁶ Specifically, the Court finds that the photograph of the notice posted on Ms. White's door does not have the additional language Ms. Murden testified was included in her August 4, 2022 notice of late rent and demand for payment. Instead, the Court finds that Ms. Murden perjured herself in that she claimed that the additional language at issue was included in her original August 4, 2022 letter. Ms. Murden is more than an uncreditable witness. The Court finds that she altered documents and presented them to the Court in a way to best position herself for relief. The false testimony concerned a material matter (i.e. when Movant properly provided notice to Ms. White as to the increase in rent). The Court specifically finds based on the testimony of witness Joyce Preston and the documents presented at trial that Ms. Murden sent notice with additional language

⁶ Exhibit 1 was proffered by Movant. Exhibit 4 was proffered by Debtor during cross-examination of Movant and still had scotch tape attached and appears to be the actual document in the photograph contained within Exhibit 1. Ms. Murden's testimony that she added additional language a couple of days after the original letter is not creditable given the timing of when this became her testimony during cross-examination.

as to the increase in rental payment on October 12, 2022. *See* Trial Exhibit 5 (envelope dated October 12, 2022 despite letter being dated August 4, 2022). Thus, the Court finds that Ms. Murden perjured herself by misstating the facts and altering documents submitted to the Court.

Ms. Murden also testified *under oath* that she did not have the utilities turned off at the Property. She simply said that the utilities were terminated for lack of payment. However, evidence to the contrary was presented by Debtor’s counsel during the hearing on the Contempt Motion. Specifically, the record reflects that Ms. Murden contacted Memphis Light Gas & Water (“MLGW”) not once, but three times⁷ to turn the utilities off at the Property. *See* DE 30, pp. 3-4; DE 50.

Additionally, Ms. Murden testified *under oath* that LR Johnson, LLC received two rental payments in September and October which she accepted and signed “with reservations;” however, based on the evidence presented during the Contempt Motion hearing, Ms. Murden again misstated the truth to the Court. Exhibit 1 presented during the Contempt Motion hearing shows that Ms. Murden only accepted and signed “with reservations” the October rent payment. *See* Contempt Motion hearing Exhibit 1. She accepted the September rent payment without reservations.⁸ *See id.*

The Court determines that it is clear that the above wrongful (and potentially criminal) conduct was intentional. Because of Ms. Murden’s conduct in this case, there is actual prejudice to Ms. White. Ms. White had to spend unnecessary time and money defending against false evidence. *See Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992). Second, the Court finds the misrepresentations were directed to disrupt the judicial process and these judicial proceedings. *Id.* Documents had been created to be used as exhibits to support Movant’s claims and to thwart

⁷ September 16, 2022, October 7, 2022 and October 10, 2022.

⁸ This evidence is relevant as to whether LR Johnson, LLC waived its right to receive the purported increase in rental rate of \$1850 versus the \$725 amount.

Ms. White's defenses/claims which interfered with the judicial process. *Id.* Third, the Court further finds, based on the record and evidence before it, that Movant intentionally and actively engaged in wrongful conduct to try to direct the outcome of a legal proceeding. *Id.*

Movant has engaged in at least four different improprieties: (1) creating altered documents; (2) producing the documents; (3) testifying using the altered documents in order to advance her position; and (4) testifying as to false information on numerous occasions. Just one of these improprieties should merit sanctions. Because there were multiple improprieties, this Court finds further reason to deny the Stay Motion as the sanction applied to Ms. Murden for engaging in fraud on this Court. *See Pope v. Fed. Express Corp.*, 974 F.2d 982, 984-85 (8th Cir. 1992) (affirming dismissal with prejudice where plaintiff offered perjured testimony and fake documents); *Alexander v. Jackson Radiology Assocs. P.A.*, 156 S.W.3d 11, 17 (Tenn. Ct. App. 2004) (Actions by party which included destruction of evidence and lying "offends the basic principles underlying our judicial system." Further, "dismissal of the action was within the range of sanctions available to the trial court."); *Wilson v. Wilson*, 58 S.W.3d 718 (Tenn. Ct. App. 2001) (Child custody case wherein the father lied during his deposition about his income and employment. As sanctions for the perjury, the court disregarded the entirety of the father's testimony, dismissed his motion to strike and ordered him to pay the mother's attorney fees and court costs.); *Walt Disney Co. v. Great Am. Corp.*, No. 2:91-0075, 1993 WL 546781, at *6 (M.D. Tenn. June 22, 1993) (Defendant obstructed the discovery process by lying and destroying evidence. The court granted plaintiff's motion for default judgment and payment of plaintiff's attorney fees as a sanction for the fraud committed on the court.); *see also Campos v. Correction Officer Smith*, 418 F.Supp.2d 277, 279 (W.D. N.Y. 2006) (pro se plaintiff "knowingly submitted a falsified exhibit in an attempt to rebut defendants' contention that he never appealed [a] grievance" and thus his complaint should be

dismissed for failure to exhaust administrative remedies. The court concluded that “plaintiff’s knowing presentation of a falsified document to a court is sufficient grounds for dismissal of complaint”) (citation omitted).

In addition, as the Court stated in *ABF Freight Sys., Inc. v. Nat’l Labor Relations Bd.*, 510 U.S. 317, 323 (1994), “[f]alse testimony in a formal proceeding is intolerable.” The Court finds that merely denying Movant’s Stay Motion (given that the motion should be denied on its face, and the fact that Ms. Murden has the potential ability to refile a motion at a later time if and when the Probate Court determines the true owner of the Property) would give the appearance of tolerating “a ‘flagrant affront’ to the truthseeking function of adversary proceedings.” *Id.* (citations omitted); *see also Chemtall, Inc. v. Citi-Chem, Inc.*, 992 F. Supp. 1390, 1409 (S.D. Ga. 1998) (“Use of the ‘ultimate sanction’ addresses not only prejudice suffered by the opposing litigants, but also vindicates the judicial system as a whole, for such misconduct threatens the very integrity of courts, which otherwise ‘cannot command respect if they cannot maintain a level playing field amongst participants.’”) (citation omitted). Instead, given the pattern of misconduct and deceitful behavior of Movant during her testimony on multiple topics, the Court also orders that Ms. White be awarded all of her reasonable costs and attorneys’ fees in responding to the Stay Motion, the related hearing, the Contempt Motion and related hearing.

Ms. White may file an affidavit and request for these fees and expenses on or before **January 13, 2023**. A failure to file the request by that date will constitute a waiver by Ms. White of any claim for fees and expenses. Movant may file a response itemizing any objections to Ms. White’s request within **seven (7) days** after Ms. White files her request. The Court will then consider the filings and determine the appropriate monetary sanction.

CONCLUSION

Movant's Motion for Relief from the Automatic Stay [DE 10] is **denied**. Ms. White's Motion to Strike Testimony and to Cite Cynthia Murden for Contempt of Court [DE 30] is **granted** as to the request for contempt. Ms. White's request to strike certain testimony of Ms. Murden is **moot**. Ms. Murden is hereby sanctioned as described in this Opinion and Order. The amount of the monetary sanction, if any, will be established by separate order as provided herein.

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

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