

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

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Bankruptcy Number: 18 B 3134

Adversary Caption: Leibowitz v. Tahseen

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Judge: David D. Cleary

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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
<hr style="width: 50%; margin-left: 0;"/>		
)	
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 MOHAMMAD TAHSEEN
AND SAMANTHA TAHSEEN’S MOTION TO DISMISS (EOD 24)**

This matter comes before the court on the motion of Mohammad Tahseen (“Mohammad” or “Debtor”) and Samantha Tahseen (“Samantha”) (collectively with Mohammad, the “Tahseens” or the “Defendants”) 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. Trustee filed a response in opposition to the Motion to Dismiss (“Response”) and Samantha filed a reply (“Reply”).¹ Having reviewed the papers filed and heard the

¹ Both Mohammad and Samantha signed the Motion to Dismiss as well as the reply. However, the reply is titled “Tahseen’s Reply to Trustee’s Response to Her Motion to Dismiss His Complaint” and the introductory paragraph states that it is Samantha Tahseen’s filing. The substance of the reply also suggests that it was filed only on behalf of Samantha.

arguments of the parties, the court will deny the Motion to Dismiss as to Mohammad and grant the Motion to Dismiss as to Samantha.

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 and 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.)

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

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.)²

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.)

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. (Case No. 18-3134, 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.)

Prior to dismissal of Samantha's case and while Mohammad's chapter 7 case was pending, on December 30, 2019, Mohammad executed and recorded a quit claim deed purporting

² For purposes of this Motion to Dismiss, "Trustee" shall refer to both Maxwell and Leibowitz.

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.)

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.) The Trustee filed an appearance in Samantha's second chapter 13 case on February 28, 2020. (*Id.*, EOD 23.)

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. In the motion, Mohammad did not disclose 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 Mortgage LLC ("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).³ 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 (collectively, the “Essex Property Transactions”) that affected the Essex Property:

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

³ In the Motion to Dismiss, the Tahseens cited pre-*Twombly* precedent with an earlier standard for considering motions to dismiss. *See* Motion to Dismiss, pp 4-5. By citing these pre-*Twombly* cases, which suggest a lower bar for a complaint to survive a motion to dismiss, Defendants presented legal contentions that are not “warranted by existing law[.]” Fed. R. Bankr. P. 9011(b)(2). *Twombly* governs the Complaint and the Motion to Dismiss.

► October 28, 2022: Mohammad purports to grant a mortgage in the Essex Property to Rocket (the “Rocket Transaction”).

In Count 1, the Trustee alleges that the Essex Property Transactions were not authorized and asks the court to avoid them. The Trustee also seeks a money judgment for the value of the Essex Property or \$481,000 plus interest, costs and expenses.

The Tahseens argue that avoidance of the 2019 Transfer 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[.]” Since § 549 is the exclusive remedy for avoiding postpetition transactions, they assert that Counts 2, 3 and 4 should also be dismissed. In response, the Trustee contends that: (1) each of the Essex Property Transactions is void as a violation of the automatic stay; and (2) if the Essex Property Transactions are actionable under [11 U.S.C. § 549](#), then the Tahseens are 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. Mohammad may be equitably estopped from raising this defense, but Samantha is not. 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).

The Tahseens argue that since the Trustee filed the Complaint on February 20, 2025, more than five years after the date of the 2019 Transfer, his claim is barred by the two-year statute of limitations in § 549(d) and should be dismissed with prejudice.

In the 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 support a finding that the Complaint plausibly alleges that the Tahseens are equitably estopped from asserting the statute of limitations as an affirmative defense:

--on June 4, 2020, Mohammad filed a motion to convert his case to chapter 13 ("Motion to Convert"). The Trustee attached the Motion to Convert to his Response as Exhibit A.⁴

Throughout the Motion to Convert, Mohammad refers to "his residence" and does not disclose Samantha's purported interest in the Essex Property;

--in April 2021, Mohammad entered into the Amerisave Mortgage, receiving the proceeds and using the funds as he saw fit;

--on May 17, 2021, Mohammad filed a motion to compel the Trustee to abandon the Essex Property ("Motion to Compel Abandonment"). The Trustee attached the Motion to Compel Abandonment to his Response as Exhibit B. In the Motion to Compel Abandonment, Mohammad did not disclose either the 2019 Transfer or the Amerisave Mortgage;

--on June 4, 2021, the Trustee filed a motion to compel Mohammad to turn over the proceeds of the Amerisave Mortgage ("Motion to Compel Turnover"). The Trustee attached the Motion to Compel Turnover to his Response as Exhibit C. In paragraph 7 of the Motion to

⁴ The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

[F.R.E. 201\(b\)](#). The court may take judicial notice of documents filed in the underlying bankruptcy case, *Vallecillos v. Salgado (In re Salgado)*, [588 B.R. 209, 214](#) (Bankr. N.D. Ill. 2018), and doing so does not convert the Motion to Dismiss into a motion for summary judgment, *Anderson v. Simon*, [217 F.3d 472, 474-75](#) (7th Cir. 2000).

