United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Judge:	David D. Cleary

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Case No. 24 B 17836
	)	
B BUCHE JONES,	)	Chapter 13
	)	
Debtor.	)	Judge David D. Cleary

ORDER GRANTING MOTION FOR RELIEF FROM STAY

This matter comes before the court on the motion for relief from the automatic stay ("Stay Relief Motion") filed by Housing Authority of Cook County ("Movant"). B Buche Jones ("Jones" or "Debtor") filed an objection to notice of motion and certificate of service ("Objection"). At the initial hearing on the Stay Relief Motion on December 23, 2024, Debtor and counsel for Movant appeared. The court entered a briefing schedule and continued the Stay Relief Motion to January 13, 2025. Debtor timely filed her objection to notice of motion ("Supplemental Objection") and Movant timely filed its reply in support of motion for relief from stay ("Reply"). Both parties appeared at the continued hearing on January 13, 2025.

Having reviewed the papers filed, heard the arguments of the parties and considered the applicable law, the court will grant the Stay Relief Motion.

I. BACKGROUND

Debtor leased certain residential real property at 508 South Boulevard in Evanston, Illinois ("Evanston Property"). Movant alleges that in February 2024, it provided Debtor with a 90-day notice advising her to vacate the Evanston Property.

Attached to the Stay Relief Motion as Exhibit A is a May 29, 2024 letter from Movant's counsel addressed to Debtor and titled, "Fifteen Day Notice of Transfer and Relocation" ("Fifteen Day Notice"). The Fifteen Day Notice states that a different property had been

renovated and was available for Debtor to move into. Movant stated in the Fifteen Day Notice that it would pay Debtor's moving expenses, arrange for movers and provide up to $5,000 worth of new furniture, so long as she relocated within 15 days.

On June 18, 2024, Movant issued a notice of termination to Debtor, stating that her tenancy would terminate within 30 days after service. *See* Stay Relief Motion, Exhibit B. According to the attached certificate of service, this notice of termination was delivered to Debtor on June 20, 2024.

About a month later, Movant filed a forcible entry and detainer action in state court. *See* Stay Relief Motion, Exhibit C. Judge James L. Allegretti of the Circuit Court of Cook County entered an eviction order against Debtor for possession of the Evanston Property on September 20, 2024 ("Eviction Order"). *See* Stay Relief Motion, Exhibit D.

On November 22, 2024, the Cook County Sheriff's Office enforced the Eviction Order. On November 25 and 27, 2024, Debtor was re-admitted to the Evanston Property to recover her belongings. After re-admittance, she did not vacate and continues to occupy the Evanston Property. She then filed for relief under chapter 13 of the Bankruptcy Code on November 27, 2024 ("Petition Date").

On Debtor's petition, when asked at Question 11 whether she rents her residence, Debtor checked "yes." Also on the Petition Date, Debtor filed Official Form 101A, Initial Statement About an Eviction Judgment Against You ("Form 101A"), which is filed only by debtors who rent their residence and against whom their "landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding (called *eviction judgment*)[.]" In Form 101A, Debtor certified under penalty of perjury that she has the right to stay in her

residence by paying her landlord the entire delinquent amount. Debtor did not file any additional certifications.

II. LEGAL DISCUSSION

A. The Automatic Stay

The automatic stay provides broad protection to bankruptcy debtors and their estates and is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat. Bank v. N.J. Dep't of Env't Prot.*, 474 U.S. 494, 503 (1986) (quotation omitted). "Among other things, the stay bars commencement or continuation of lawsuits to recover from the debtor, enforcement of liens or judgments against the debtor, and exercise of control over the debtor's property." *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 42 (2020). The stay benefits creditors as well, replacing "an unfair race to the courthouse with an orderly liquidation procedure designed to treat all creditors equally." *United States v. Nicolet, Inc.*, 857 F.2d 202, 207 (3d Cir. 1988).

B. The Exception to the Automatic Stay in 11 U.S.C. § 362(b)(22) Applies Here

While the protection of the automatic stay is broad, it is not limitless. *See In re Chellino*, No. 18 B 25452, 2022 WL 1180621, at *5 (Bankr. N.D. Ill. Apr. 13, 2022) ("the automatic stay is not without limits or exceptions"). 11 U.S.C. § 362(b) lists several exceptions to the automatic stay, including:

> (b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay -- …
>
> > (22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor[.]

