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

**Transmittal Sheet for Opinions for Publishing and Posting on Website**

**Will This Opinion be Published?** Yes

**Bankruptcy Caption:** Tayler J. Stewart

**Bankruptcy No.:** 22 B 9727

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**Judge:** A. Benjamin Goldgar

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**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| In re: | ) | Chapter 7 |
| | ) | |
| TAYLER J. STEWART, | ) | No. 22 B 9727 |
| | ) | |
| Debtor. | ) | Judge Goldgar |

## MEMORANDUM OPINION

Joseph Giordano and Tayler Stewart met online and went on a date in September 2019. Soon after, Stewart began sending anonymous text messages to Giordano, his friends, family, and business associates accusing him of rape. Giordano sued Stewart in Indiana state court alleging defamation and other state-law claims. Stewart counterclaimed, alleging battery and other claims.

About a year later, Stewart filed a chapter 13 bankruptcy case in this district. The bankruptcy filing automatically stayed Giordano's Indiana action. 11 U.S.C. § 362(a). Giordano filed a proof of claim in the bankruptcy case to which Stewart has objected in an adversary proceeding. Giordano filed an adversary proceeding of his own alleging that Stewart owes him a debt nondischargeable under section 1328(a)(4) of the Bankruptcy Code, 11 U.S.C. § 1328(a)(4).

Giordano now moves under section 362(d) of the Code, 11 U.S.C. § 362(d), to have the stay lifted so he can resume his Indiana action against Stewart. For the reasons below, his motion will be granted.

### 1. 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. 28 U.S.C. §

157(b)(2)(G).

## 2. Background

The facts come from the parties' papers and exhibits; from the dockets in the bankruptcy case, the two adversary proceedings, and the Indiana action styled *Giordano v. Doe*, No. 49D06-1912-CT-053399 (Super. Ct. Marion Cty., Ind.) (available at www.mycase.IN.gov); and from a transcript in an Illinois action styled *Giordano v. Stewart*, No. 21 OP 78473 (Cir. Ct. Cook Cty., Ill.). The court can take judicial notice of its own records, *In re Allegretti*, 584 B.R. 287, 289 n.1 (Bankr. N.D. Ill. 2018), as well as the records of other courts in related matters, *BMO Harris Bank N.A. v. Brahos (In re Brahos)*, 589 B.R. 381, 386 n.5 (Bankr. N.D. Ill. 2018). No facts are in dispute.

Stewart (an Illinois resident) and Giordano (a resident of Indiana) became acquainted through an online dating site. In September 2019, they met in person for a date in downtown Chicago. They had dinner, visited several bars, and then repaired to Giordano's hotel room. Soon after the date, Giordano started receiving anonymous text messages from unknown phone numbers accusing him of rape. His family, friends, and business partner received similar messages.

In December 2019, Giordano filed an action in the Superior Court of Marion County, Indiana, naming as defendants "Jane Doe and/or John Doe (Numbers 1-10)." Giordano's complaint alleged Indiana state-law claims for stalking, intimidation, harassment, tortious interference with business relations, slander, and libel. After discovery revealed that Stewart had sent the text messages, Giordano amended his complaint to name her as a defendant. Stewart answered and counterclaimed against Giordano, alleging battery as well as intentional and

negligent infliction of emotional distress.[1/] The parties have taken some discovery in the action, but discovery is incomplete.

While his Indiana action was pending, Giordano also sued Stewart in the Circuit Court of Cook County, Illinois, to obtain a "stalking/no-contact" order against her. In July 2022, the court held an evidentiary hearing on Giordano's complaint. At the hearing, Stewart admitted creating false identities to send Giordano and others texts claiming he had raped her. She also admitted having "surveilled" him, engaged in electronic stalking, and tracked him to his home. The court found in Giordano's favor and entered the order.

The next month, Stewart filed a chapter 13 bankruptcy case. Giordano filed an unsecured claim in the bankruptcy case seeking $5,000,000 and attaching the complaint from the Indiana action. Stewart responded with an adversary proceeding contesting the claim's amount and asking this court to value it. She also alleged in her complaint that to punish her for filing bankruptcy and coerce her into paying him, Giordano had sent letters to several people including her parents and had telephoned and emailed her employer. Stewart sought both an injunction barring Giordano from further communications and damages under section 362(k), 11 U.S.C. § 362(k), for violating the stay. Giordano has not yet answered the complaint, and the parties have not begun discovery.

