

**United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division**

**Transmittal Sheet for Opinions for Posting**

**Will this opinion be published?**      Yes

**Bankruptcy Caption:**                      In re Mohammad Tahseen

**Bankruptcy Number:**                      18 B 3134

**Adversary Caption:**                      Leibowitz v. Tahseen

**Adversary Number:**                      25 A 55

**Date of Issuance:**                      March 3, 2026

**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. 18 B 3134
MOHAMMAD TAHSEEN,	)	
	)	
Debtor.	)	Chapter 7
_____	)	
	)	
DAVID LEIBOWITZ, not individually but as the	)	
chapter 7 trustee of the estate of Mohammad	)	
Tahseen,	)	
	)	Adv. No. 25 A 55
Plaintiff,	)	
	)	
v.	)	
	)	
MOHAMMAD TAHSEEN, SAMANTHA	)	Judge David D. Cleary
TAHSEEN, AMERISAVE MORTGAGE CORP.	)	
and ROCKET MORTGAGE LLC,	)	
	)	
Defendants.	)	

**ORDER GRANTING IN PART AND DENYING IN PART ROCKET MORTGAGE  
LLC’S MOTION TO DISMISS (EOD 21)**

This matter comes before the court on the motion of Rocket Mortgage LLC (“Rocket”) to dismiss the adversary proceeding (“Motion to Dismiss”) filed by David Leibowitz (“Leibowitz”), not individually but as the chapter 7 trustee of the estate of Mohammad Tahseen. At the initial presentation of the Motion to Dismiss, the court entered a briefing schedule. Leibowitz filed a response in opposition to the Motion to Dismiss (“Response”) and Rocket filed a reply (“Reply”). Having reviewed the papers filed and heard the arguments of the parties, the court will grant the Motion to Dismiss as to Count 1 and will deny the Motion to Dismiss as to Counts 2, 3 and 4.

## I. JURISDICTION

The court has subject matter jurisdiction under [28 U.S.C. § 1334\(b\)](#) and the district court's Internal Operating Procedure 15(a). This is a core proceeding under [28 U.S.C. § 157\(b\)\(2\)\(A\)](#) and [\(O\)](#). Venue is proper under [28 U.S.C. § 1409\(a\)](#).

## II. BACKGROUND

In resolving a motion to dismiss for failure to state a claim under [Fed. R. Civ. P. 12\(b\)\(6\)](#), the court considers well-pleaded facts and the reasonable inferences drawn from them in the light most favorable to the plaintiff. *See Reger Dev., LLC v. Nat'l City Bank*, [592 F.3d 759, 763](#) (7th Cir. 2010). Every allegation that is well-pleaded by a plaintiff is taken as true in ruling on the motion. *See Berger v. Nat'l Collegiate Athletic Ass'n*, [843 F.3d 285, 289-90](#) (7th Cir. 2016). The court may take judicial notice of its own docket. *See Collum v. City of Chicago (In re Collum)*, [649 B.R. 186, 192](#) (Bankr. N.D. Ill. 2023).

Mohammad Tahseen ("Mohammad") and Samantha Tahseen ("Samantha") assert that they are married. Mohammad filed a petition for relief under chapter 13 of the Bankruptcy Code on February 4, 2018. (Complaint, ¶¶ 6-7.)

Before he filed his bankruptcy case, Mohammad was the sole owner of real property at 128 Essex Road, Elk Grove Village, IL 60007 (the "Essex Property"). Mohammad and Samantha live at the Essex Property. The Essex Property became property of Mohammad's bankruptcy estate when he filed his petition. (*Id.*, ¶¶ 8-10 and 54.)

It appears that Mohammad filed this bankruptcy case to stop a tax purchaser from acquiring the Essex Property. Mohammad and the tax buyer engaged in extensive litigation over the Essex Property and related issues during his bankruptcy case. (*Id.*, ¶¶ 11-12.)

On September 20, 2018, Mohammad voluntarily converted his case to one under chapter 7 of the Bankruptcy Code. (Case No. 18-3134, EOD 64.) Litigation between the tax buyer and Mohammad over the Essex Property and related issues continued. (Complaint, ¶ 16.)

