

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE BRENDAN LINEHAN SHANNON



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June 8, 2022

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Re: *In re Heather J. McCoy*
Case No. 20-10466 (BLS) (Chapter 13)

Dear Counsel:

Before the Court are two matters:

- (i) Notice of Lis Pendens and/or Charging Lien for Personal Injury Proceeds (the “Lis Pendens Notice”)¹ filed by Shaun McCoy (the “Ex-Husband”) and the Debtor’s Objection to the Lis Pendens Notice (the “Debtor’s Objection”),² and
- (ii) The Debtor’s Motion for Sanctions for Violation of the Automatic Stay against Shaun McCoy (the “Sanctions Motion”)³ and the Ex-Husband’s Response to the Sanctions Motion (the “Sanctions Response”).⁴

Prior to her bankruptcy filing, the Debtor and the Ex-Husband entered into a Property Settlement Agreement dated July 11, 2019.⁵ On September 25, 2019, the Ex-Husband filed a Petition for Specific Performance in Family Court (the “Original Family Court Petition”) to resolve disputes involving the Property Settlement Agreement.⁶ The Debtor and the Ex-Husband divorced shortly thereafter by a Family Court Decree dated October 30, 2019.⁷

¹ Docket No. 39.

² Docket No. 40. The Ex-Husband also filed a response to the Debtor’s Objection (the “Response”). Docket No. 49.

³ Docket No. 41.

⁴ Docket No. 48.

⁵ Sanctions Motion, Ex. C Docket No. 41-6.

⁶ Sanctions Motion, ¶ 3.

⁷ Sanctions Motion, ¶ 3.

The Debtor filed a Chapter 13 bankruptcy petition on March 2, 2020. The Debtor's First Amended Chapter 13 Plan was confirmed on an interim basis by Order dated September 23, 2020.⁸ The Plan states that "Debtor does not qualify for, nor is she seeking, a Chapter 13 discharge."⁹

On October 19, 2020, this Court approved a Stipulation To Approve Relief From Stay To Allow Proceed[ings] in Family Court (the "Stipulation") between the Debtor and Ex-Husband in which the parties requested this Court to "allow Relief from the Automatic Stay so that the Family Court may accept jurisdiction over all ancillary matters."¹⁰ The Court Order approving the Stipulation stated that "Relief from the Automatic Stay is permitted to allow the parties to the Divorce to proceed with their Family Court matters."¹¹ On November 17, 2021, the Family Court held a hearing on the Original Family Court Petition (as well as other matters) and entered an Order granting the Petition without Objection, although the Family Court also noted that:

While the Husband would have liked to proceed [sic] with a hearing regarding other breaches he alleges Wife has committed, those other breaches were not alleged in the Petition and, therefore, the Court could not find that Wife had legal notice of those allegations and could not proceed with a hearing on allegations that were not plead. Husband requested an award of cost and fees as damages for the breach to which Wife admitted.

.....

If Husband's attorney submits an Affidavit of Costs and Fees related to the issues raised in the Petition within ten (10) days of this Order, the Court will consider an award of cost and fees.¹²

On December 1, 2021, the Ex-Husband filed a second Petition for Specific Performance with the Family Court (the "Second Family Court Petition") seeking damages for the Debtor's alleged breach of the Separation Agreement, including a request for attorney's fees and costs.¹³

On December 16, 2021, the Ex-Husband filed the Lis Pendens Notice in this Court. In that Notice he claimed an interest in certain proceeds from a personal injury lawsuit that he believed the Debtor would soon receive (the "Lawsuit Proceeds").¹⁴ The Debtor filed an objection to the Lis Pendens Notice arguing that Delaware law only allows the filing of a lis pendens against real property or a charging lien against an interest in a limited liability company.

⁸ Docket No. 21. The Debtor recently filed the First Motion to Modify Confirmed Chapter 13 Plan (Docket No. 56) and the Notice of Proposed Modification of Plan After Confirmation (Docket No. 57).

⁹ Docket No. 19, p. 2.

¹⁰ Sanctions Motion, Ex. A, ¶ 4. Docket No. 41-4.

¹¹ Sanctions Motion, Ex. A.

¹² Sanctions Motion, Ex. B.

¹³ Sanctions Motion, Ex. C.

¹⁴ Docket No. 39. The Debtor's personal injury lawsuit arises from the Debtor's injuries in a vehicle collision that occurred on May 9, 2018 (i.e., prior to the divorce and the bankruptcy filing) (the "Lawsuit"). The Debtor argues that Lawsuit is property of the Debtor's bankruptcy estate. The Debtor notes that she listed the Lawsuit on Schedule B and claimed an exemption in the Lawsuit in Schedule C attached to her Chapter 13 petition.

On February 1, 2022, the Debtor filed the Sanctions Motion arguing that the Ex-Husband's filing of the Second Family Court Petition was beyond the scope of the Stipulation and is a willful violation the automatic stay. The Debtor further argues that the Lis Pendens Notice also willfully violates the automatic stay because, through the Lis Pendens Notice, the Ex-Husband is taking actions to control and enforce a lien against the Lawsuit Proceeds, which are property of the estate. In his response to the Debtor's Objection, the Ex-Husband (i) admits that a lis pendens is proper only against real property, but notes that the Debtor was a joint title owner of the marital residence at the time the Lis Pendens Notice was filed, and (ii) argues that the Lis Pendens Notice was necessary to advise the Court that the Debtor previously pledged the Lawsuit Proceeds to pay for damages arising from her breach of the Property Settlement Agreement.