A week after Stewart filed her adversary complaint, Giordano filed his own. In it, he repeated the allegations from his Indiana state court complaint and said that her rape accusations were false. Giordano asserted that Stewart's false accusations gave rise to a debt nondischargeable under section 1328(a)(4), which makes nondischargeable a debt for damages

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[1/] Before Stewart answered, Giordano amended his complaint again. The second amended complaint combined the slander and libel counts into a single defamation count. Otherwise, the legal theories remained the same.

"awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual." 11 U.S.C. § 1328(a)(4). Just as Giordano has not answered Stewart's complaint, Stewart has not answered Giordano's, and the parties have not begun discovery.

Giordano now moves for relief from the stay so he can pursue his Indiana action. Stewart opposes the motion. Both adversary proceedings have been stayed pending the resolution of Giordano's motion.

### 3. Discussion

Giordano's motion will be granted and the stay lifted to allow him to pursue his claims in the Indiana state court. Although this court can decide whether Stewart owes Giordano a debt and whether that debt is nondischargeable, it cannot liquidate the debt and so cannot value Giordano's claim, as Stewart requests in her adversary complaint. Because the claim is one for a "personal injury tort," it must be liquidated in the district court or the state court. 11 U.S.C. § 157(b)(5). Of the two, the Indiana state court is the better choice. And the outcome there could shorten or even short-circuit Giordano's nondischargeability adversary here.

#### a. *Fernstrom*

The automatic stay in section 362(a) halts various creditor actions against the debtor, the debtor's property, and property of the estate during the bankruptcy case. 11 U.S.C. § 362(a); *see Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755-56 (9th Cir. 1995). The stay is "one of the fundamental debtor protections provided by the bankruptcy laws," *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl Prot.*, 474 U.S. 494, 503 (1986) (internal quotation omitted), because it preserves the estate and gives the debtor some respite from creditors, *In re Grede Foundries,*

*Inc.*, 651 F.3d 786, 790 (7th Cir. 2011). Unless estate property is concerned, the stay remains in effect until the case is closed or dismissed or the debtor is discharged, whichever occurs first. 11 U.S.C. § 362(c).

That said, even before the stay expires it may be lifted for, among other things, "cause." 11 U.S.C. § 362(d)(1). "Cause" is not defined (except as a lack of adequate protection) and depends on a "balancing of the costs and benefits of maintaining the stay" under "the facts of the specific case." *In re Comdisco, Inc.*, 271 B.R. 273, 276 (Bankr. N.D. Ill. 2002). When a creditor asks for the stay to be lifted to proceed with an action in another court, courts in this circuit consider three factors:

(1) whether any "great prejudice" to the estate or the debtor will result if the stay is lifted;

(2) whether the hardship from continuing the stay "considerably outweighs" the hardship to the debtor from lifting it; and

(3) whether the creditor has a probability of prevailing on the merits of its action.

*IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731, 735 (7th Cir. 1991); *see In re Prate*, 634 B.R. 72, 78 (Bankr. N.D. Ill. 2021) ("*Fernstrom* has supplied the applicable test in this circuit for more than three decades."). Whether to lift the stay is a decision committed to the bankruptcy court's discretion. *Colon v. Option One Mortg. Corp.*, 319 F.3d 912, 916 (7th Cir. 2003).

**b. Personal Injury Tort**

Here, the first two factors collapse into one because both sides will be better off if the stay is lifted. In opposing the motion, Stewart suggests that this court can rule on all the parties' disputes – can value Giordano's claim, determine whether she owes Giordano a debt, and decide whether the debt is nondischargeable. In making that suggestion, though, she forgets an

important limit on bankruptcy court authority. Proceedings on a claim for a "personal injury tort" are not core proceedings in which a bankruptcy court can enter a final judgment. 28 U.S.C. §§ 157(b)(2)(B), (O). In fact, a "personal injury tort claim" cannot be tried in the bankruptcy court at all but must instead be "tried in the district court in which the bankruptcy case is pending, or . . . in the district in which the claim arose." 28 U.S.C. § 157(b)(5).[2/]