When the case was converted, Andrew Maxwell (“Maxwell”) was appointed as and served as the chapter 7 trustee. Maxwell resigned on July 26, 2023, and Leibowitz now serves as the successor trustee. (*Id.*, ¶ 14.)<sup>1</sup>

Shortly after the case was converted, the Trustee took steps to sell the Essex Property, including seeking court authority to employ a broker. (Case No. 18-3134, EOD 106.) The Trustee has not been able to sell the Essex Property. (Complaint, ¶ 15.)

The court granted Mohammad’s discharge on December 26, 2018. (Case No. 18-3134, EOD 83.)

On July 25, 2019, Mohammad moved to convert his case back to chapter 13. The court denied Mohammad’s motion to convert on August 7, 2019. (*Id.*, EOD 119 and 121.)

On September 28, 2019, Samantha filed for relief under chapter 13 of the Bankruptcy Code. On her Schedule A, Samantha stated that she was the sole owner of the Essex Property. (Case No. 19-27591, EOD 17.)

On December 16, 2019, her chapter 13 trustee filed a motion to dismiss Samantha’s case for unreasonable delay. The court granted this motion on January 13, 2020. (*Id.*, EOD 63 and 75.)

On December 30, 2019, Mohammad executed and recorded a quit claim deed purporting to transfer the Essex Property from himself as sole owner to himself and Samantha as joint tenants. This was not authorized by the court. (Complaint, ¶ 22, 56, 59.)

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<sup>1</sup> For purposes of this Motion to Dismiss, “Trustee” shall refer to both Maxwell and Leibowitz.

At the time of this transfer, Mohammad and Samantha both knew that Mohammad's bankruptcy case was still pending and that the Trustee was attempting to sell the Essex Property, but they kept it a secret from the Trustee and the court. (*Id.*, ¶¶ 62-65.)

As a result of the transfer, Samantha obtained a purported interest in the Essex Property that should have been available to pay Mohammad's creditors. (*Id.*, ¶ 66.)

On January 21, 2020, Samantha filed a second chapter 13 case. On Schedule A, Samantha stated that she was a joint owner of the Essex Property. (Case No. 20-1797, EOD 1.)

On March 2, 2020, the chapter 13 trustee moved to dismiss Samantha's second chapter 13 case, arguing (among other contentions) that Mohammad was the sole owner of the Essex Property, that the Essex Property was already part of the estate in Mohammad's chapter 7 case, and that Samantha had filed her case for the improper purpose of thwarting the Trustee's administration of Mohammad's estate. (*Id.*, EOD 24.)

On May 11, 2020, the court granted the chapter 13 trustee's motion to dismiss and barred Samantha from filing another bankruptcy case for 180 days. (*Id.*, EOD 44.)

On June 4, 2020, Mohammad again sought to convert his case back to chapter 13. The court denied Mohammad's motion on July 22, 2020. (Case No. 18-3134, EOD 138 and 151.)

On April 15, 2021, without obtaining court authority first, Mohammad entered into a mortgage loan with Amerisave Mortgage Corp. ("Amerisave"). (Complaint, ¶¶ 30 and 59.)

As part of the mortgage loan, Mohammad purported to grant Amerisave a mortgage in the Essex Property, which Amerisave recorded with the Cook County Clerk on April 23, 2021. (*Id.*, ¶¶ 31 and 57.)

Amerisave distributed the net loan proceeds, totaling \$184,657.03, to Mohammad. Mohammad then used some of the proceeds to pay past due real estate taxes, contractors for

work on the Essex Property, and his attorneys. After these payments, only \$81,321.34 remained unspent. (*Id.*, ¶¶ 32-33.)

At the time of the mortgage, Mohammad knew that his bankruptcy case was still pending and Amerisave knew that Mohammad had filed a bankruptcy case. (*Id.*, ¶¶ 68-69.)

The fact that Mohammad's bankruptcy case was still pending at the time of the mortgage was public record. (*Id.*, ¶ 70.)

Neither Mohammad nor Amerisave made any effort to contact the Trustee about the mortgage or the Essex Property, or to obtain the Trustee's or the court's consent. Mohammad kept the mortgage secret from the Trustee and the court. (*Id.*, ¶¶ 71-72.)

As a result of the transaction, the Essex Property became encumbered by a mortgage to Amerisave and Mohammad appropriated proceeds of the Essex Property from the bankruptcy estate. (*Id.*, ¶ 73.)

