

Dated: October 03, 2025
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Howard Jones
Debtor

Case No. 25-22442
Chapter 13

Todario Harris

MOVANT

v.

Howard Jones

RESPONDENT

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

This matter came before the Court upon the Motion for Relief from the Automatic Stay (the “Motion”) filed by Todario Harris (“Mr. Harris”) [DE 41] on July 28, 2025, and Howard

Jones's ("Mr. Jones" or "Debtor") Response filed August 19, 2025 [DE 55]. A hearing was held on September 17, 2025, 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 Movant's Motion is hereby denied without prejudice.

DISCUSSION OF BACKGROUND FACTS AND PROCEDURAL HISTORY OF THE CASE

The record in this case imparts the following facts. Mr. Harris and Mr. Jones are business partners. Mr. Harris describes himself as the silent partner that put money into the business, Trailers in Motion, Inc. ("Trailers in Motion"), and Mr. Jones acted as the CEO. Trailers in Motion was formed in November 2022. It was in the business of selling and servicing utility trailers and/or commercial equipment and components. Trailers in Motion entered into a floor plan financing and security agreement for the purchase of utility trailers with All American Floor Plan, LLC ("All American"). As part of the financing arrangement, All American required personal guarantees of the floor plan financing from both Mr. Harris and Mr. Jones. Trailers in Motion eventually

defaulted on the terms of the floor plan financing and security agreement which resulted in All American filing a Verified Complaint for Money Damages for Breach of Contract, Injunctive Relief and for Writ of Attachment in Obion County Chancery Court, Case No. 35,778 (“State Court Litigation”) on June 27, 2024. [DE 41-1] It is unclear to the Court whether Mr. Jones has filed any answer in the State Court Litigation or otherwise appeared in the case. Mr. Harris, the Movant in this matter, has appeared and filed a *pro se* answer to the Verified Complaint for Money Damages. Since filing his answer, Mr. Harris sought the aid of counsel and has prepared an Amended Answer and Cross-Complaint and Request for Injunctive Relief on behalf of himself, Individually, and Derivatively as a Shareholder on Behalf of Trailers in Motion, Inc. Against Mr. Jones (the “Cross-Complaint”). [DE 41-3]

A copy of the Cross-Complaint [DE 41-3] is attached to Movant’s Motion and seeks numerous causes of action, including: (1) common law breach of fiduciary duty, duty of loyalty, good faith and fair dealing, (2) violation of TENN. CODE ANN. § 48-18-301 and 302 (statutory duty of good faith), (3) accounting, (4) indemnification, (5) conversion, (6) fraudulent inducement of contract, (7) fraudulent misrepresentation, (8) breach of contract/recission, (9) common law fraud, (10) fraudulent concealment, (11) violation of TENN. CODE ANN. § 48-18-701 *et seq.* (corporation conflict of interest), (12) unjust enrichment, (13) seeks *lis pendens* on all of Debtor’s property and temporary injunction pursuant TENN. CODE ANN. § 20-3-101 *et seq.* and TENN. R. CIV. P. 65, and (14) judicial dissolution of Trailers in Motion pursuant to TENN. CODE ANN. § 48-24-301(2)(B). The prayer for relief seeks (1) Trailers in Motion be judicially dissolved, (2) Mr. Harris’s Continuing Personal Guarantee be rescinded, (3) All American be entitled to judgment in its lawsuit against Trailers in Motion and Debtor but be prohibited from collecting any judgment resulting therefrom as against Mr. Harris, (4) judgment be entered in favor of Mr. Harris for

punitive, compensatory, special, and restitutionary damages against Debtor in an amount not less than \$1,000,000.00, (5) the Action by Resolution of the Shareholders of Trailers in Motion, Inc., signed February 27, 2023, be immediately and permanently revoked, and (6) a *lien lis pendens* and temporary injunction issue, attaching Debtor's real property located at 4842 Gertrude Drive, Memphis, Tennessee and prohibiting the sale, withdrawal, transfer, dissipation, or encumbrance of the home and Mr. Jones's equity therein by way of the injunction.

Mr. Harris asserts that he filed the Motion seeking termination of the automatic stay in order to proceed with the State Court Litigation against the Debtor in Chancery Court. Specifically, so that he can file his Cross-Complaint. This Court held a hearing on the Motion on September 17, 2025. During the hearing, Mr. Harris's counsel stressed that Mr. Harris is not seeking money damages against Debtor but is simply attempting to have the Chancery Court rescind Mr. Harris's personal guaranty.