With one exception, Giordano's claims against Stewart are "personal injury tort" claims. Neither the Code nor Title 28 defines "personal injury tort," and courts have arrived at three interpretations. *See Adams v. Adams (In re Adams)*, 478 B.R. 476, 486-87 (Bankr. N.D. Ga. 2012) (describing the three interpretations). At one end are courts holding narrowly that a "personal injury tort" means a tort involving bodily injury. *See, e.g., In re Byrnes*, 638 B.R. 821, 829 (Bankr. D.N.M. 2022); *In re Gawker Media LLC*, 571 B.R. 612, 620 (Bankr. S.D.N.Y. 2017). At the other are courts holding broadly that "personal injury" means any "invasion of personal rights" and so includes business and financial injuries. *See, e.g., Leathem v. Von Volkmar (In re Von Volkmar)*, 217 B.R. 561, 566 (Bankr. N.D. Ill. 1998); *Thomas v. Adams (In re Gary Brew Enterprises Ltd.*, 198 B.R. 616, 620 (Bankr. S.D. Cal. 1996).

The majority view, though – and the most reasonable – lies in the middle, defining personal injury to include "emotional and reputational harms" but not business and financial injuries. *See Adams*, 478 B.R. at 486-87 (noting that "many courts" have adopted this interpretation); *Adelson v. Smith (In re Smith)*, 389 B.R. 902, 908 (Bankr. D. Nev. 2008)

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[2/] Parties (including the parties here) often treat these statutes as "jurisdictional." Not so. Bankruptcy jurisdiction is vested in the district court, *see* 28 U.S.C. § 1334(a), of which the bankruptcy court is a "unit," 28 U.S.C. § 151. Section 157 simply "allocates the authority to enter final judgment between the bankruptcy court and the district court," and section 157(b)(5) "specifies where a particular category of cases should be tried." *Stern v. Marshall*, 564 U.S. 462, 480 (2011); *see also Pausch v. DiPiero (In re DiPiero)*, 553 B.R. 122, 129 (Bankr. N.D. Ill. 2016).

(explaining why the middle view is the better view). Courts in this circuit have generally taken the middle view and so have declined to require bodily injury. *See, e.g.*, *S.V. v. Kratz*, Nos. 12-C-705, 10-C-919, 2012 WL 3070979, at *2 (E.D. Wis. July 26, 2012) (finding "personal injury tort" includes "mental and emotional suffering and humiliation"); *Lightfoot v. Bally Total Fitness Corp.*, No. 08 C 1733, 2011 WL 13383764, at *2 (N.D. Ill. Jan. 6, 2011) (holding that discrimination and defamation claims are "personal injury tort" claims); *Rizzo v. Passialis (In re Passialis)*, 292 B.R. 346, 352 (Bankr. N.D. Ill. 2003) (finding defamation to be a "personal injury tort").[3/]

Under this view, all but one of Giordano's claims in the Indiana action fall squarely into the "personal injury tort" category. His second amended complaint alleges defamation, plainly a personal injury tort. *Lightfoot*, 2011 WL 13383764, at *2; *Rizzo*, 292 B.R. at 352. He also alleges stalking, intimidation, and harassment, here simply legal variations on his defamation theme. *Plys v. Ang (In re Ang)*, 589 B.R. 165, 179-81 (Bankr. S.D. Cal. 2018) (sending anonymous, harassing text messages constituted a personal injury tort). Only his final claim, tortious interference with a business relationship, is a business tort. *Menasha Corp. v. News Am. Mktg. In-Store, Inc.*, 354 F.3d 661, 666 (7th Cir. 2004). But it would be inefficient to slice and dice Giordano's complaint so that the Indiana court had to decide four claims and an Illinois federal court the fifth claim, especially when all the claims stem from the same conduct, *see* Sec. Am. Comp. ¶ 54 (alleging that the interference consisted of Stewart's "false claims and accusations"). As the first four claims go, then, so goes the fifth.

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[3/] The Seventh Circuit has not weighed in except to hold that business torts are not personal injury torts, implicitly rejecting the broad interpretation. *See Horwitz v. Alloy Auto. Co.*, 992 F.2d 100, 103 (7th Cir. 1993).