On May 17, 2021, Mohammad filed a motion to compel the Trustee to abandon the Essex Property as burdensome to the estate. Mohammad did not disclose in the motion the Amerisave mortgage or his appropriation of the proceeds of estate property. (Case No. 18-3134, EOD 152.)

In responding to Mohammad's motion to abandon, the Trustee discovered the Amerisave mortgage, leading to significant additional litigation between Mohammad and the Trustee over the Essex Property and its proceeds. (Complaint, ¶ 35.)

Among other consequences, Mohammad was held in contempt of court for failing to turn over the loan proceeds, which were an asset of the bankruptcy estate, to the Trustee. (Case No. 18-3134, EOD 198.)

By November 18, 2021, Mohammad purged his contempt by turning the \$81,321.34 of unspent loan proceeds over to the Trustee. (*Id.*, EOD 209.)

On January 26, 2022, the U.S. Trustee filed a complaint seeking to revoke Mohammad's discharge on grounds that he received and concealed estate assets, that he failed to surrender property to the estate, and that he failed to obey this court's order regarding turnover of property. (Adv. No. 22 A 16, EOD 1.)

Mohammad contested the U.S. Trustee's complaint, and the matter was eventually set for trial on September 26, 2023. (*Id.*, EOD 78.)

The matter did not proceed to trial, as on September 26, 2023, this court entered an agreed judgment revoking Mohammad's discharge. (*Id.*, EOD 148.)

On October 28, 2022, while the U.S. Trustee's revocation of discharge case was pending, Mohammad entered into another mortgage loan secured by the Essex Property, this time with Rocket. The total amount Mohammad financed with Rocket was \$366,300. Mohammad did not obtain court authority for this transaction. (Complaint, ¶¶ 41-42 and 58-59.)

At the time of the mortgage, Mohammad knew that his bankruptcy case was still pending and Rocket knew that Mohammad had filed a bankruptcy case. (*Id.*, ¶¶ 75-76.)

The fact that Mohammad's bankruptcy case was still pending at the time of the mortgage was public record. (*Id.*, ¶ 77.)

Neither Mohammad nor Rocket made any effort to contact the Trustee about the mortgage or the Essex Property, or to obtain the Trustee's or the court's consent. Mohammad kept the mortgage secret from the Trustee and the court. (*Id.*, ¶¶ 78-79.)

As a result of the transaction, the Essex Property became encumbered by a mortgage to Rocket and Mohammad appropriated proceeds of the Essex Property from the bankruptcy estate. (*Id.*, ¶ 80.)

As part of the mortgage loan process, Rocket obtained an appraisal valuing the Essex Property at \$481,000 as of October 14, 2022. (*Id.*, ¶ 43.)

Some of the proceeds of the Rocket loan paid off Amerisave's mortgage, and Mohammad received \$98,066.55 in cash from the proceeds of the Rocket loan. (*Id.*, ¶¶ 44-45.)

Mohammad did not inform the Trustee about the Rocket transaction, nor did he turn over the \$98,066.55 in proceeds to the Trustee. (*Id.*, ¶ 46.)

Rocket was aware of Mohammad's bankruptcy case, but it did not take any steps to investigate the status of the case or whether the Essex Property was still property of Mohammad's bankruptcy estate. (*Id.*, ¶¶ 47-48.)

The effect of each of these transactions was to remove the Essex Property from Mohammad's bankruptcy estate, to prevent the Trustee from selling the Essex Property for the benefit of Mohammad's creditors, and to allow Mohammad to appropriate the Essex Property's value for his own use. (*Id.*, ¶ 81.)

The Trustee was not able to realize the value of the Essex Property for the benefit of Mohammad's creditors. (*Id.*, ¶¶ 82 and 93.)

On December 13, 2023, the Trustee filed a motion for Rule 2004 examination of Rocket ("2004 Motion"). In the 2004 Motion, the Trustee requested authority to demand the production of documents and to conduct an examination of Rocket. He sought, among other items, "the loan origination and closing files for any and all loans made by Rocket Mortgage, LLC to Debtor." The court granted the 2004 Motion on December 20, 2023. (Case No. 18-3134, EOD 238 and 240.)

### III. LEGAL DISCUSSION

#### A. Standard for a motion to dismiss for failure to state a claim

To defeat a motion to dismiss under Fed. R. Civ. P. 12(b)(6), made applicable in bankruptcy proceedings by Fed. R. Bankr. P. 7012, a complaint must describe the claim in enough detail to give notice to the defendant. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In addition, the claim for relief must be “plausible on its face.” *Id.* at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint need only offer “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2).

