

Dated: July 19, 2023
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:

Case. No. 17-20831

Will J. Nelson and
Hattie N. Nelson,

Chapter 7

Debtors.

MEMORANDUM OPINION AND ORDER ON DEBTORS' MOTION TO SET ASIDE
AND VACATE PREVIOUS ORDER FOR RELIEF FROM AUTOMATIC STAY AND
RELATED RELIEF

This matter came before the Court upon Will J. Nelson and Hattie N. Nelson's Motion to Set Aside and Vacate Previous Order for Relief from Automatic Stay and Related Relief [DE 516] filed May 31, 2023, and Harbor Town Marina Association, Inc.'s Response filed June 7, 2023 [DE 519]. A hearing was held on June 14, 2023, and upon reviewing the supporting documentation and hearing arguments of counsel, the Court took the matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G) and (O); accordingly, this Court has 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. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered the statements of counsel, and reviewed the entire record of the cause. Based upon that review, and for the following reasons, Debtor’s Motion to Set Aside and Vacate Previous Order for Relief from Automatic Stay and Related Relief is hereby **DENIED**.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Will J. Nelson and Hattie N. Nelson (“Debtors”) filed their original Chapter 13 bankruptcy petition on January 27, 2017. The case was then converted to a case under Chapter 11 of the Bankruptcy Code, and ultimately converted to a case under Chapter 7; the Order Converting Chapter 11 Case to Chapter 7 Case [DE 305] was entered by the Court on July 24, 2019. To date, Debtors have been debtors and litigants of this Bankruptcy Court for nearly six-and-a-half years.

Entering the fray “late,” so to speak, but not prohibitively so, Harbor Town Marina Association, Inc. (“Creditor”) filed its Motion for Relief from the Automatic Stay [DE 511] on April 29, 2023, seeking to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in regard to a boat slip (“Slip E-09”) owned by Debtors. The motion alleged, *inter alia*, that Debtors have been delinquent in payment for a number of years, are in post-petition default, and that Slip E-09 had been abandoned by the Chapter 7 trustee as she had determined that it was “burdensome and had an ‘inconsequential value to the [e]state.’” Creditor’s Mot. for Relief 2-3. Further, the boat occupying Slip E-09 had fallen into such a state of disrepair that it partially sunk in the marina. *Id.* at 1. The Court held a hearing on May 17, 2023, and operating on these facts coupled with the absence of a response opposing relief (*see* Local Bankruptcy Rule 9013-1(b)), it granted Creditor’s motion without opposition. A corresponding Order reflecting that disposition was entered on May 18, 2023 [DE 514].

On May 31, 2023, Debtors filed their Motion to Set Aside and Vacate Previous Order for Relief from Automatic Stay and Related Relief [DE 516]. The Motion alleged that Debtors did not receive timely notice of Creditor's pending Motion for relief due to Debtors' counsel being unavailable for in-person hearings until July 2023, of which counsel informed the Court at a hearing held on April 19, 2023. Debtors' Mot. Set Aside 2. The Motion further states that Debtors do not entirely oppose affording automatic stay relief to Creditor, but that they would like the record to reflect their opposition to granting that relief at this time. *Id.* The grounds for Debtors' objection lie in Federal Rule of Bankruptcy Procedure 9024, and by extension Federal Rule of Civil Procedure 60(b), both of which deal with relief from a judgment or order. Specifically, Debtors cite Rule 60(b)(6), which "provides a catchall for 'any other reason that justifies relief.'" *Kemp v. United States*, 142 S. Ct. 1856, 1861 (2022). Arguing that granting automatic stay relief to Creditor causes substantial harm, represents irreparable injury, is unduly prejudicial and detrimental, and generally perpetrates injustice, Debtors move this Court to vacate its Order Granting Relief from the Automatic Stay. Debtors' Mot. Set Aside 1, 3-4.

