UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 25-00102-EG
Dominic Joseph Badalamenti,	Chapter 13
Debtor(s).	**ORDER GRANTING CONDITIONAL RELIEF FROM AUTOMATIC STAY**

THIS MATTER is before the Court on the Motion for Relief from the Automatic Stay ("Motion") filed by Catherine Williams Badalamenti ("Ms. Badalamenti").[1] Dominic Joseph Badalamenti ("Debtor") objected to the Motion.[2] The Court conducted a hearing on the Motion on March 11, 2025, which was attended by Debtor, Debtor's counsel, Ms. Badalamenti and her counsel, as well as the Chapter 13 Trustee. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (O). Based upon the facts in the record in this case and the arguments and evidence presented at the hearing, the Court makes the following findings of fact and conclusions of law:

FACTUAL BACKGROUND

A. Family Court Litigation

Debtor and Ms. Badalamenti were married on September 29, 2001, and have four children together. During their marriage, Debtor and Ms. Badalamenti resided with their children at the family's home in Lexington, South Carolina (the "Property").[3] On December 29, 2020, Debtor commenced domestic proceedings in the Lexington County Family Court ("Family Court").[4] Ms. Badalamenti also filed an action in Family Court on January 13, 2021, and the parties agreed to

[1] ECF No. 11, filed Jan. 29, 2025.
[2] ECF No. 14, filed Feb. 12, 2025.
[3] *See* Debtor's Ex. 2.
[4] *See* Debtor's Ex. 1.

consolidate their cases into one action under docket number 2020-DR-32-2236 (the "Family Court Action").[5] The parties have been engaged in contentious and protracted litigation in the Family Court for more than four years. During that time, there have been approximately 43 hearings[6] conducted by the Family Court, including numerous disputes regarding child custody and discovery, resulting in significant legal fees for both parties. It appears that the parties' relationship is acrimonious—with both parties accusing the other of engaging in marital misconduct. According to counsel for Debtor, the parties have participated in three mediations without reaching resolution. Despite the lengthy Family Court history, at the hearing on the Motion, the parties stipulated to the admission into evidence of three documents from the Family Court Action record: (1) a Temporary Order issued by the Family Court on March 16, 2021 ("Temporary Order");[7] (2) a Second Supplemental Temporary Order entered on September 1, 2021 ("Supplemental Order");[8] and (3) a Transcript of Record from a hearing held by the Family Court on August 13, 2024 ("Transcript").[9] These documents offer this Court only a glimpse of what has transpired between the parties in the Family Court.

The Temporary Order required Debtor to, among other things, make monthly support payments of $2,500.00 to Ms. Badalamenti, maintain medical insurance for the parties and their children, pay certain medical expenses for their children, and pay a portion of Ms. Badalamenti's attorney's fees. The Temporary Order further ordered that Debtor shall have exclusive use and possession of the Property and be solely responsible for making timely and full payments on the mortgage, taxes, insurance and other expenses related to it.

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[5] *See* Debtor's Ex. 2.
[6] While no docket for the Family Court Action was introduced into evidence, Debtor and his counsel did not dispute the number of hearings held in Family Court that was mentioned by Ms. Badalamenti's bankruptcy counsel.
[7] Debtor's Ex. 1.
[8] Debtor's Ex. 2.
[9] Debtor's Ex. 3.

The Supplemental Order, which was entered six months later, addressed visitation, reduced Debtor's support obligation to $1,500 per month—this time designated as strictly "child support"—and required the parties to engage in mediation within 90 days. The Family Court further determined that Ms. Badalamenti did not have a need for spousal support at that time and held that issue in abeyance.