#### B. Count 1: Avoidance of Post-Bankruptcy Transactions

In Count 1, the Trustee recites the various postpetition transactions that affected the Essex Property:

- ▶ December 30, 2019: Mohammad purports to transfer an interest in the Essex Property to Samantha;
- ▶ April 15, 2021: Mohammad purports to grant a mortgage in the Essex Property to Amerisave; and
- ▶ October 28, 2022: Mohammad purports to grant a mortgage in the Essex Property to Rocket (the “October 28 Mortgage”).

For purposes of this Motion to Dismiss, the court will focus only on the October 28 Mortgage. The Trustee alleges that the October 28 Mortgage was not authorized and asks the court to avoid it. The Trustee also seeks a money judgment against all defendants, including Rocket, for the value of the Essex Property or \$481,000 plus interest, costs and expenses.

Rocket argues in the Motion to Dismiss that Count 1 is time-barred pursuant to 11 U.S.C. § 549(d), which states that “[a]n action or proceeding under this section may not be commenced after the earlier of – (1) two years after the date of the transfer sought to be avoided[.]” In his Response, the Trustee contends that: (1) the October 28 Mortgage is void as a violation of the automatic stay;<sup>2</sup> and (2) if the October 28 Mortgage is actionable under 11 U.S.C. § 549, then Rocket is equitably estopped from asserting the statute of limitations as an affirmative defense.

**1. The statute of limitations bars a claim under 11 U.S.C. § 549 and the Complaint does not plausibly allege that Rocket is equitably estopped from raising this defense. The Trustee will be granted leave to amend the Complaint.**

Certain postpetition transfers may be avoided pursuant to 11 U.S.C. § 549(a):

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--

(1) that occurs after the commencement of the case; and

(2) (A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

The Code provides a statute of limitations, however, on the avoidance of postpetition transfers:

(d) An action or proceeding under this section may not be commenced after the *earlier* of--

(1) two years after the date of the transfer sought to be avoided; or

(2) the time the case is closed or dismissed.

11 U.S.C. § 549(d) (emphasis added).

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<sup>2</sup> Rocket points out that the Complaint “makes no mention of a stay violation under Section 362.” Reply, p. 4. Failure to include legal argument, or the legal basis for a claim, is not a deficiency in a complaint.

Rocket argues that since the Trustee filed the Complaint on February 20, 2025, more than two years after the date of the October 28 Mortgage, his claim is barred by the two-year statute of limitations in § 549(d) and should be dismissed with prejudice.

In his Response, the Trustee contends that the statute of limitations is not appropriately considered at this stage of the litigation. “Only when the plaintiff pleads itself out of court—that is, admits all the ingredients of an impenetrable defense—may a complaint that otherwise states a claim be dismissed under Rule 12(b)(6).” *Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 899, 901 (7th Cir. 2004). *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (“A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief. If the allegations, for example, show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim; that does not make the statute of limitations any less an affirmative defense[.]”).

The Trustee asserts that the Complaint alleged facts supporting the application of equitable estoppel; therefore, the statute of limitations is not an “impenetrable” affirmative defense. Equitable estoppel bars a defendant from asserting the statute of limitations as an affirmative defense when that defendant has taken

active steps to prevent the plaintiff from suing in time, as by promising not to plead the statute of limitations. Equitable estoppel in the limitations setting is sometimes (though confusingly, as we’re about to see) called fraudulent concealment.... Fraudulent concealment in the law of limitations ... denotes efforts by the defendant, above and beyond the wrongdoing upon which the plaintiff’s claim is founded, to prevent, by fraud or deception, the plaintiff from suing in time.

*Shropshear v. Corp. Couns. of City of Chicago*, 275 F.3d 593, 595 (7th Cir. 2001).

The Trustee contends that the following allegations<sup>3</sup> support a finding that the Complaint plausibly alleges that Rocket is equitably estopped from asserting the statute of limitations as an affirmative defense:

--Rocket knew that Mohammad had filed a bankruptcy case when he granted the October 28 Mortgage;

--Rocket did not take any steps to investigate whether the Essex Property was property of Mohammad's bankruptcy estate;

--the fact that Mohammad's bankruptcy case was still pending was public record, which Rocket knew or should have known;

--Rocket did not make any effort to contact the Trustee, obtain his consent or obtain court approval regarding the October 28 Mortgage;

--Rocket kept the transaction secret from the Trustee; and

--the natural effect of the October 28 Mortgage and the presumed intent of Rocket was to remove the Essex Property from Mohammad's bankruptcy estate, to prevent the Trustee from selling the Essex Property for the benefit of Mohammad's creditors and to allow Mohammad to appropriate the Essex Property's value for his own use.

