

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **21-02644-hb**

**ORDER GRANTING MOTION FOR RELIEF FROM STAY**

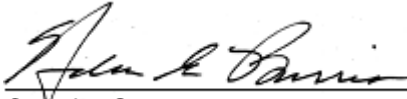
The relief set forth on the following pages, for a total of 6 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
01/21/2022**



Entered: 01/21/2022

  
Chief US Bankruptcy Judge  
District of South Carolina

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

IN RE:

Ze’Kiya Arleashia Knox,

Debtor(s).

C/A No. 21-02644-HB

Chapter 7

**ORDER GRANTING MOTION FOR  
RELIEF FROM STAY**

**THIS MATTER** is before the Court on Creditor’s Motion for Relief from Stay.<sup>1</sup> The Court must determine whether a wrongful death action pending in state court should resume and proceed to judgment.

**UNCONTESTED FACTS & PROCEDURAL BACKGROUND**

On December 12, 2019, Debtor Ze’Kiya Arleashia Knox was arrested and charged with first degree murder, possession of a firearm in the commission of a violent crime, and attempted murder arising from events that allegedly took place earlier that month and resulted in a death. Since her arrest, Debtor has been confined and is awaiting trial for these and other charges. On January 22, 2021, Hermenia Williams, as Special Administrator of the Estate of the decedent (“Movant”), filed a complaint in the Court of Common Pleas for York County, South Carolina alleging Debtor is responsible for the death and demanding judgment (“Wrongful Death Action”).<sup>2</sup> Movant’s motion for summary judgment was scheduled for a hearing on October 12, 2021.

Debtor filed a voluntary petition for Chapter 7 relief on October 11, 2021, triggering the automatic stay of 11 U.S.C. § 362(a). Movant seeks relief under § 362(d) to proceed with the Wrongful Death Action to determine liability and damages. Movant does not seek to collect or enforce any judgment against Debtor in another court. She would need to return to this Court for

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<sup>1</sup> ECF No. 36, filed Nov. 23, 2021.

<sup>2</sup> *Hermenia Williams, as Special Administrator of Estate of Tyquan Price v. Zekiya Knox*, C/A No. 2021-CP-46-00199.

a determination of whether such debt is nondischargeable under § 523(a)(6) through the adversary proceeding filed here.<sup>3</sup>

Debtor's Schedule A/B lists assets exceeding \$16,000,000.00, derived mostly from a medical malpractice award and property purportedly purchased with resulting funds. Debtor has claimed exemptions and Movant and the Chapter 7 Trustee have objected.<sup>4</sup> Movant filed a proof of claim in the amount of \$15,000,000.00 in connection with the Wrongful Death Action.<sup>5</sup> The only other claims filed are a general unsecured claim for \$111.62 filed by Founders Federal Credit Union<sup>6</sup> and a priority unsecured claim for \$10,313.52 filed by the Internal Revenue Service.<sup>7</sup>

In opposition to this Motion, Debtor argues there is no cause to lift the stay because continuing the Wrongful Death Action is futile since her assets are claimed as exempt. Debtor also argues she will be harmed if the Wrongful Death Action continues before her criminal charges are resolved and asserted her Fifth Amendment privilege against self-incrimination in proceedings related to this bankruptcy.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

The parties consent to this Court entering a final order resolving this Motion. Neither party has asked the District Court to withdraw the reference of this matter to determine the claim.<sup>8</sup> Accordingly, the Court has jurisdiction over and the ability to hear and decide this Motion. *See* 28

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<sup>3</sup> *See* Adv. Pro. No. 21-80080-HB, ECF No. 1, filed Dec. 15, 2021. The adversary proceeding was initiated to meet the deadline to file a complaint to except a debt from discharge. *See* 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c). Section 523(a)(6) excepts from discharge a debt incurred “for willful and malicious injury by the debtor to another entity or to the property of another entity[.]”

<sup>4</sup> ECF No. 50, filed Jan. 3, 2022; ECF No. 56, filed Jan. 10, 2022.

<sup>5</sup> POC No. 3-1, filed Jan. 7, 2022.

<sup>6</sup> POC No. 1-1, filed Nov. 10, 2021.

<sup>7</sup> POC No. 2-1, filed Dec. 6, 2021.

<sup>8</sup> “The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.” 28 U.S.C. § 157(b)(5). A request for withdrawal of the reference is initiated by the filing of a motion to be decided by the district court. *See* Fed. R. Bankr. P. 5011.

U.S.C. §§ 1334 and 157; Local Civ. Rule 83.IX.01 (D.S.C.); *Kozec v. Murphy (In re Murphy)*, 569 B.R. 402, 414-18 (Bankr. E.D.N.C. 2017); *Adelson v. Smith (In re Smith)*, 389 B.R. 902, 911-12 (Bankr. D. Nev. 2008); *In re Thomas*, 211 B.R. 838, 842-43 (Bankr. D.S.C. 1997).