### c. Hardships and Likelihood of Success

Because four of Giordano's five claims against Stewart are personal injury tort claims, and because (as discussed above) this court cannot liquidate those claims, 28 U.S.C. § 157(b)(5), the stay should be lifted so the Indiana state court can liquidate them (or "value" them, Stewart's term in her adversary complaint). True, no stay-lift would be necessary if Stewart's claim objection were tried in the district court here, as section 157(b)(5) contemplates. But lifting the stay to let the Indiana action do the job makes more sense. The claims in the action are Indiana state-law claims. The judge hearing the action is an Indiana judge and so familiar with Indiana law. The parties are not only at issue in the action but are taking discovery. What is more, Stewart has a counterclaim in the action, and her bankruptcy case has not stayed the counterclaim. *Aiello v. Providian Fin. Corp.*, 239 F.3d 876, 880 (7th Cir. 2001). Stewart's counterclaim would proceed even if Giordano's complaint did not.

In contrast, the parties are not even at issue in Stewart's adversary proceeding to value Giordano's claim and have not begun discovery. A district judge from this district hearing Stewart's claim objection would have no familiarity with the facts or applicable Indiana law. With Stewart's counterclaim in Indiana not stayed, the parties would be forced to litigate in two courts in different states. And with different courts hearing what effectively amounts to the same dispute (since the outcome on both Giordano's claims and Stewart's counterclaim depends on whether Stewart's rape accusations were true), litigation in two courts would risk inconsistent decisions. If the Indiana action continues, on the other hand, the preclusive effect of any judgment will likely dictate the outcome of Stewart's claim objection here. *See, e.g., Jacobson v. Wells Fargo Bank, N.A. (In re Jacobson)*, 614 B.R. 321, 327 (Bankr. E.D. Wis. 2020). Considerations of judicial efficiency (not to mention comity) favor lifting the stay. *See In re*

*Quay Corp.*, No. 05 C 7235, 2006 WL 208704, at *2 (N.D. Ill. Jan. 24, 2006).

The same considerations favor lifting the stay when it comes to Giordano's nondischargeability adversary proceeding. Although, as Stewart observes, the prohibition on liquidating a personal injury tort claim does not prevent this court from deciding whether she owes such a debt and whether the debt is nondischargeable, *DiPiero*, 553 B.R. at 129-30, it would be unreasonable to leave the stay in place when Giordano's claims must liquidated in another court, and the stay will be lifted to allow the Indiana action to liquidate them. As with Stewart's claim objection, the outcome in the Indiana action will likely dictate the outcome in Giordano's adversary proceeding. If Giordano wins in Indiana, the Indiana judgment's preclusive effect will prove not only a debt but likely dischargeability as well. If Stewart wins, on the other hand, there will be no debt, and Giordano's adversary will be over. Either way, the judgment could well permit this court to dispose of the adversary proceeding on summary judgment, no trial needed. Again, judicial efficiency and comity favor lifting the stay.

In short, the balancing of hardships under *Fernstrom* is unnecessary here. Because no one court can resolve the parties' disputes, and because allowing the Indiana action to proceed will reduce the parties' litigation, saving them time and money, lifting the stay will benefit both sides.

That leaves the third *Fernstrom* factor: the likelihood Giordano will succeed in the Indiana action. It has never been clear *why* the creditor's likelihood of success should matter to a lift-stay decision. For current purposes, though, it is enough that *Fernstrom* says it matters, and Seventh Circuit decisions are binding. *Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1029 (7th Cir. 2004) (noting that trial judges in this circuit must follow decisions from the court of appeals "whether or not they agree"). Also, the district court has sometimes faulted

bankruptcy judges who failed to address the third factor. *See, e.g., Sears, Roebuck & Co. v. Jackson*, No. 99 C 3176, 1999 WL 703730, at *3 (N.D. Ill. Aug. 26, 1999).

Based on the limited information available, the third factor favors lifting the stay. That is because Giordano prevailed in his Illinois action to obtain a stalking/no contact order against Stewart. True, the Illinois and Indiana actions are not perfectly congruent: as the Illinois court stressed, the issue before it was "not whether Mr. Giordano raped Ms. Stewart or whether Ms. Stewart slandered or libeled Mr. Giordano." (Tr. at 2). But during the Illinois hearing Stewart admitted she was behind the anonymous messages Giordano alleges in the Indiana action and had stalked him electronically. Her admissions and the Illinois court's findings based on them show that Giordano will be able to prove at least part of his case, so there is at least some likelihood he will succeed in his Indiana action.