In its Reply, Rocket argues that the statute of limitations has not been *equitably tolled* because the Trustee did not pursue his rights diligently and no extraordinary circumstance stood in his way. *See* Reply, p. 9. Although it titled section III of its argument as “[e]quitable estoppel cannot save the Trustee’s avoidance claim,” Rocket appears to conflate equitable tolling with equitable estoppel. In fact, although both doctrines permit the suspension of the statute of limitations, they are not the same.

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<sup>3</sup> These allegations are repeated from the Response. Not all of them are included in the Background section because not all are well-pleaded.

Equitable estoppel suspends the running of the statute of limitations during any period in which the defendant took active steps to prevent the plaintiff from suing, as by promising the plaintiff not to plead the statute of limitations pending settlement talks or by concealing evidence from the plaintiff that he needed in order to determine that he had a claim....

[E]quitable tolling ... permits a plaintiff to sue after the statute of limitations has expired if through no fault or lack of diligence on his part he was unable to sue before, even though the defendant took no active steps to prevent him from suing.

*Singletary v. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, [9 F.3d 1236, 1241](#) (7th Cir. 1993).

It is clear to the court why the Trustee does not argue that the doctrine of equitable tolling suspended the running of the statute of limitations. His filing of the 2004 Motion on December 13, 2023 – more than ten months before the expiration of the statute of limitations – would undercut any argument that he was unaware of a relationship between Mohammad and Rocket. And, in light of the 2004 Motion, there are no allegations before the court that would support a plausible claim that, “despite the exercise of all due diligence he [was] unable to obtain vital information bearing on the existence of his claim.” *Shropshire*, [275 F.3d at 595](#).

The remaining question, therefore, is whether the Complaint plausibly alleges that Rocket is equitably estopped from asserting the statute of limitations because it made efforts to prevent, by fraud or deception, the Trustee from suing timely. *See Shropshire*, [275 F.3d at 595](#).

As the Seventh Circuit has articulated, the actions of a defendant that merely make it difficult to trace the potential claim are a nonstarter without some basis that the defendant was trying to throw potential suitors off the scent. Even construing all facts and reasonable inferences in the light most favorable to the Plaintiffs, [Defendant’s] total loss vehicle assessments do not amount to the type of nefarious action that could justify equitable intervention to overcome the contractual provision.

*Williams v. State Farm Mut. Auto. Ins. Co.*, No. 22 C 1422, [2025 WL 2755318](#), at \*13 (N.D. Ill. Sept. 29, 2025) (quotation omitted).

The Complaint contains no well-pleaded allegations that Rocket was trying to throw the Trustee “off the scent.” Neither are there allegations that Rocket made any efforts grounded in

“fraud or deception” to prevent the Trustee from suing timely. Even considering all well-pleaded allegations in the light most favorable to the Trustee, as the court must do, there is only one allegation that could possibly suggest Rocket took “nefarious action.”

In paragraph 79 of the Complaint, the Trustee alleged that “Mohammad and Rocket Mortgage kept the October 28 mortgage secret from the Trustee and the Court.” As to Mohammad, this is a well-pleaded allegation. Mohammad knew that he was still a debtor in a pending chapter 7 case. At the time of the October 28 Mortgage, the court had just entered a briefing schedule on Mohammad’s motion for summary judgment in the U.S. Trustee’s adversary proceeding to revoke Mohammad’s discharge.

But the allegation that *Rocket* kept the October 28 Mortgage secret from the Trustee is not a well-pleaded allegation.<sup>4</sup> Rocket knew that Mohammad had filed for protection under the Bankruptcy Code in 2018 and received a discharge the same year. It is a far leap from that knowledge to a well-pleaded allegation that when it engaged in a transaction with Mohammad nearly four years later, Rocket kept that transaction secret from Mohammad’s bankruptcy trustee.

