

Dated: January 22, 2024
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
Irma Ezell Sanders
Debtor

Case No. 23-23766
Chapter 13

**OPINION AND ORDER GRANTING AMENDED MOTION OF WILLIAMS REALTY
& INVESTMENTS, LLC FOR COMFORT ORDER**

This matter is before the Court on the Amended Motion of Williams Realty & Investments, LLC for a “comfort order” confirming its position that there is no automatic stay in effect as to Williams Realty & Investments, LLC regarding its actions pertaining to real property located at 464 Parkdale Drive, Memphis, Tennessee. [DE 22]

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). 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 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. 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that there is no automatic stay in effect in this Chapter 13 case.

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

The relevant facts – including the key dates of this case - are undisputed. Debtor Irma Ezell Sanders commenced a Chapter 13 bankruptcy case in this Court on August 5, 2019 and that case was dismissed on motion of the Chapter 13 trustee on December 19, 2022 due to the Debtor’s failure to make plan payments. [Case No. 19-26058, DE 69] Debtor then filed a second Chapter 13 case on April 6, 2023, and that case was subsequently dismissed on April 26, 2023 for Debtor’s failure to complete the filing requirements. [Case No. 23-21719, DE 11] Debtor then filed this Chapter 13 case on August 2, 2023, bringing this case within the “2 or more . . . cases of the debtor were pending within the previous year but were dismissed” provision of Bankruptcy Code § 362(c)(4)(A)(i) so that the automatic stay did not go into effect upon this filing of this case. 11 U.S.C. § 361(c)(4)(A)(i).

The day after this case was filed, on August 3, 2023, Movant Williams Realty & Investments, LLC, purchased Debtor’s real property located at 464 Parkdale Drive, Memphis, Tennessee in a foreclosure sale. [DE 22, p.1] On December 5, 2023, Movant filed a Notice of Sale

indicating that it has now sold the property to third party HB Acquisitions, LLC, and asserting that HB Acquisitions, LLC is now the legal title holder of the property at issue. [DE 43]

It is against this factual backdrop that the Court determines the Motion before it.

LAW AND ANALYSIS

As a general rule, from the moment a bankruptcy petition is filed under Chapter 7, 11, 12, or 13, the debtor and the debtor's estate are afforded the protection of an automatic stay against essentially all creditor collection activity, without any action by the bankruptcy judge. This broad protection is established in Bankruptcy Code § 362(a), which provides that the filing of a bankruptcy petition

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 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.

11 U.S.C. § 362(a). The legislative history outlines the reasoning for this central element of bankruptcy law:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 95-595, at 340 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6296-97.

Hence, absent one of the exceptions enumerated in Bankruptcy Code § 362(b), the filing of a bankruptcy petition prohibits the commencement or continuation of a judicial action against

the debtor, any act to collect on a claim against the debtor, the enforcement of any judgment against the debtor, the exercise of setoff rights, and any act to obtain possession of or create a lien on the debtor's property. HON. WILLIAM HOUSTON BROWN, BANKRUPTCY AND DOMESTIC RELATIONS MANUAL 96 (Gavin Phillips et al. eds., 2007). In most bankruptcy cases, the automatic stay remains in effect until the bankruptcy case is either dismissed or otherwise concluded, or unless an interested party files a motion for termination of the automatic stay pursuant to 11 U.S.C. § 362(d).

One exception to the general rule imposing the automatic stay, however, applies to “repeat” or “serial” filers such as the Debtor in this case. The Code is very clear that

if a single or joint case is filed by . . . a debtor . . . and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed . . . the stay under subsection (a) shall not go into effect upon the filing of the later case; and on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect.

11 U.S.C. § 362(c)(4)(A)(i) and (ii). In this case, Ms. Sanders is such a debtor and Williams Realty and Investments, LLC is such a party in interest. This Court has historically generously granted the motions of countless debtors for imposition of the automatic stay upon a proper showing, but no such motion was filed by the Debtor in this case. Debtor did file an adversary proceeding and a motion for a temporary restraining order on November 8, 2023¹, but the adversary proceeding is essentially “too little, too late.” There is no dispute that the foreclosure sale conducted on August 3, 2023, took place at a time when no automatic stay was in effect. There is still no automatic stay in place in this case. The Court granted Debtor's Motion for Temporary Restraining Order [Adv. Proc. 23-00125 DE 2] in an attempt to stay Debtor's eviction from the property until such time as the Court decides the Motion for Comfort Order before it. [DE 22]

¹ The Court will enter a separate order in Adversary Proceeding 23-00125, *Sanders v. Williams Realtors & Investments, LLC, et al*, terminating the temporary restraining order in accordance with this Opinion and Order.

Unfortunately for the Debtor in this case, the Court's hands are tied by the unambiguous provisions of the Bankruptcy Code. The Motion of Williams Realty & Investments, LLC, for a comfort order confirming that no automatic stay is in effect in this case pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) is therefore granted.

CONCLUSION

Based on the facts presented, the Court finds that the Amended Motion of Williams Realty & Investments, LLC, for a comfort order confirming that no automatic stay is in effect in this case as to Williams Realty & Investments, LLC, and the property located at 464 Parkdale Drive, Memphis, Tennessee pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) [DE 22] is well-taken and therefore granted.

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

Ms. Irma Ezell Sanders
Ms. Alicia Sanders
464 Parkdale Drive
Memphis, TN 38109

Mr. Ben Sissman
Attorney for Williams Realty & Investments, LLC
44 N. Second St., Suite 403
Memphis, TN 38103

Ms. Jennifer K. Cruseturner, Esq.
Chapter 13 trustee
5350 Poplar Avenue, Suite 500
Memphis, TN 38119-3697

United States Trustee
Office of the United States Trustee
200 Jefferson, Suite 400
Memphis, TN 38103