The Transcript, the third document introduced into evidence, is of a hearing held by the Family Court on August 13, 2024, regarding Debtor's motion to quash subpoenas and motion to compel discovery from his estranged spouse. Debtor appeared *pro se* at the hearing,[10] while Ms. Badalamenti appeared with her Family Court counsel. During that hearing, Debtor asked the Family Court to also address his motion to sell the Property, which had been filed but was scheduled for a hearing on a later date. Ms. Badalamenti objected to the motion to sell unless certain stipulations were agreed to, including the condition that arrangements be made for Ms. Badalamenti to visit the Property and conduct an inventory of personal property stored on the Property. Debtor indicated he believed there was between $150,000 and $200,000 of equity in the Property and requested that a valuation of the Property be conducted prior to listing it for sale. He further argued that the equity should be divided evenly between the parties so that he would have liquid funds with which to pay bills and other expenses. Ms. Badalamenti's Family Court counsel, however, argued that the only other marital asset of significant value was Debtor's business and she wanted to make sure that the proceeds from the Property—if sold—would be secured in case they need to be "offset" in the future in the equitable division.[11] The Family Court denied the

[10] It appears that Debtor's Family Court counsel had been relieved as counsel prior to the August 13, 2024 hearing.
[11] *See* Debtor's Ex. 3, at 17.

motion to sell without prejudice.[12] The motion to quash was also denied and Debtor was ordered to respond and provide the information requested by Ms. Badalamenti's Family Court counsel.

The Transcript also indicates that the parties were engaged in a discovery dispute resulting in the parties' filing of motions to compel, and Ms. Badalamenti filing a contempt action against Debtor. It appears that both parties were refusing to produce documents in response to discovery requests. The Family Court observed that while Debtor sought to compel Ms. Badalamenti to produce documents he requested, he had also failed to provide tax returns she had requested. The Family Court denied Debtor's motion to compel due to "unclean hands" and prohibited Debtor from filing any discovery motions until after he complied with the Family Court's outstanding orders regarding discovery. It further awarded attorney's fees to Ms. Badalamenti for defending Debtor's motions.

To date, the Family Court has not yet entered a final divorce decree, and no equitable division of the assets or final determination of alimony or child support has been made. According to Ms. Badalamenti's bankruptcy counsel, a contempt hearing was scheduled to take place before the Family Court on January 13, 2025, and a trial regarding the final divorce decree was scheduled for some time in February of 2025.

B. Bankruptcy Filing

Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on January 9, 2025, which stayed the contempt hearing and trial in Family Court. Debtor filed his schedules, statements, and Chapter 13 plan (the "Plan") on January 23, 2025.[13] On Schedule A/B, Debtor listed the Property as having a current value of $385,000.00 with the current value of his

[12] In denying the motion, the Family Court noted "and that is without prejudice for y'all to work out your terms upon which you might consider doing that and submitting it by a consent order." Debtor's Ex. 3, at 36.
[13] ECF Nos. 8, 9.

ownership interest being $192,500.00. The parties have indicated that the Property is titled jointly with the right of survivorship. Debtor also listed ownership of a business, Toolex, Inc. (the "Business"), with an asserted value of $0.00 due to the Business's liabilities purportedly exceeding its assets. No other assets of significant value are disclosed in Debtor's Schedules. On Schedule C, Debtor claimed an exemption under S.C. Code Ann. § 15-41-30(A)(1)(a) (the "homestead exemption" provision) for the Property in the amount of $76,125.00. Debtor's Schedule D indicates that the Property is subject to a mortgage held by Wells Fargo Home Mortgage in the amount of $189,926.00.[14] Debtor's Plan proposes to maintain direct mortgage payments on the Property while the case is pending and indicates that no pre-petition child support is owed to Ms. Badalamenti.[15] A confirmation hearing for the Plan is currently scheduled for March 25, 2025. Ms. Badalamenti filed a proof of claim asserting an unsecured claim of $6,243.60 for unpaid medical expenses for their children.[16] Debtor has objected to Ms. Badalamenti's claim, [17] and she responded, arguing she provided Debtor's counsel with supporting evidence for the medical expenses for which she is seeking reimbursement.[18]

Ms. Badalamenti filed the Motion currently before this Court, seeking relief from stay to pursue the equitable division of marital assets and other domestic proceedings excluded from the stay pursuant to § 362(b) in Family Court, such as dissolution of the marriage, child custody, and alimony. Debtor objects to the stay being lifted to allow the Family Court to decide and enforce the division of property that is part of the bankruptcy estate, asserting that relief from stay would prejudice both him and the estate. At the hearing on the Motion, Debtor's counsel indicated that