With no well-pleaded allegations that Rocket made “efforts ... to prevent, by fraud or deception,” *Shropshire*, [275 F.3d at 595](#), the Trustee from suing timely, the Trustee cannot plausibly maintain a claim that Rocket is equitably estopped from raising the statute of limitations as an affirmative defense. Since the allegations in the Complaint plainly establish that it was filed after the statute of limitations expired for an action under [11 U.S.C. § 549](#), the Complaint admits all the ingredients of an impenetrable defense. Therefore, the court will grant the Motion to Dismiss as to Count 1. The Trustee will be granted leave to amend the Complaint

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<sup>4</sup> Paragraph 79 is not incorporated into Count 1. For this reason alone, the court could have disregarded it. Since the court would have granted leave to Plaintiff to amend the Complaint so that he could move this allegation into Count 1, however, the court considered Paragraph 79 in the interests of efficiency and economy.

if he is able to make well-pleaded allegations that Rocket acted by fraud or deception, took active steps to prevent the Trustee from suing, concealed evidence or otherwise took actions that would plausibly support a claim for equitable estoppel.

Having determined that the statute of limitations bars a claim for relief under [11 U.S.C. § 549](#), the court need not consider whether the good faith defense applies.

**2. The Complaint does not plausibly allege that the October 28 Mortgage is void as a violation of the automatic stay, but the Trustee will be granted leave to amend the Complaint.**

The Trustee asserts in the Response that the filing of a bankruptcy petition operates as a stay, applicable to all entities, of “any act to create, perfect, or enforce any lien against property of the estate[.]” [11 U.S.C. § 362\(a\)\(4\)](#). He contends that when Rocket entered into a mortgage loan transaction with Mohammad, and Mohammad granted it a mortgage on the Essex Property, Rocket created and perfected a lien against property of Mohammad’s bankruptcy estate. Since this action was prohibited by the automatic stay, argues the Trustee, the October 28 Mortgage is void.

**a. The automatic stay did not terminate as to property of the estate when the court granted Mohammad’s discharge**

In its Reply, Rocket first argues that under [11 U.S.C. § 362\(c\)\(2\)](#), the automatic stay terminated when the court granted Mohammad a discharge on December 26, 2018. *See In re Garcia*, No. 22 B 130, [2022 WL 665825](#), at \*4 (Bankr. N.D. Ill. Mar. 7, 2022) (“Ordinarily, the stay remains in effect until the case is closed or dismissed or the debtor is discharged.”).

Rocket’s argument, however, is only partially accurate. [11 U.S.C. § 362\(c\)](#) states, in relevant part:

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied[.]

Therefore, the stay of any act *other than an act against property of the estate* terminates upon the granting of a discharge, as Rocket contends. The Trustee argues in the Response, however, that “when it entered into a mortgage loan transaction with Mohammad and obtained a mortgage in the [Essex] Property, Rocket Mortgage created and perfected a lien *against property of Mohammad’s bankruptcy estate*.” Response, p. 5 (emphasis added). See [11 U.S.C. § 362\(a\)\(4\)](#) (the filing of a bankruptcy petition operates as a stay of “any act to create, perfect, or enforce any lien against property of the estate[.]”).

Taking the allegations in the Complaint as true, the Essex Property was property of the estate at the time of the October 28 Mortgage. Therefore, the automatic stay still applied to certain actions against it, and Rocket’s first argument cannot prevail.

**b. The automatic stay can apply to voluntary transactions initiated by a debtor**

The October 28 Mortgage involved a voluntary post-petition transfer by the Debtor. See [11 U.S.C. § 101\(54\)\(A\)](#) (a “transfer” under the Bankruptcy Code includes the “creation of a lien”). Rocket urges the court to follow the case law suggesting that the automatic stay does not apply to voluntary, debtor-initiated transactions. See *In re Schwartz*, [954 F.2d 569, 574](#) (9th Cir. 1992) (“Section 362’s automatic stay does not apply to sales or transfers of property initiated by the debtor.”). See also *In re Roth*, [595 B.R. 572, 577](#) (S.D. Cal. 2018) (“To determine which [sic] whether § 549 or § 362 applies, the Court must determine whether the transfer or action