In its Response, Creditor effectively reasserts its grounds for relief as stated in its original motion. In addition, Creditor addresses Debtors' argument regarding lack of notice, arguing that it served electronic copies to all parties listed on the matrix and served physical copies via U.S. mail to all three attorneys associated with Debtors; however, no response was filed prior to a hearing on the motion held on May 17, 2023. Creditor's Resp. 1. Creditor also notes that "[o]ne of the attorneys listed as Debtors' counsel was present [at the hearing] but stated that she was no longer representing Debtors in this cause." *Id.* at 2. Further grounds for relief—and to deny Debtors' Motion to Set Aside—include that Debtors do not entirely oppose automatic stay relief and Debtors' failure to address why they have allowed the debt owed to Creditor to increase from

approximately \$4,000 at the time of filing to approximately \$11,000, excluding attorneys' fees, which Creditor states is "substantial, especially in light of the nature of the type of organization the [Creditor] is." *Id.* at 3.

At a hearing held on June 14, 2023, the Court heard arguments from counsel regarding Debtors' Motion to Set Aside and Creditor's Response. The Court took the matter under advisement for further consideration and now addresses the issue before the Court in this Opinion and Order.

LAW

Federal Rule of Bankruptcy Procedure 9024 incorporates FED. R. CIV. P. 60 and allows parties, in appropriate actions, to obtain relief from orders entered by the Court. Rule 60(b) provides six grounds under which relief may be granted:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). Federal Rule of Bankruptcy Procedure 9024 applies Rule 60(b) to cases arising under the Bankruptcy Code, giving a bankruptcy judge the discretion generally afforded to a district judge under the Rule. *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 363 n. 5 (6th Cir. 1990) (citation omitted). However, Rule 60(b) "does not give courts unlimited authority to fashion relief as they deem appropriate. Relief under the Rule is an extraordinary remedy." *Karr v. Pankey (In re Pankey)*, 122 B.R. 710, 712 (Bankr. W.D. Tenn. 1991) (citation omitted). To achieve relief under Rule 60(b), the moving party must establish that such relief is warranted by clear and

convincing evidence. *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (citations omitted).

ANALYSIS

Because the burden of proof is on the moving party, the Court must first look to Debtors' Motion to Set Aside to determine whether that burden has been met. Debtors seek relief pursuant to Rule 60(b)(6), which allows relief to be granted for any other justified reason that does not fall within the Rule's enumerated categories. To that end, Debtors cite numerous grounds for relief, which are best characterized by Creditor in its response as "vague," and in the Court's opinion, unrelated and confusing. To put it colloquially, Debtors' reasons are "a mile wide and an inch deep."

For example, Debtors maintain that automatic stay relief at this juncture would be unduly prejudicial and detrimental, but they fail to describe *how*. Debtors argue that previous motions for relief filed by *another* creditor have been denied "pending several unresolved and complex issues," but they fail to describe how those instances are related to this one. Debtors' Mot. Set Aside 3. Debtors fail to recognize the Chapter 7 trustee's abandonment of the property at issue and fail to discuss how the creditor in this proceeding is actually adequately protected (as compared to the mortgage holder in a prior proceeding that benefited from a substantial equity cushion). Given the type of asset involved here and the value of the asset (*See* Chapter 7 Schedule A/B, Section 1.6 [DE 325] (value of \$6,500)) compared to the outstanding debt (\$11,000), there is simply no equity.

Moreover, venturing into the confusing, Debtors state that it was their "due diligence that led to further proceedings and therefore [their] desire not to suffer further detriment," that they had "been seeking and inquiring about the boat slip for over six (6) months prior to any filings," and

that they “desired to make payments and arrangements for several years but [were] prohibited due to the extended time of the Debtors’ proceedings for several years.” Debtors’ Mot. Set Aside 3. As before, Debtors fail to describe what due diligence was performed and how it “led to further proceedings” (or what those proceedings were), what inquiring about Slip E-09 for six months accomplished, or how exactly the protracted nature of their bankruptcy case prohibited Debtors from making payments and/or arrangements regarding Slip E-09.

