

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Christopher Bernard Jones,

Debtor(s).

C/A No. 21-01034-HB

Chapter 13

**ORDER**

**THIS MATTER** is before the Court on the Motion and Notice filed by Alfie Investors, LLC, requesting relief pursuant to 11 U.S.C. § 362(d).<sup>1</sup> A response was due on or before May 10, 2021. On May 12, 2021, Debtor Christopher Bernard Jones, *pro se*, filed a Motion requesting an extension of time to respond and asking for additional time to file outstanding documents due in his case.<sup>2</sup> The relevant undisputed facts are found in exhibits to the Motion and were proffered by the parties at the hearing.

**FACTS AND PROCEDURAL HISTORY**

1. On October 11, 2018, a Real Estate Purchase Agreement (the “Agreement”) was executed defining “Sellers” as Thomas and Judith Oglesby (the “Oglesbys”) and “Buyer” as “Christopher Jones, International Palm, a South Carolina Corporation[.]” Despite the “Sellers” definition, the Agreement was signed by the Oglesbys on behalf of Judith South, LLC. The subject property is located at 217 Barker Rd, Simpsonville, SC 29680 (“217 Barker”). The Agreement lists the Buyer’s address as:

International Palm Oil, Inc.  
c/o Christopher Jones/ for Purchaser  
P.O. Box 1064  
Greenville, SC 29602

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<sup>1</sup> ECF No. 19, filed Apr. 26, 2021.

<sup>2</sup> ECF No. 25.

The Agreement was signed by Jones as President of “International Palm Oil” and recorded in the Greenville County Register of Deeds (“Greenville ROD”), despite it providing “Buyer agrees and covenants that it shall not under any circumstances record this Agreement in the land records of the county and state in which the Property is located.” The Agreement provides “Seller shall convey the Property to Buyer by a transferable and recordable Limited or Special Warranty Deed...”

2. On August 8, 2019, International Palm Oil and Biodiesel, LLC (“International Palm”) executed and delivered a promissory note to Alfie in the principal amount of \$228,000.00 (“217 Barker Note”), which was personally guaranteed by the Oglesbys. Alfie obtained a mortgage on the property to secure the 217 Barker Note, which was signed by the Oglesbys as Members and Managers of International Palm.

3. On September 13, 2019, International Palm executed and delivered a promissory note to Alfie in the principal amount of \$210,000.00 (“213 Barker Note”), which was also personally guaranteed by the Oglesbys. Alfie obtained a mortgage on this property to secure the 213 Barker Note, which was signed by the Oglesbys as Members and Managers of International Palm. The property description attached as an exhibit to this mortgage states Crown Properties LLC conveyed 213 Barker to International Palm that same day.

4. The 217 Barker Note matured on May 8, 2020.

5. On May 12, 2020, International Palm executed a deed conveying 213 Barker to Universal Funding Group, LLC (“Universal Funding”) and recorded in Book 2594, Page 5048 in the Greenville ROD on May 29, 2020, and that entity is the current record owner of 213 Barker.

6. The 213 Barker Note matured on June 13, 2020.

7. After International Palm defaulted on its loans with Alfie, Alfie initiated a foreclosure action on August 27, 2020 against all parties who may assert an interest in the properties: International Palm; the Oglesbys; James T. Donovan; Carter Lumber of the South, Inc.; Universal Funding; Jones; and an additional “International Palm.”<sup>3</sup>

8. Defendant Carter Lumber of the South, Inc. filed an Answer, and Jones filed an unsworn Affidavit stating that he had personal knowledge that the Oglesbys, International Palm, and the Agent for International Palm were not served, and that he alone was served with the summons and complaint.

9. On April 13, 2021, Jones initiated a bankruptcy case by completing and filing Official Form 101, Voluntary Petition for Individuals Filing for Bankruptcy, listing his name and selecting Chapter 13. In response to the portion of the voluntary petition requiring disclosure of “[a]ny business names and Employer Identification Numbers (EIN) you have used in the last 8 years” with instructions to “[i]nclude trade names and *doing business as* names,” Jones listed “International Palm Oil & Biodiesel LLC” and “Universal Funding Group LLC.” Jones attached a Schedule D to his petition and listed Alfie as a secured creditor with mortgages on 213 and 217 Barker, and represented he owes those mortgage debts. Jones also listed Carter Lumber as a creditor without describing the collateral securing the claim but did not list any other creditors on his matrix for notice purposes. Jones also attached to his petition an incomplete Schedule I and the Declaration About an Individual Debtor’s Schedules, but nothing further. He filed a chapter 13 plan that includes inconsistent terms regarding payments to the trustee and Alfie that are not