taken against the Zanzibar properties was debtor-initiated or creditor-initiated.”); *Garcia v. Phoenix Bond & Indemnity Co. (In re Garcia)*, [109 B.R. 335, 339](#) (N.D. Ill. 1989) (“Targeted at the activities of creditors, the automatic stay itself does not specifically prohibit the debtor from willingly transferring an interest in property of the estate post-petition.”); *Tese-Milner v. Capstone Credit, LLC (In re Level 8 Apparel, LLC)*, Adv. Pro. No. 20-1208 (JLG), [2021 WL 408981](#), at \*8 (Bankr. S.D.N.Y. Feb. 3, 2021) (“as a matter of law, the Trustee cannot state a claim against Capstone Capital under section 362 of the Bankruptcy Code because she must use [11 U.S.C. § 549](#), rather than [11 U.S.C. § 362](#), to recover estate property that the debtor voluntarily transfers after the bankruptcy filing”) (quotation omitted).

The better line of reasoning, however, follows the “one, cardinal canon” that a court should turn to first when interpreting a statute – that Congress “says in a statute what it means and means in a statute what it says there.” *Connecticut Nat. Bank v. Germain*, [503 U.S. 249, 253-54](#) (1992). Any dispute over the meaning of the Bankruptcy Code “begins where all such inquiries must begin: with the language of the statute itself.” *United States v. Ron Pair Enters., Inc.*, [489 U.S. 235, 241](#) (1989). And there is no language in § 362(a)(4) that excludes acts to create, perfect or enforce a lien if those acts are the result of a voluntary transaction initiated by the debtor.

As Judge Ginsberg acknowledged when interpreting a related subsection of the Bankruptcy Code, “nothing in either §§ 362(a)(3) or (6) suggests that only coercive, nonvoluntary acts to take property of the estate or collect a prepetition debt are stayed.” *Knopfler v. Glidden Co. (In re Germansen Decorating, Inc.)*, [149 B.R. 517, 521](#) (Bankr. N.D. Ill. 1992). Similarly, nothing in the language of § 362(a)(4) suggests that only acts to create, perfect or enforce a lien that are based on nonvoluntary transactions are stayed.

Finally, the Supreme Court has told its lower courts that “[a]n ‘act’ is ‘[s]omething done or performed ... ; a deed.’ Black’s Law Dictionary 30 (11th ed. 2019); *see also* Webster’s New International Dictionary 25 (2d ed. 1934) (‘that which is done,’ ‘the exercise of power,’ ‘a deed’).” *City of Chicago, Illinois v. Fulton*, [592 U.S. 154, 158](#) (2021). Again, nothing in those definitions suggests that an “act” to create, perfect or enforce a lien is excluded from the ambit of § 362(a)(4) if it was an element of a voluntary, debtor-initiated transaction.

Therefore, the automatic stay may have prohibited the October 28 Mortgage.

**c. The Trustee will be granted leave to amend the Complaint**

Although the October 28 Mortgage may have been a violation of the automatic stay, the Complaint does not plausibly allege that it is void as a stay violation. In his prayer for relief in Count 1, the Trustee seeks avoidance of the October 28 Mortgage and entry of a money judgment. He did not seek a declaration that the October 28 Mortgage is void. Moreover, even if the court determines after trial that the October 28 Mortgage violated the automatic stay, “section 362 does not contain any express grant of authority for a trustee to pursue an avoidance action or to recover or seek turnover of property of the estate conveyed in violation of its provisions. Resort to other provisions of the Code is required and their terms must be considered.” *Groupe v. Hill (In re Hill)*, [156 B.R. 998, 1005–06](#) (Bankr. N.D. Ill. 1993).

For all of the reasons stated above, the Motion to Dismiss will be granted as to Count 1. The Trustee will be granted leave to amend the Complaint as described above.

**C. Counts 2-4: Laches does not bar the remaining counts of the Complaint**

The remaining counts of the Complaint seek relief on the grounds of fraud, rescission and constructive trust. Rocket argues that “if the Court finds the Trustee cannot avoid the Rocket Mortgage pursuant to Section 549(d), the Trustee cannot support a claim to rescind the properly

recorded Rocket Mortgage, that the recorded Rocket Mortgage was fraudulently concealed, or that the Trustee is entitled to a constructive trust as a result of the post-petition transfer. Because the avoidance claim fails as a matter of law under Section 549(d), so too do the Trustee's remaining claims." Reply, pp. 3-4.