To illustrate further, Debtors assert that they were contacted in January 2023 and told that their boat had suffered extensive damage—presumably the damage that caused it to partially sink in the marina—and they speculate that this was “potentially due to the power being discontinued,” but once again, they give no details as to who or what caused the power outage nor how the loss of power could have damaged the boat to the point of sinking. *Id.* at 4. Upon learning of the damage to the boat, and to mitigate further damages, Debtors state that they “contacted the Trustee to inquire about the boat slip with [Creditor],” but once more they fail to explain the purpose or result of the inquiry. *Id.*

Characterizing this Court’s Order Granting Relief from the Automatic Stay as unduly prejudicial and detrimental, unjust, extraordinary, unanticipated, substantially harmful, and as inflicting irreparable injury that “greatly outweighs any alleged ‘harm’ to [Creditor],” Debtors move this Court to grant their Motion to Set Aside. *Id.* at 3–4. In lieu of relief from the automatic stay, Debtors would have the parties negotiate a consent agreement to address damages, arrears, and other concerns, arguing that Creditor “has been under the stay for over six years and would not be greatly harmed by [a] brief delay in relief.” *Id.* at 4. Not only do Debtors fail to elaborate on their chosen adjectives, but they also fail to address what has prevented them from reaching a consent agreement with Creditor in the six-plus years prior to it being granted relief from the

automatic stay. What's more, Debtors' contention that Creditor would not be harmed by a delay in relief is unsupported by the facts, which demonstrate that Debtors' obligation to Creditor has grown from approximately \$4,000 at the time of filing to approximately \$11,000 as of this writing, which denotes severe post-petition default by Debtors.

Further, the Court can discern no harm being inflicted upon Debtors by granting Creditor relief from the automatic stay, and certainly not any harm that "greatly outweighs any alleged 'harm' to [Creditor]." *Id.* First, the Chapter 7 trustee determined that Slip E-09 was "burdensome and [had an] 'inconsequential value to the [e]state,'" resulting in her filing a Notice of Proposed Abandonment of Property of the Estate. [DE 509] *See also* Creditor's Mot. for Relief 3. Second, the Debtors' own actions demonstrate that little to no thought was given to this "asset," and the facts alleged in their Motion show that they were initially unaware that their boat had been damaged and partially sunk, who or what caused that damage, or who was even responsible for maintaining the property. Third, and perhaps the proverbial death knell of Debtors' half-hearted attempt at seeking relief, is their own admission that they do not entirely oppose lifting the automatic stay, which cannot be reconciled with Debtors' aforementioned characterizations of this Court's Order Granting Relief from the Automatic Stay.

Finally, the Court is unpersuaded that it should allow the record to reflect Debtors' opposition to Creditor's motion for relief as requested by Debtors. Creditor filed its motion on April 29, 2023, with a bar date for objections set for May 15, 2023. Despite maintaining to the contrary, Debtors and three attorneys associated with them were served a notice of hearing, which was scheduled for May 17, 2023. Regardless of whether Debtors' counsel was unavailable for in-person hearings during that time, nothing would have prevented counsel from filing a written objection to Creditor's motion as contemplated by Local Bankruptcy Rule 9013-1(b). Had Debtors

timely filed an objection to Creditor's motion; however, the Court is not convinced that it would have made a difference in the disposition. Debtors are in significant post-petition default and have not provided post-petition payments (or even any adequate protection payments) to Creditor, both of which are sufficient grounds for relief from the automatic stay given there is no equity in the property.

In light of the foregoing, the Court finds that Debtors have failed to meet their burden for relief pursuant to Federal Rule of Civil Procedure 60(b)(6) by clear and convincing evidence. As such, invocation of this "extraordinary remedy" is unwarranted.

CONCLUSION

For the reasons stated herein, Debtors' Motion to Set Aside and Vacate Previous Order for Relief from Automatic Stay and Related Relief is hereby **DENIED**.

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

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