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<sup>3</sup> *Alfie Investors, Inc. v. International Palm Oil & Biodiesel, LLC et al.*, C.A. No.: 2020-CP-23-04007 (Ct. Common Pls., Greenville Cnty). James T. Donovan and the additional, non-existent “International Palm” were dismissed from the action.

feasible. Although more than a month has passed since his case was filed, Jones has not filed his remaining schedules and statements required of a Chapter 13 debtor.

10. The Court issued a Notice of Chapter 13 Bankruptcy Case, scheduling the first meeting of creditors pursuant to 11 U.S.C. § 341 for May 17, 2021 at 1:30 p.m, and gave due notice to Jones.

11. Jones notified the state court of his bankruptcy filing. That court proceeded with a previously scheduled hearing in the foreclosure action and entered the Decree of Foreclosure with respect to both 213 and 217 Barker on April 21, 2021, specifically noting that service was sufficient. The Decree of Foreclosure recognized only Carter Lumber of the South, Inc.’s answer and found that no defendant failing to respond was in active military service as contemplated under the Servicemembers Civil Relief Act, U.S.C.A., Title 50, App. § 501, et seq., and any amendments thereto.

12. The Decree of Foreclosure stated that, “[u]pon information and belief, [Jones] was only referenced in the [Agreement] as President of [International Palm] and was not intended to have any right[,] title[,] or interest in [217 Barker]” and that Jones was “named as a party to this action for the purpose of asserting any claim or interest he may claim in [217 Barker].” The Decree of Foreclosure did not reference Jones’ pending bankruptcy case or applicability of the automatic stay. It determined that International Palm’s conveyance of 213 Barker to Universal Funding violated the loan documents, which constituted a default under the loan, and the conveyance was subject to and subordinate to the first lien of Alfie. While Alfie sought, and the Decree of Foreclosure ordered, the collection of a deficiency judgment against International Palm and the Oglesbys, there is no indication that it sought to collect any amounts from or recover any property interest from Jones.

13. The deadline for Jones to file his bankruptcy schedules and statements was April 27, 2021 pursuant to Fed. R. Bankr. P. 1007(c) and SC LBR 1007-3(c). On May 12, 2021, Jones filed his request for an extension of time to respond and additional time to file remaining documents due in his case.

14. The Court previously granted Jones' Application to Pay Filing Fee in Installments and he has failed to pay all installments according to the schedule ordered by the Court.<sup>4</sup>

15. Jones failed to participate in his first meeting of creditors, which was held on May 17, 2021.<sup>5</sup>

16. A hearing was held on May 18, 2021, to consider Alfie's Motion as well as Jones' request for an extension. Present at the hearing were Amber B. Glidewell, counsel for Alfie, Jones, and Gretchen D. Holland, Chapter 13 Trustee.

17. Jones acknowledged 213 and 217 Barker are not titled in his name and corporations are the named owners. He is not personally listed in the notes and mortgages. Jones stated he lives at 213 Barker, which is owned by Universal Funding or International Palm, but represented he pays the Oglesbys \$1,000.00 per month. No further details were provided.

18. Jones stated he filed for Chapter 13 relief believing that one petition could initiate a bankruptcy case for himself and the two corporations listed. Jones asserted he has not filed his schedules and statements because he has been working to obtain counsel and was traveling for business purposes. No further information regarding his income, expenses, other assets and liabilities, or to otherwise shed light on his financial situation was provided.

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<sup>4</sup> ECF No. 11, entered Apr. 14, 2021.

<sup>5</sup> Currently these meetings are held by phone.