However, Rocket makes no further argument on this point and cites no case law in support of its position. It provides no explanation of why the facts that might otherwise support a claim to avoid a postpetition transfer or a claim that an act is void as a violation of the automatic stay cannot support a claim for fraud, or for the remedies of rescission or constructive trust based on that fraud, simply because the statute of limitations bars a claim under § 549.

Instead, Rocket argues that the Trustee's remaining claims are barred by laches. Rocket's argument must fail for two reasons. First, Illinois law provides a five-year statute of limitations for fraud, rescission and constructive trust. *See* [735 ILCS 5/13-205](#) ("actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued"); *Boyd Mach. & Repair Co. v. Am. Int'l Homes, Ltd.*, [100 F. Supp. 2d 898, 901](#) (N.D. Ill. 2000) ("the five year statute of limitations applies to this claim of common law fraud"); *DeSantis v. Brauvin Realty Partners, Inc.*, [618 N.E.2d 548, 552](#) (Ill. App Ct. 1993) ("[W]e hold that plaintiff had a cause of action no later than 1985 wherein he could assert that defendants defrauded him and seek, as a remedy therefor, rescission of the contract under which he purchased his partnership interest.... [Therefore,] the five-year period of limitation in section 13-205 barred the action he brought in 1991."); *Hagney v. Lopeman*, [590 N.E.2d 466, 468](#) (Ill. 1992) ("In Illinois, a five-year statute of

limitations applies to an action for constructive trusts.”). The Trustee filed the Complaint well within that five-year statute of limitations period.<sup>5</sup>

Second, “[l]aches is an equitable doctrine that cuts off the right to sue when a plaintiff’s unreasonable delay in pursuing his claim prejudices the defendant.” *R.R. Maint. & Indus. Health & Welfare Fund v. Mahoney*, 144 F.4th 957, 964 (7th Cir. 2025). In this case, the allegations regarding delay must be concerned with the Trustee’s actions *after* he could have learned about the October 28 Mortgage. *See Hollis v. Muller (In re T & M Enters., Inc.)*, 284 B.R. 256, 262 (Bankr. N.D. Ill. 2002) (“When applying the doctrine of laches to bar a claim, the period of delay is measured from when the claimant had actual notice of the claim, or, would have reasonably been expected to inquire about the subject matter.”) (quotation omitted).

Was the Trustee’s delay in filing this Complaint unreasonable and inexcusable? Rocket makes the *argument* that it was, but contentions in a motion to dismiss are not the same as allegations in a complaint. When deciding a motion to dismiss, the court looks only to the well-pleaded allegations in a complaint as well as attached exhibits and those facts for which it can take judicial notice. There is nothing in either the Complaint or in the record to support a finding, at this stage of the litigation, that laches precludes the Trustee from bringing his fraud, rescission and constructive trust claims.

It may be that during discovery, Rocket uncovers facts that would support the application of laches. If so, Rocket may make this argument again at trial. At this time, however,

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<sup>5</sup> Since the Trustee filed the Complaint within the limitations period, one could argue that laches *cannot* be invoked. *See, e.g., Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 679 (2014) (“the dissent has come up with no case in which this Court has approved the application of laches to bar a claim for damages brought within the time allowed by a federal statute of limitations”). *See also SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 332 (2017) (“*Petrella*’s reasoning applies to a similar provision of the Patent Act”). However, the court is not deciding the question of the applicability of laches on this point.

considering all allegations in the Complaint in the light most favorable to the Trustee, the court denies the Motion to Dismiss Counts 2, 3 and 4 on the grounds that laches applies.

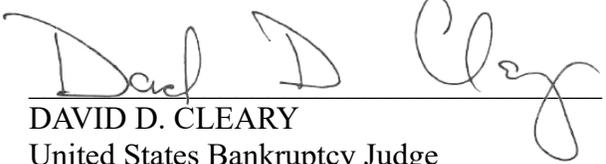
#### IV. CONCLUSION

For all of the reasons stated above, **IT IS ORDERED THAT:**

1. The Motion to Dismiss is **GRANTED** as to Count 1;
2. The Motion to Dismiss is **DENIED** as to Counts 2, 3 and 4;
3. The Trustee is given leave to amend the Complaint as described above;
4. Any amended complaint shall be filed on or before **March 31, 2026**; and
5. This adversary proceeding is set for status on **April 8, 2026 at 10:00 a.m.**

ENTERED:

Date: March 3, 2026

  
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DAVID D. CLEARY  
United States Bankruptcy Judge

MLU