

**Dated: November 26, 2024**  
**The following is ORDERED:**



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

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**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

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

In re  
**Nancy Ellis Neely**  
Debtor

Case No. 24-25102  
Chapter 13

**Randall J. Fishman, Successor Trustee of**  
**the Henry C. Ellis, III Revocable Living Trust**

**MOVANT**

v.

**Nancy Ellis Neely**

**RESPONDENT**

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**OPINION AND ORDER DENYING WITHOUT PREJUDICE MOVANT'S MOTION**  
**FOR RELIEF FROM THE AUTOMATIC STAY**

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This matter came before the Court upon the Motion for Relief from the Automatic Stay (the “Motion”) filed by Randall J. Fishman, Successor Trustee of the Henry C. Ellis, III Revocable Living Trust (“Ellis Trust”), by and through counsel, Richard S. Townley, Esq [DE 12] filed October 17, 2024, and Nancy Ellis Neely’s (“Ms. Neely” or “Debtor”) Response filed November 12, 2024 [DE 21]. A hearing was held on November 20, 2024, and upon reviewing the relevant supporting documentation and hearing arguments of counsel, the Court took the matter under advisement.

### **JURISDICTION**

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G); 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. This order of decision constitutes the Court’s findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 9104 and 7052. Regardless of whether or not specifically referred to in this decision, the Court has examined the docket, the submitted materials, considered statements of counsel, considered all of the evidence, and reviewed the entire record of the cause. Based upon that review, and for the following reasons, the Court finds that Plaintiff’s Motion for Relief is hereby denied without prejudice.

### **DISCUSSION OF BACKGROUD FACTS AND PROCEDURAL HISTORY OF THE CASE**

The facts of this case are undisputed. By succession upon the death of her father, the Debtor became trustee of the Henry C. Ellis, III Revocable Living Trust, and, along with other family members, was named a beneficiary of the Trust. Under the Trust provisions, distributions to the

beneficiaries flow into separate, individual trusts, and Debtor is also accordingly the trustee and beneficiary of the separate Nancy E. Neely Trust.

Movant has placed much emphasis on the Spendthrift Provision of the Ellis Trust [DE 12-1], which provides, in pertinent part:

**Section 13.02 Spendthrift Provision**

Neither the income nor the principal of any trust created under this trust agreement may be assigned, anticipated, encumbered, alienated, or otherwise voluntarily transferred in any manner by any beneficiary. In addition, neither the income nor the principal of any trust created under this trust agreement is subject to attachment, bankruptcy proceedings or any other legal process, to the interference or control of creditors or others, or otherwise subject to any involuntary transfer.

The separate trusts of the beneficiaries are also subject to the spendthrift clause.

On May 6, 2020, an action was commenced by several Trust beneficiaries in the Chancery Court of Shelby County, Tennessee, to remove Debtor as trustee of the Ellis Trust, and a successor trustee was ultimately appointed. During the past four (4) years the parties have continued to litigate various matters in the Chancery Court and the litigation is still actively progressing with a trial date of January 27, 2025. Faced with an impending Chancery Court hearing on a pretrial motion for summary judgment and a pending motion for default judgment related to a discovery dispute, the Debtor commenced this Chapter 13 bankruptcy case on October 15, 2024, bringing the Chancery Court action to a halt.

The Movant, Successor Trustee for the Ellis Trust, filed a Motion for Relief from the Automatic Stay [DE 12] in order to proceed with the litigation against the Debtor in Chancery Court, and this Court held a hearing on the Motion on November 20, 2024. During the hearing the Court learned that the other Trust beneficiaries have each received a distribution of \$200,000, but in order to protect the Debtor's distribution from various judgment creditors, the Debtor has

received a distribution of only \$50,000, with the remaining \$150,000 still held in the Ellis Trust. Ellis Trust argues that the Spendthrift Provision prevents Debtor's Trust allotment from becoming part of her bankruptcy estate and should therefore be subject to distribution as determined by the Chancery Court's ultimate ruling. Further, Ellis Trust asserts that the rights of the non-debtor Trust beneficiaries should be adjudicated in Chancery Court.

Debtor does not dispute this argument, but instead contends that it is inequitable to allow the Chancery Court Action to proceed when the Debtor has no remaining funds to defend the lawsuit and she is unable to apply her \$150,000 distribution from the Ellis Trust to such a defense.

It is against this factual background that the Court took this matter under advisement.