In opposing Giordano's lift-stay motion, Stewart relies heavily on *In re Prate*, 634 B.R. 72 (Bankr. N.D. Ill. 2021), in which the court denied a request to lift the stay. Stewart apparently believes this case is just like *Prate*.

This case is nothing like *Prate*. The *Prate* court declined to lift the stay because "only one court, the bankruptcy court, [could] dispose of all the issues no matter who [won]." *Id.* at 76. That was so because the creditor's claims in the state court were business torts, not personal injury torts. Because they were, the bankruptcy court could not only determine the debt's existence and nondischargeability but could also liquidate the debt. Not true here. In fact, the bankruptcy court in *Prate* was the *only* court that could decide nondischargeability because section 523(c)(1) of the Code gave it exclusive jurisdiction over the creditor's nondischargeability claims. *Id.* Not true here either. *See* Keith M. Lundin, *Lundin on Chapter 13*, § 159.7 at ¶ 6 (LundinOnChapter13.com, last visited April 5, 2023) ("A determination of

dischargeability under section 1328(a)(4) is not limited as provided in § 523(c)."). And as if these differences were not enough, the adversary proceeding in *Prate* was several years old, discovery was finished, and the matter was ready for trial. The adversary was well ahead of the state court action. Also not true here. *Prate* is no help to Stewart.

Stewart also argues that both the claim objection and the nondischargeability matter are core proceedings under section 157. She is right about the nondischargeability adversary proceeding, 28 U.S.C. § 157(b)(2)(I), but again she is wrong about her claim objection, 28 U.S.C. §§ 157(b)(2)(B), (O). Giordano's claim cannot be liquidated (or "valued") in the bankruptcy court, as Stewart believes. *Id.* And the question is irrelevant in any event. Whether a proceeding is core or non-core governs only whether the bankruptcy court or the district court can enter final judgment. *British Am. Ins. Co. v. Fullerton (In re British Am. Ins. Co.)*, 488 B.R. 205, 234 (Bankr. S.D. Fla. 2013). It has nothing to do with granting or denying stay relief.[4/]

A final point. The procedural posture here is not novel: "a personal injury tort action . . . initiated in State Court, interrupted by [a] chapter 13 filing[,] and . . . followed by [a] nondischargeability adversary proceeding." *Dorris v. Chacon (In re Chacon)*, 438 B.R. 725, 736 (Bankr. D.N.M. 2010). Neither is the appropriate judicial response. Courts facing these circumstances commonly "permit the liability and damages issues to be determined either in the state court or the U.S. district court, and then have the parties return to the bankruptcy court as needed for an adjudication of the dischargeability issue." *Id.* (citing cases); *see also In re Cooney*, No. 17-20071, 2017 WL 4119582, at *2 (Bankr. D. Kan. Sept. 14, 2017) (lifting stay to permit state court action to continue); *In re Abbott*, No. 15-06822-5-SWH, 2016 WL 6892456, at

[4/] That a proceeding is core does not necessarily mean the bankruptcy court has exclusive jurisdiction over it, as Stewart seems to think. *See In re Lemoine*, No. 12-11152, 2012 WL 5906939, at *2 (Bankr. E.D. Pa. Nov. 26, 2012).

*2 (Bankr. E.D.N.C. Nov. 22, 2016) (same); *Miller v. Schaub (In re Schaub)*, Nos. 11-23707 (DHS), 11-01811 (DHS), 2012 WL 1144424, at *5 (Bankr. D.N.J. Apr. 4, 2012) (same). There is every reason to follow the common practice here.

## 4. Conclusion

The motion of Joseph Giordano for relief from stay is granted. The automatic stay is lifted to permit the action styled *Giordano v. Doe*, No. 49D06-1912-CT-053399 (Super. Ct. Marion Cty., Ind.), to proceed through final judgment and the exhaustion of any appeals. No steps may be taken to enforce the judgment.[5/]

Dated: April 13, 2023

A. Benjamin Goldgar
United States Bankruptcy Judge

[5/] Because the automatic stay is lifted, this court's stay of adversary proceeding No. 22 A 192 will remain in effect. Count I of the complaint in adversary proceeding No. 22 A 188 will also remain stayed, but the stay will be lifted as to Counts II and III. Separate orders will be entered in the adversary proceedings.