Compel Turnover, the Trustee acknowledged that “Debtor purported to convey partial ownership of the House by deed to Samantha.... Trustee believes that such conveyance is void.”

--in his response to the Motion to Compel Turnover, Mohammad did not dispute that the 2019 Transfer was void and did not assert that Samantha had any ownership interests in the Essex Property. The Trustee attached Mohammad’s response to the Response as Exhibit D. The court eventually ordered Mohammad to turn over the full amount of the proceeds of the Amerisave Mortgage. The Trustee attached the court’s order to the Response as Exhibit E.

The Trustee summarized his argument as follows: “Because Mohammad continued before this Court to treat the [Essex] Property as his sole property, implicitly agreeing that the transfer to Samantha was void, Mohammad and Samantha wrongfully prevented the Trustee from seeking to avoid the transfer. Mohammad and Samantha are therefore equitably estopped from asserting the statute of limitations as a defense.” Response, p. 7.

This argument, however, ignores what Trustee admitted earlier on the same page: “On June 4, 2021, the Trustee’s predecessor filed a motion to compel Tahseen to turnover the Amerisave mortgage proceeds. Mot. (attached without its own exhibits as Ex. C). In that motion, the Trustee’s predecessor noted the transfer to Samantha but stated that ‘Trustee believes that such conveyance is void.’ *Id.*” Response, p. 7.

Mohammad may have written motions that suggested the Essex Property remained his property alone, but the Trustee⁵ was not fooled. In his Motion to Compel Turnover, the Trustee acknowledged the purported transfer to Samantha.

“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

⁵ This is the only instance in the Response in which the Trustee refers to “the Trustee’s predecessor[.]”

trying to throw potential suitors off the scent.” *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).

Taken together, the allegations in the Complaint and the documents for which the court takes judicial notice suggest a factual dispute over the impetus for Mohammad’s actions. It is plausible that by his statements in the various documents attached to the Response, Mohammad was trying to “throw” the Trustee “off the scent” and that his efforts could have “prevent[ed], by fraud or deception, the [Trustee] from suing in time.” *Shropshear*, [275 F.3d at 595](#). Therefore, the statute of limitations may not be an “impenetrable” affirmative defense for Mohammad, who may be equitably estopped from asserting it. On those grounds, the court will deny the Motion to Dismiss Count 1 as to Mohammad. The question of whether Mohammad is equitably estopped from asserting a statute of limitations defense will be resolved after further discovery and motion practice or trial.

None of the allegations in the Complaint or in the documents attached to the Response, however, support the application of equitable estoppel against Samantha. Moreover, the court can take judicial notice of the Trustee’s appearance in Samantha’s second chapter 13 case, in which she stated on Schedule A that she was a joint owner of the Essex Property. Therefore, it is not plausible to allege that Samantha concealed the 2019 Transfer. Since the allegations in the Complaint plainly establish that it was filed well after the statute of limitations expired for an action under [11 U.S.C. § 549](#), the Complaint admits all the ingredients of an impenetrable affirmative defense for Samantha. Therefore, the court will grant the Motion to Dismiss as to Count 1 against Samantha.

The Trustee will be granted leave to amend the Complaint if he is able to make well-pleaded allegations that Samantha acted by fraud or deception, took active steps to prevent the

Trustee from suing, concealed evidence or otherwise took actions that would plausibly support the application of equitable estoppel against Samantha.

In Count 1, the Trustee seeks avoidance of all three Essex Property Transactions. The Tahseens addressed only the 2019 Transfer in the Motion to Dismiss, and the Trustee suggests that “[i]f Count 1 is dismissed on limitations grounds, it should be dismissed only as to the” 2019 Transfer. Response, p. 8.

The court already determined that it would deny the Motion to Dismiss Count 1 as to Mohammad. Therefore, the question is whether Count 1 states a claim against Samantha if the 2019 Transfer is not considered. Although Samantha did not address the other Essex Property Transactions in the Motion to Dismiss, it is patently obvious from the face of the Complaint that none of the allegations therein support a claim for relief against Samantha based on the Amerisave Mortgage or the Rocket Transaction. As stated above, the court will grant the Motion to Dismiss Count 1 as to Samantha.