## **DISCUSSION**

The automatic stay is often described as "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. New Jersey Dep't of Env't Prot.*, 474 U.S. 494, 503 (1986) (citation omitted). When a bankruptcy petition is filed, the automatic stay prohibits several actions, including the commencement or continuation of proceedings against a debtor, 11 U.S.C. § 362(a)(1), and acts to take possession of, or exercise control over, property of the estate, § 362(a)(3). The automatic stay essentially gives a debtor a breathing spell from the debtor's creditors. The stay also provides some protection to creditors by "preventing particular creditors from acting unilaterally in self-interest . . . to the detriment of other creditors." *In re Johnson*, 548 B.R. 770, 786 (Bankr. S.D. Ohio 2016) (citations omitted).

Section 362(d)(1) of the Bankruptcy Code provides that a court may grant relief from stay "for cause," but cause is not defined within the Code. Therefore, a court must determine whether to grant relief "on a case-by-case basis." *Trident Assocs. Ltd. P'ship v. Metropolitan Life Ins. Co.* (*In re Trident Assocs. Ltd. P'ship*), 52 F.3d 127, 131 (6th Cir.1995), quoting *Laguna Assocs. Ltd.*

*P'ship. v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'shp.)*, 30 F.3d 734, 737 (6th Cir. 1994). The decision to grant relief from the automatic stay “resides within the sound discretion of the bankruptcy court” after considering (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 F. App'x 179, 181 (6th Cir. 2002) (citations omitted); *see also In re Martin*, 542 B.R. 199, 202 (B.A.P. 6th Cir. 2015) (using the five *Garzoni* factors).

#### *Judicial economy and trial readiness*

Judicial economy concerns the time and energy other courts have already spent on the proceedings. *Hornback v. Polylok, Inc. (In re Hornback)*, No. 21-8006, 2021 WL 5320418, at \*3 (B.A.P. 6th Cir. Nov. 16, 2021) (citing *Junk v. CitiMortgage, Inc. (In re Junk)*, 512 B.R. 584, 607 (Bankr. S.D. Ohio 2014)). The more time and energy spent, the more familiar a court typically is with the facts and circumstances of the underlying causes of action. *Id.* (citing *Ewald v. Nat'l City Mortg. Co. (In re Ewald)*, 298 B.R. 76, 81 (Bankr. E.D. Va. 2002)). The time an action has been pending is not important in and of itself, rather a court should focus on “the stage to which the non-bankruptcy litigation has progressed” because “the further along the litigation, the more unfair it is to force the plaintiff suing the debtor-defendant to duplicate all of its efforts in the bankruptcy court.” *Id.* at \*4 (citing *Int'l Bus. Machs. v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731, 737 (7th Cir. 1991)). The further along the state court litigation is, the more likely a bankruptcy court is to lift the stay to allow it to proceed. *Compare In re Martin*, 542 B.R. at 203 (affirming the decision to lift the stay because “[d]iscovery has commenced and thousands of pages of written discovery have been exchanged and reviewed”), *with In re Sonnox*

*Indus.*, 907 F.2d 1280, 1287 (2d Cir. 1990) (declining to lift the stay because “the litigation in state court has not progressed even to the discovery stage”).

The first factor drives the second. Presumably, parties in litigation that is further along are more prepared to go to trial. They have completed discovery and have moved toward (or even beyond) dispositive motions. The Ellis Trust argues that the underlying litigation has been pending for more than four (4) years. However, time alone does not mean a case is at a more advanced stage. The initial Chancery Court Action was filed in 2020 during a time when most state courts grinded proceedings to a halt due to the pandemic. What is more compelling to this Court is the fact that there are pending dispositive motions before the Chancery Court and the parties have an upcoming trial date in late January/early February (though, the opportunity to use this date may be at risk due to this pending bankruptcy case). Judicial economy and trial readiness weigh in favor of the Ellis Trust’s Motion.<sup>1</sup>

*The resolution of preliminary bankruptcy issues*

As for the third factor, this bankruptcy case is in its infancy. The § 341 meeting of creditors in this case was just held on November 19, 2024 (the day before this hearing). It is unclear at this point whether the Ellis Trust will file a timely dischargeability complaint under 11 U.S.C. § 523(a)(4) as alleged in its Motion since the deadline for filing such a complaint is not until January 21, 2025. The deadline for any proof of claim of Ellis Trust is likewise not until December 24, 2024. And lastly, this Court has concerns over the labeling of Debtor’s trust interest as one that is a “spendthrift trust” (thereby making it an exempt asset).<sup>2</sup> The Debtor just filed her Amended

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<sup>1</sup> The Court is not fully aware of the status of discovery in the Chancery Court Action. The Court is only aware there is a pending motion for sanctions against the Debtor related to discovery which seeks a default judgment against the Debtor.