## DISCUSSION AND CONCLUSIONS

“Only an *individual*...may be a debtor under chapter 13” of the Bankruptcy Code. 11 U.S.C. § 109(e) (emphasis added). The Bankruptcy Code does not define “individual,” but defines a “corporation” as including a “partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association.” 11 U.S.C. § 101(9)(A)(ii). “[A] limited liability company is not eligible to file under chapter 13 of the Bankruptcy Code because it is not considered to be an individual under the Code.” *In re McCormick*, 381 B.R. 594, 598 (S.D.N.Y. 2008) (citing *Collier on Bankruptcy* ¶ 109.06 (15th ed. 2007)). “[T]here is ‘[n]o provision in the Code [permitting] an individual and a business to file jointly. Thus, when an LLC and one of its members both seek to file a bankruptcy petition, they must do so separately.’” *Id.* (quoting *In re Calhoun*, 312 B.R. 380, 383 (Bankr. N.D. Iowa 2004)). Simply listing the names of two corporate entities in addition to the individual filer’s name on an individual Chapter 13 bankruptcy petition does not initiate a case for those entities nor invoke the protections of the automatic stay for them or their property, and non-individuals are not eligible for Chapter 13 bankruptcy relief.

Section 362(a) of the Bankruptcy Code provides that the filing of a petition operates as a stay, applicable to all entities, of:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- ...
- (3) 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;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

Generally, unless the Court orders otherwise or movant agrees to a waiver, the automatic stay is terminated with respect to a party that filed a motion for relief from stay if the Court does not act on the motion within 30 days of the motion being made. 11 U.S.C. § 362(e)(1).

“[T]he automatic stay does not stay actions against property that is not property of the estate.” *In re Brittain*, 435 B.R. 318, 321 (Bankr. D.S.C. 2010) (citing *In re Moore*, 410 B.R. 439, 441 (Bankr. E.D. Va. 2009)). Section 541(a)(1) of the Code defines property of the estate as, *inter alia*, “all legal or equitable interests of the debtor in property as of the commencement of the case.” An LLC “member’s bankruptcy estate has no interest in property of an LLC and...the estate’s property interest is limited to the member’s distributional interest.” *Brittain*, 435 B.R. at 322 (citing *Moore*, 410 B.R. at 442 (“[A]lthough the debtor’s interest in a corporation becomes property of the estate when a bankruptcy petition is filed, the corporation’s property does not thereby become property of the shareholder’s estate.”)). Additionally, the automatic stay created by an individual filing for Chapter 13 relief does not extend to an LLC in which the individual debtor has an interest. *See In re McCormick*, 381 B.R. at 598-603 (rejecting several theories under which the automatic stay created by a Chapter 13 filing would extend to an LLC in which the individual debtor had an interest). Further, the codebtor stay is “only available to individuals with consumer debts.” *Id.* at 598 (interpreting 11 U.S.C. §§ 1301 and 101(8)).

There is no bankruptcy case nor automatic stay for International Palm and Universal Funding or their property. There is no evidence that Jones has any interest in 213 or 217 Barker that is protected by the automatic stay. Further, a review of the Foreclosure Order indicates that Alfie does not seek to collect from Jones personally. As no automatic stay is applicable, Jones’

untimely motion requesting additional time to file a response to Alfie's Motion would serve no purpose.

Bankruptcy Rule 1007(a)(1) provides a debtor "shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms." Rule 1007(c) requires the debtor file "the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6)...with the petition or within 14 days thereafter" with certain exceptions inapplicable here.

Any extension of time for the filing of the lists required by [subdivision (a)] may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.

Fed. R. Bankr. P. 1007(a)(5).

[A]ny extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

Fed. R. Bankr. P. 1007(c).

More than one month has passed since Jones filed this bankruptcy case and incomplete schedules and statements and other deficiencies remain. He has failed to move this case forward by meeting basic requirements for relief. Jones has had ample time for the preparation and filing of schedules and statements and has failed to demonstrate sufficient cause as to why any extension of time is warranted. Therefore, Jones' request for an extension is denied.

**IT IS, THEREFORE, ORDERED:**

1. the Motion for Relief from Stay filed by Alfie Investors, LLC is granted, as no automatic stay exists with respect to 213 and 217 Barker; and

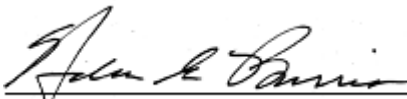


2. the Motion to Extend Time to File Response to Creditor's Motion for Relief from Stay and to File Remaining Schedules filed by Debtor Christopher Bernard Jones is denied.

**FILED BY THE COURT**  
**05/24/2021**



Entered: 05/24/2021

  
Chief US Bankruptcy Judge  
District of South Carolina