A hearing on these two matters was held on February 23, 2022 and the matters were taken under advisement.

The Lis Pendens Notice

The Ex-Husband has narrowed his request for relief under the Lis Pendens Notice to asking this Court for an order placing the Lawsuit Proceeds into an escrow account pending a decision by the Family Court on the Second Family Court Petition. The Ex-Husband bases his request on an agreement by the parties (with their attorneys) in Family Court that the Debtor would commit the Lawsuit Proceeds to cure her breach of the Property Settlement Agreement. The Ex-Husband argues that the Debtor has acted in a pattern of bad faith with respect to the Family Court matters, which continues to increase damages and shows that, if she received the Lawsuit Proceeds, she would spend them before he could enforce her pledge of those assets.

In response, the Debtor argues that the Ex-Husband has failed to state any legitimate statutory right to a lien against the Debtor's Lawsuit Proceeds. She asks this Court to enter an order indicating that the Ex-Husband's claim of a charging lien is declared null and void and has no effect on the bankruptcy proceedings or assets of the bankruptcy estate.

The Court notes that the Ex-Husband has provided no written evidence that the Debtor entered into a "breach agreement" pledging the Lawsuit Proceeds to cure any damages arising from the Debtor's breach of the Property Settlement Agreement. Based on the record before this Court, the Ex-Husband's request in the Lis Pendens Notice to place the Lawsuit Proceeds into an escrow account is denied.

The Sanctions Motion

Bankruptcy Code § 362(a) operates as a stay to prevent entities from commencing or continuing a judicial proceeding against the debtor that could have been commenced prior to the bankruptcy filing,¹⁵ or to recover a claim against the debtor that arose before the bankruptcy filing,¹⁶ or to take any act to obtain possession or exercise control over property of the estate.¹⁷ In this case,

¹⁵ 11 U.S.C. § 362(a)(1).

¹⁶ *Id.*

¹⁷ 11 U.S.C. § 362(a)(3).

however, the parties entered into a Stipulation, approved by this Court, to grant relief from the automatic stay to “allow the Parties to the Divorce to proceed with their Family Court matters.”

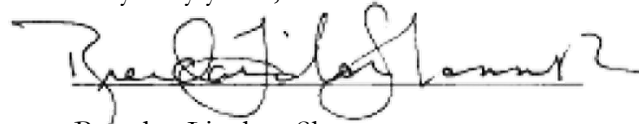
The Debtor argues that the Ex-Husband violated the automatic stay of § 362 by filing the Second Family Court Petition and the Lis Pendens Notice. The Debtor seeks sanctions for the alleged willful violations under Bankruptcy Code § 362(k). The Debtor claims that the Stipulation lifted the stay to allow only the Original Family Court Petition to proceed because it was the only ancillary matter that was pending at the time the Stipulation was signed and approved by the Court. The Debtor asserts that the parties did not discuss blanket stay relief to allow the filing of new petitions, such as the Second Family Court Petition. In response, the Ex-Husband argues that the parties understood and agreed that the Stipulation lifted the stay to permit all Family Court matters to go forward. The Ex-Husband further argues that the parties discussed the parameters of the Family Court matters for months prior to the November 2021 hearing and both parties were surprised when the Family Court required an additional filing to address issues that fell within those discussions.

The Court has reviewed the Stipulation and has determined that it broadly agreed to relief from the stay for “Family Court matters,”¹⁸ particularly one so closely aligned with the Original Family Court Petition. The Debtor could not be surprised that the Ex-Husband filed the Second Family Court Petition since the Debtor required the Ex-Husband to do so at the Family Court hearing on November 17, 2021.

The Lis Pendens Notice also is not a violation of the automatic stay. As a general proposition, the automatic stay does not operate to preclude the filing of suits and contested matters against a debtor in the bankruptcy court.¹⁹ The Ex-Husband filed the Notice in Bankruptcy Court which has jurisdiction over property of the estate, including property claimed as exempt.²⁰

Neither the Second Family Court Petition nor the Lis Pendens Motion violated the automatic stay. For the foregoing reasons, the Debtor’s Sanctions Motion is denied. The parties are requested to confer and promptly submit an order consistent with the foregoing.

Very truly yours,



Brendan Linehan Shannon
United States Bankruptcy Judge

cc: William F. Jaworski, Jr., Esquire
BLS/jim

¹⁸ Sanctions Motion, Ex. A.

¹⁹ *In re Forever 21, Inc.*, 623 B.R. 53, 62-63 (Bankr. D. Del. 2020) (quoting *Nat’l City Bank v. Lapidis (In re Transcolor Corp.)*, 296 B.R. 343, 358 (Bankr. D. Md. 2003) (holding that filing an adversary proceeding against the debtors did not violate the automatic stay and collecting cases)). See also *Charan Trading Corp. v. Uni-Marts, LLC (In re Uni-Marts, LLC)*, 399 B.R. 400, 418 (Bankr. D. Del. 2009) (holding that an adversary proceeding filed in the home bankruptcy court did not violate automatic stay and noting that it was akin to filing a proof of claim)).

²⁰ *Davis v. Davis (In re Davis)*, 2013 WL 5230637, *2-*3 (Bankr. M.D. Pa. Sept. 13, 2013) (citing 28 U.S.C. § 1334(a), (e)(1)).