Debtor disputes any wrongdoing as alleged in the Cross-Complaint and simply asks the Court to deny the Motion as it would be inequitable to allow the State Court Litigation to proceed when the Debtor has no ability to defend while also funding his Chapter 13 Plan.

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

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 (quoting *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 Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 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 State Court Litigation was filed by All American on June 27, 2024 against Debtor, Movant and Trailers in Motion. Since the filing of this action, this Court was presented with no evidence that discovery ensued or that the Debtor participated in the State Court Litigation. Movant seeks modification of the automatic stay in Debtor’s case to file an Amended Answer to the State Court complaint and assert a Cross-Complaint against Debtor. While the State Court Litigation has been pending for more than a year, time alone does not mean the case is at an advanced stage. In fact, it appears based on Movant’s draft of the Cross-Complaint, the litigation involving the Debtor is just beginning. There are no dispositive motions pending, no pending discovery, and no trial date. Therefore, judicial economy and trial readiness weigh in favor of denying the Movant’s Motion for termination of the automatic stay.

The resolution of preliminary bankruptcy issues

As for the third factor, this bankruptcy case is less than five months old. The § 341 meeting of creditors very recently concluded on August 21, 2025 (originally scheduled June 26, 2025). Based on several counts contained in the Cross-Complaint, there are numerous allegations of fraud and misconduct by Debtor. However, the deadline to file a timely dischargeability complaint in this Court under 11 U.S.C. § 523(a)(2) or (4) was August 25, 2025. Movant did not file any such complaint and is now barred pursuant to 11 U.S.C. § 523(c) and FED. R. BANKR. P. 4007(c).

The deadline for any proof of claim of Movant is likewise barred as nongovernment claims were due July 28, 2025. All American did file a timely proof of claim in the amount of \$221,710.20 (Claim No. 32-1), but Movant filed no claim related to indemnification, over \$1,000,000 in punitive damages or any other of the fourteen (14) causes of action alleged in the draft Cross-Complaint.

Several of the preliminary bankruptcy issues have been resolved simply by the deadlines set by this Court, and Movant has simply not participated. “It would be absurd to allow the state court action to go ahead and require the estate to spend money litigating a debt that might ultimately be uncollectable.” *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) (citations omitted). Therefore, this factor also weighs against termination of 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 Litigation. Given the stage of the proceedings in this Court and the lack of knowledge as to the viability of the pending allegations in the Cross-Complaint, this Court is in no position to assess

whether the Movant is likely to prevail on his claims. *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.”).

Moreover, Movant is barred from asserting any 11 U.S.C. § 523(a)(2) or (4) claims because of the time deadline set forth in 11 U.S.C. § 523(c) and FED. R. BANKR. P. 4007(c); therefore, numerous counts in Movant’s fourteen (14) count Cross-Complaint will be subject to this Court’s discharge order (provided that Debtor does, in fact, receive his discharge). The Court finds this factor neutral.

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 it would expend the funds necessary to fund his Chapter 13 Plan.

While this in and of itself is not an acceptable argument, Movant did not participate in this bankruptcy proceeding in a timely way to preserve his 11 U.S.C. § 523(a)(2) or (4) claims. In fact, Movant did not participate in a meaningful way to even preserve any claim against the estate (because the proof of claim deadline has lapsed). Simply put, any continued litigation in Chancery Court would take Debtor’s funds¹ that are necessary for the Debtor’s reorganization to pay all properly filed claims in this case. Debtor would be forced to use estate funds to litigate in State Court claims that are potentially dischargeable if Debtor completes all plan payments and other requirements under the Bankruptcy Code. This Court finds that the cost of Debtor’s defense in the

¹ Debtor must use all disposable income to fund his Chapter 13 plan under 11 U.S.C. § 1325(b)(1)(B).

as-drafted Cross-Complaint would be a burden on Mr. Jones's estate and would have an adverse impact on other creditors.

The Court is, however, mindful that further amendments to the proposed Cross-Complaint potentially could cause this Court to grant limited relief from the automatic stay.² Examples of such would be dissolution of Trailers in Motion and potentially a viable claim which relieves Movant of liability under his guaranty agreement. However, the current Cross-Complaint is so broad and seeks money damages, including punitive damages in excess of \$1,000,000, along with *in rem* relief against property of the bankruptcy estate. As written, the Court denies Movant's Motion without prejudice. If circumstances change in the future, the Movant may renew his Motion for relief from stay by 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 Movant'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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² During the hearing, Movant claimed that he is not seeking money damages against Debtor but only seeks to rescind Mr. Harris's guaranty. However, the fourteen (14) count Cross-Complaint tells another story; therefore, Movant can attempt to amend the Cross-Complaint accordingly and reset this Motion.

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