11 U.S.C. § 362(b)(22). *See In re Focht*, No. 24-10197 (DSJ), 2024 WL 1185032, at *2 (Bankr. S.D.N.Y. Mar. 19, 2024) ("In 2005, the Bankruptcy Code was amended to add Section 362(b)(22) to provide greater protection to landlords and prevent tenants from filing bankruptcy to forestall an eviction.").

Movant, a lessor, commenced an eviction action against Debtor regarding a residential property in which Debtor resided as a tenant under a lease. Movant obtained the Eviction Order before the date of the filing of this bankruptcy petition. The Eviction Order, which is a judgment of the Circuit Court of Cook County, gives possession of the Evanston Property to Movant. Therefore, each of the elements of § 362(b)(22) are present and have been satisfied.

However, § 362(b)(22) is subject to § 362(l), which states in relevant part:

> (l) (1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a ***certification*** under penalty of perjury that--
>
> > (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
> >
> > (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
>
> (2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a ***further certification*** under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

11 U.S.C. § 362(l) (emphasis added). If both (l)(1) and (l)(2) are satisfied, § 362(l) effectively prevents application of the exception set forth in § 362(b)(22) and the stay remains in effect. In

addition to a lessor's ability to seek relief under any other provision in § 362, however, § 362(l)(3) permits a lessor's objection to the certifications required by §§ 362(l)(1) (the "Deposit Certification") and (l)(2) (the "Cure Certification"). 11 U.S.C. § 362(l)(3). If an objection is filed, "the court shall hold a hearing within 10 days" in order to determine if the certifications are true. *Id.*

Debtor filed Form 101A, which is the Deposit Certification described in § 362(l)(1). *See* EOD 6. Movant did not object to the Deposit Certification. However, neither Debtor nor an adult dependent of the Debtor filed with the court a further Cure Certification stating that any monetary default has been cured. More than 30 days have elapsed since Debtor filed her petition and she failed to file a Cure Certification. Without the Cure Certification, therefore, the exception to the automatic stay described in 11 U.S.C. § 362(b)(22) applies to the continuation of Movant's eviction proceeding and relief from the automatic stay is not necessary. 11 U.S.C. § 362(l)(4)(A).

C. Even if § 362(b)(22) Does Not Apply, the Court Will Modify the Stay Pursuant to § 362(d)(2)

Even if there were no applicable exception to the automatic stay, and because Movant also seeks relief from the stay to file and pursue a complaint with the Evanston Police Department related to Debtor's alleged trespass on the Evanston Property, the court will review the standard for granting relief from the automatic stay under 11 U.S.C. § 362(d)(2). This subsection states:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-- …
>
> > (2) with respect to a stay of an act against property under subsection (a) of this section, if--
> >
> > > (A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization[.]

11 U.S.C. § 362(d).

In any hearing under § 362(d), the movant has the burden of proof on the issue of a debtor's equity. 11 U.S.C. § 362(g)(1). Debtor does not have equity in the Evanston Property; she is a tenant without an equity interest.

As the party opposing the Stay Relief Motion, Debtor has the burden of proof on all issues other than equity. 11 U.S.C. § 362(g)(2). Therefore, it is Debtor's burden to show that the Evanston Property is necessary to an effective reorganization. "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect*." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375–76 (1988). None of the arguments that Debtor raises in opposition to the Stay Relief Motion satisfy this burden.

In the Objection, Debtor first contends that she did not have sufficient time to respond to the Stay Relief Motion prior to the initial hearing on December 23, 2024. At that hearing, however, the court heard Debtor's verbal objection, allowed additional time for her to respond in writing, and continued the Stay Relief Motion until January 13, 2025. Debtor then timely filed the Supplemental Objection.

In the Supplemental Objection, Debtor again raised the issue of whether the Stay Relief Motion was properly served. In light of Debtor's appearances at both the December 23, 2024 and January 13, 2025 hearings, as well as her filing of both the Objection and the Supplemental Objection, the court is satisfied that Debtor received sufficient notice of the Stay Relief Motion to meet the requirements of due process.

Next, Debtor argues in both the Objection and the Supplemental Objection that her residence constitutes essential shelter, which is critical for maintaining her health and safety, and that her lease agreement falls under the protections of the Consumer Leasing Act. The Debtor does not explain how either of these arguments satisfy her burden of proof.