While a debtor may elect to assert her Fifth Amendment privilege against self-incrimination to protect herself, there are consequences of asserting that privilege to avoid making disclosures necessary to determine whether certain debts are dischargeable. *See Gen. Motors Acceptance Corp. v. Bartlett (In re Bartlett)*, 162 B.R. 73, 77-79 (Bankr. D.N.H. 1993). A debtor may have to decide between protecting herself from criminal prosecution and protecting herself from her creditors in civil actions. *See Banknorth, N.A. v. Vrusho (In re Vrusho)*, 321 B.R. 607, 613 (Bankr. D.N.H. 2005).

Section 362(d)(1) states the Court shall grant relief from stay for cause. A decision to lift the automatic stay for cause is within the discretion of the bankruptcy judge. *Robbins v. Robbins (In re Robbins)*, 964 F.2d 342, 345 (4th Cir. 1992), *as amended* (May 27, 1992). The party requesting relief has the initial burden of proving cause exists for relief from the automatic stay. *See* 11 U.S.C. § 362(g). “Once the creditor makes a *prima facie* case, the burden shifts to the debtor on all other issues.” *In re Garcia*, 584 B.R. 483, 488-89 (Bankr. S.D.N.Y. 2018) (citations omitted). Because the Code does not define “cause,” the Court must examine the facts and totality of the circumstances to determine if cause exists to grant relief from stay. *In re Beach First Nat’l Bancshares, Inc.*, 451 B.R. 406, 410 (Bankr. D.S.C. 2011) (citing *Robbins*, 964 F.2d at 345).

This Court has adopted a balancing test that considers:

- a) any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,
- b) the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship of the debtor, and
- c) the creditor has a probability of prevailing on the merits.

*In re Mitchell*, 546 B.R. 339, 344 (Bankr. D.S.C. 2016) (quoting *Int’l Bus. Machs. v. Fernstrom Storage and Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991)). “[A]lthough the weight afforded to each of the three factors varies based on the circumstances of each case, a creditor must have a probability of prevailing on the merits in order for the automatic stay to be lifted to pursue litigation in a non-bankruptcy forum.” *Id.* at 345 (quoting *In re Jefferson Cnty., Ala.*, 484 B.R. 427, 466 (Bankr. N.D. Ala. 2012)).

In exercising its discretion to determine if cause is present to lift the stay, the Court must balance the prejudice against the estate and the hardship on the movant. *Robbins*, 964 F.2d at 345.

In applying this balancing test, the Court considers the following factors:

(1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

*Id.* (citations omitted).

The undisputed facts recited above indicate sufficient factual allegations and legal arguments to demonstrate Movant has a colorable claim in the Wrongful Death Action, leading the Court to conclude she has a sufficient probability of prevailing on the merits. The issues involved in the Wrongful Death Action are entirely based on state law. Allowing continuance in the state court promotes judicial economy because it has already progressed to the dispositive motions stage.

Debtor’s bankruptcy filing began the process of determining claims and collecting and distributing available assets, if appropriate. Determination of Movant’s claim is somewhat time-sensitive, as the Bankruptcy Code and Rules set a deadline for Movant’s request to determine dischargeability and the Chapter 7 Trustee is in the process of timely performing his duties. The

estate is protected and will not be prejudiced by continuation in state court because Movant does not seek at this time to enforce any judgment outside this Court. Movant is essentially the only creditor with a significant claim in this case, so the interests of other creditors is not a significant factor.

Considering 28 U.S.C. § 157(b)(5), determination of liability and the amount of any claim arising from the Wrongful Death Action must occur in some forum other than bankruptcy court. Whether Movant is ultimately able to collect any debt through the proof of claim and liquidation of estate assets is not dispositive to the Court's determination under § 362(d). Knox's bankruptcy will likely discharge the debt unless Movant has the claim determined and then prevails in the adversary proceeding under § 523(a)(6). Even if no assets are available to apply to the proof of claim filed in the bankruptcy case, success in the adversary proceeding would allow Movant to retain the ability to collect from future non-exempt assets. Therefore, Movant will be harmed if not allowed to proceed with the Wrongful Death Action. There is no legally cognizable harm to Debtor that outweighs this harm to Movant.

After a review of the facts and totality of the circumstances of this case and considering the *Robbins* factors and the balancing test adopted in *Mitchell*, the Court finds Movant has demonstrated ample cause to lift the automatic stay pursuant to § 362(d)(1) to return to state court for the purposes of determining liability and any damages.

**IT IS, THEREFORE, ORDERED** that the Motion for Relief from Stay is granted and the automatic stay of § 362(a) is lifted to allow *Hermenia Williams, as Special Administrator of Estate of Tyquan Price v. Zekiya Knox*, C/A No. 2021-CP-46-00199 to proceed to judgment in the Court of Common Pleas for York County, South Carolina.