<sup>2</sup> The Chapter 13 trustee has not weighed in on the issue of whether the Debtor’s interest in either trust (the Henry C. Ellis, III Revocable Living Trust or the separate trust created for the benefit of the Debtor under

Chapter 13 Plan and the opportunity for the Chapter 13 trustee, and other creditors, to object to confirmation is not until January 8, 2025. All of these preliminary bankruptcy issues require resolution.<sup>3</sup> See, e.g., *In re United Imps., Inc.*, 203 B.R. 162, 168 (Bankr. D. Neb. 1996) (concluding that the filing of a proof of claim is a preliminary bankruptcy issue requiring resolution); accord *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346, 352 - 53 (9th Cir. 1996). This factor weighs heavily against granting the Ellis Trust relief from the automatic stay.

*The creditor's chance of success on the merits*

The fourth factor questions the creditor's likelihood of success on the merits in the state court action. Given the stage of the proceedings in this Court and the lack of knowledge as to the viability of the pending dispositive motions in the Chancery Court Action, this Court is in no position to assess whether the Ellis Trust is likely to prevail on its claims.<sup>4</sup> See *In re Hornback*, 2021 WL 5320418, at \*5 ("A bankruptcy court is not required to be clairvoyant regarding the movant's chance of success on the merits when determining whether to lift the automatic stay.").

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section 7.02 of the living trust [DE 12-1, Section 7.02]) is a spendthrift trust. During the hearing, the Court questioned the spendthrift provision since at least at the distribution level (i.e. Nancy's separate trust), the beneficiary of the trust is also the trustee of the trust thereby prohibiting the trust from being a spendthrift. The Court is making no findings as to this issue, but is simply pointing out a larger preliminary issue that should be resolved in due time.

<sup>3</sup> A bigger preliminary issue for this Court is, if Debtor's trust is indeed not a spendthrift trust, then Debtor's interest in the trust is property of the estate under 11 U.S.C. § 541 which should not be subject to collection efforts outside of this Court's jurisdiction. Ellis Trust did suggest to the Court that it could lift the automatic stay to allow the parties in Chancery Court to proceed to judgment alone. While this argument has merit, the Court nonetheless finds in favor of Debtor when considering all of the preliminary bankruptcy issues outstanding.

<sup>4</sup> Even if the Ellis Trust prevails on its claims in Chancery Court, this Court has the exclusive jurisdiction to hear the dischargeability of any § 523(a)(4) claim.

*The cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors*

The final factor weighs the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors. The Debtor argues that it would be burdensome to litigate the state court claims as she does not have sufficient funds to continue paying lawyers. While this in and of itself is not a palatable argument, the Ellis Trust has made multiple distributions to the beneficiaries while continuing to hold at least one of Debtor's distributions within the Ellis Trust. While this action was done by agreement, what this creates is an unfair playing field among the five beneficiaries,<sup>5</sup> leaving Debtor with no money to defend herself and causing her to file this bankruptcy case. Any continued litigation in Chancery Court would also take Debtor's funds that are necessary for the Debtor's reorganization (because she is to use all disposable income to fund her Chapter 13 plan under 11 U.S.C. § 1325(b)). Debtor would be forced to use estate funds to continue to litigate in Chancery Court and then turn around and defend herself in a similar action in this Court relating to a potential 11 U.S.C. § 523(a)(4) action.

Moreover, this Court regularly liquidates claims in connection with dischargeability proceedings. The parties may choose to remove the Chancery Court Action to this Court under FED. R. BANKR. P. 9027. Regardless, this Court must become familiar with the claims between the parties because of a potential 11 U.S.C. § 523(a)(4) adversary proceeding. Therefore, at least for now, the Court believes that the better option is for all claims and proceedings involving the Debtor to be heard in a single forum before a single judge and that this Court is in the best position to achieve, so far as possible, the just, speedy, and inexpensive determination of all such claims. If circumstances change in the future, the Ellis Trust may renew its Motion for relief from stay by

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<sup>5</sup> The Ellis Trust does require when a distribution is made to any of the beneficiaries that the distribution be made to all beneficiaries in equal shares. *See* Henry C. Ellis, III Revocable Living Trust, DE 12-1, Section 7.01 and 13.06.



filing a written request to reset the Motion without the necessity of paying another filing fee. *See Ritzen Group, Inc. v. Jackson Masonry, LLC*, 140 S.Ct. 582, 592 n.4 (2020).

### **CONCLUSION**

For the reasons stated above, the Court denies without prejudice the Ellis Trust's Motion for relief from the automatic stay.

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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