2. The Complaint does not plausibly allege that the 2019 Transfer is void as a violation of the automatic stay. 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 obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]” [11 U.S.C. § 362\(a\)\(3\)](#). He contends that when Samantha obtained an interest in the Essex Property and asserted that she was an owner, she obtained possession of property of Mohammad’s bankruptcy estate and attempted to exercise control over it. *See* Response, p. 4. Since this action was prohibited by the automatic stay, argues the Trustee, the 2019 Transfer is void.

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

The 2019 Transfer was a voluntary post-petition transfer by the Debtor. *See* [11 U.S.C. § 101\(54\)\(D\)](#) (a “transfer” under the Bankruptcy Code includes “each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing or parting with—(i) property; or (ii) an interest in property”). In their Reply, Mohammad and Samantha cite case law in support of the argument that “[g]enerally, voluntary post-petition transfers of the debtor do not violate the automatic stay” and that § 549 is the exclusive remedy for avoiding those transfers. Reply, p. 6. *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). As Judge Ginsberg acknowledged when interpreting this section 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).

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 obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate is excluded from the ambit of § 362(a)(3) if it was a voluntary, debtor-initiated transaction.

Therefore, the automatic stay may apply to the 2019 Transfer.

b. The Trustee will be granted leave to amend the Complaint

Although the 2019 Transfer 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 Essex Property Transactions and entry of a money judgment. He did not seek a declaration that the Essex Property Transactions are void. Moreover, even if the court determines after trial that the 2019 Transfer 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 Trustee will be granted leave to amend the Complaint as described above.

C. Counts 2-4: The remaining counts of the Complaint are dismissed as to Samantha only

The statute of limitations under [11 U.S.C. § 549\(d\)](#) does not apply to the remaining counts of the Complaint, which seek relief on the grounds of fraud, rescission and constructive trust. The Tahseens argue, however, that the Trustee’s only remedy for avoidance of the transfers is pursuant to [11 U.S.C. § 549](#) and that “Counts 2 through 4 of the Complaint are improper, and cannot be used to avoid the transfers in question because section 549 is the exclusive remedy of the Trustee to avoid post-petition transfers initiated by the Debtor.” Motion to Dismiss, p. 7.

In Counts 2 through 4, however, the Trustee does not seek to *avoid* the Essex Property Transactions. The prayer for relief in Count 2 seeks a money judgment in the amount of the value of the Essex Property. Count 3 seeks rescission of the Essex Property Transactions. In Count 4 the Trustee asks the court to order: (1) the Tahseens to account for those transactions; (2) the Essex Property and all proceeds and profits to be held in constructive trust; and (3) that the Essex Property and all proceeds and profits be transferred to the Trustee.

Moreover, the Tahseens provide no authority to support an argument that 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.

The court notes, however, that 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 2019 Transfer occurred more than five years before the Trustee filed the Complaint, therefore claims for fraud, rescission and constructive trust related to that transaction are barred by the affirmative defense of the statute of limitations unless equitable estoppel applies. As the court stated above, it is plausible that the statute of limitations may not be an “impenetrable” affirmative defense for Mohammad, who may be equitably estopped from asserting it. The court will deny the Motion to Dismiss Counts 2, 3 and 4 as to Mohammad.

However, none of the allegations in the Complaint or in the documents attached to the Response support the application of equitable estoppel against Samantha. Additionally, there are no allegations in the Complaint that support a claim for relief against Samantha based on the

Amerisave Mortgage or the Rocket Transaction. For these reasons, the court will grant the Motion to Dismiss Counts 2, 3 and 4 as to Samantha. As with Count 1, the Trustee will be granted leave to amend the Complaint if he is able to make well-pleaded allegations that Samantha acted by fraud or deception, took active steps to prevent the Trustee from suing, concealed evidence or otherwise took actions that would plausibly support the application of equitable estoppel against Samantha.

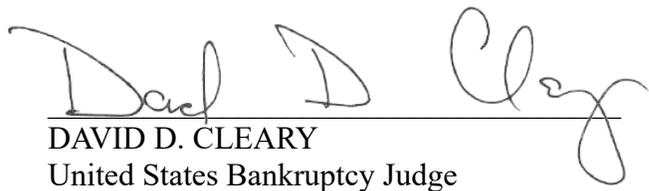
IV. CONCLUSION

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

1. The Motion to Dismiss is **GRANTED** in part and all counts are dismissed as to Samantha;
2. The balance of the Motion to Dismiss is **DENIED** as to Mohammad;
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



DAVID D. CLEARY
United States Bankruptcy Judge MLU