As for the first argument, many courts have held that in a chapter 13 case, a debtor's home is necessary for an effective reorganization. Any suggestion that the Evanston Property is necessary for an effective reorganization, however, is completely undercut by the statements in the Fifteen Day Notice that a different property in the same city had been renovated and was available for Debtor. The Fifteen Day Notice further stated that Movant would pay Debtor's moving expenses, arrange for movers and provide up to $5,000 worth of new furniture, so long as she relocated within 15 days.

Regarding the second argument, Debtor has not demonstrated why, even if her lease agreement falls under the protections of the Consumer Leasing Act, this would be relevant to a finding about whether the Evanston Property is necessary to an effective reorganization.

In the Objection and the Supplemental Objection, Debtor cites two Illinois state court cases. *See Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 775 N.E.2d 951 (Ill. 2002); *People v. Paramo*, 2024 IL App (1st) 230952-U.[1] Debtor also cites an Eleventh Circuit decision on the Fair Debt Collection Practices Act. *See Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014).[2] None of these cases are relevant to the issue of whether the Evanston Property

[1] Debtor cited *People v. Molina*, 2024 IL App (1st) 230952-U. The court could not locate this case. The Appellate Court of Illinois, First District, issued *Paramo* at that citation.

[2] "*Crawford* … was effectively overruled by the Supreme Court in *Midland Funding*. 137 S. Ct. at 1415–16." *In re Soler Somohano*, 819 F. App'x 873, 876 (11th Cir. 2020) (unpublished opinion).

is necessary to an effective reorganization, or indeed to any element of the court's analysis of a motion for relief from the automatic stay.

Debtor contends that "Movant must validate the debt associated with the Debtor's lease to ensure compliance with federal and state laws." Objection, p. 14. This contention is not correct. "Hearings to determine whether the stay should be lifted are meant to be summary in character.… Many cases hold that the issues considered at a § 362 hearing are limited strictly to adequacy of protection, equity, and necessity to an effective reorganization." *Matter of Vitreous Steel Prods. Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990). The bankruptcy court is not required to and indeed should not "validate" an underlying debt. *See Ritzen*, 589 U.S. at 43 (2020) ("Adjudication of a stay-relief motion, as just observed, occurs before and apart from proceedings on the merits of creditors' claims: The motion initiates a discrete procedural sequence, including notice and a hearing, and the creditor's qualification for relief turns on the statutory standard, *i.e.*, 'cause' or the presence of specified conditions.").

To the extent any proof of claim filed by the Movant does not comply with the requirements of the Bankruptcy Code, Debtor may file an objection to that proof of claim. That issue is not before the court.

In the Supplemental Objection, Debtor also asserts that she was unable to appear at a hearing in state court on September 20, 2024 and that the Cook County Sheriff's Office enforced an eviction order on November 22, 2024. These allegations may be relevant in any state court proceedings, but neither of these events bear on the court's analysis of whether the Evanston Property is necessary for an effective reorganization.

Finally, even if Debtor were able to show that the Evanston Property is necessary for her reorganization, the Supreme Court has instructed us that that she must show that it "is essential

for an effective reorganization *that is in prospect*. This means … that there must be a reasonable possibility of a successful reorganization within a reasonable time." *Timbers of Inwood Forest*, 484 U.S. at 376 (quotation omitted).

While Debtor filed a chapter 13 plan on December 11, 2024, that plan is essentially blank. The last page of the plan, which is an exhibit that shows the total amount of estimated trustee payments, is a series of zeros. Debtor filed her petition under chapter 13 nearly two months ago, and the only plan she has filed to date contains no provisions for payments or treatment of her creditors.[3] There is no reasonable possibility of a successful reorganization in this case.

III. CONCLUSION

Having read the papers filed in this case, heard the arguments of the parties and considered the applicable law, the court concludes that the automatic stay does not apply to the Movant's continuation of its unlawful detainer action pursuant to 11 U.S.C. § 362(b)(22). Even if the automatic stay did apply, Movant has satisfied its burden under 11 U.S.C. § 362(d)(2). Debtor does not have an equity in the Evanston Property, and the Evanston Property is not necessary to an effective reorganization.

For all of the reasons stated above, **IT IS ORDERED THAT** the Stay Relief Motion is **GRANTED**.

ENTERED:

Date: January 22, 2025

DAVID D. CLEARY
United States Bankruptcy Judge

[3] Section 5.1, which describes the treatment of nonpriority unsecured claims not separately classified, states that unsecured creditors will receive $0.