[14] Wells Fargo Bank, N.A. filed a proof of claim on January 21, 2025, asserting a secured claim of $189,164.94, secured by the Property. Proof of Claim No. 2-1.
[15] ECF No. 9. The Plan provides for payments of pre-petition domestic support obligation arrearages to Ms. Badalamenti at the rate of $0.00 per month.
[16] Proof of Claim No. 5-1, filed Feb. 14, 2025.
[17] ECF No. 20, filed Mar. 7, 2025. A hearing on the Objection to Claim will be held on April 22, 2025.
[18] ECF No. 27, filed Mar. 17, 2025.

Debtor would like the bankruptcy court to (1) determine the value of the Property and the Business, (2) conduct an equitable division of these assets, and (3) authorize a sale of the Property so that Debtor's share of the proceeds from the sale can be used to pay off his debts. Debtor's counsel contends that the Court can complete the valuation of these assets, conduct an equitable division, and sell the Property within ninety (90) days.

CONCLUSIONS OF LAW

The automatic stay set forth in 11 U.S.C. § 362(a) is a statutory injunction provided by the Bankruptcy Code which serves to give debtors a breathing spell, by freezing the collection of debts and other actions in most judicial proceedings, so they can address their debts through the bankruptcy process. *See In re Parast,* 612 B.R. 710, 716 (Bankr. D.S.C. 2020) (noting that in a chapter 11 case, this breathing spell provides the debtor with "an opportunity to propose a structured reorganization plan to repay all creditors"). Section 362(a) provides, in pertinent part, that the bankruptcy petition operates as a stay 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 [bankruptcy case], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy case];
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the [bankruptcy case];
> (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 . . . .

11 U.S.C. § 362(a).

With regard to domestic proceedings brought by or against a debtor, however, the Bankruptcy Code recognizes that "family matters have historically been reserved to the state courts." *See In re Sapp,* 655 B.R. 421, 432 (Bankr. D.S.C. 2023) (citing 1 COLLIER FAMILY LAW AND THE BANKRUPTCY CODE ¶ 5.01 (2023)). Therefore, the Bankruptcy Code excludes certain

domestic matters from the stay's application, including "the commencement or continuation of a civil action or proceeding . . . for the establishment or modification of an order for domestic support obligations; . . . concerning child custody or visitation; . . . [or] for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate." 11 U.S.C. § 362(b)(2)(A)(ii)-(iv). In doing so, the Bankruptcy Code acknowledges that these excluded matters are areas in which "state courts have a special expertise and for which federal courts owe significant deference." *Robbins v. Robbins (In re Robbins),* 964 F.2d 342, 345 (4th Cir. 1992).

Even so, the automatic stay does enjoin proceedings that seek to determine the division of property that is property of the estate. 11 U.S.C. § 362(b)(2)(A)(iv). Therefore, relief from the stay must be obtained prior to seeking equitable division of marital property that is property of the estate in family court. *See Parast,* 612 B.R. at 722. As the Fourth Circuit noted in *Robbins*,

> Lifting the stay would not harm the estate or the interests of their creditors. The [state] courts would determine, as they are uniquely capable of doing, the amount of the parties' claims to the marital property in question, while the bankruptcy court would retain jurisdiction subsequently to determine the allowance of claims against the estate. Other courts that have considered the issue of lifting an automatic stay in order to let equitable distribution proceedings conclude in state court have sensibly done so while retaining jurisdiction to make the subsequent distribution from the estate.

Robbins, 964 F.2d at 346.

Ms. Badalamenti seeks authorization from this Court to finalize the divorce proceedings that have been pending in Family Court since 2020, including the division of marital property—a portion of which is property of Debtor's bankruptcy estate under 11 U.S.C. § 541(a). Pursuant to 11 U.S.C. § 362(d)(1), the bankruptcy court may grant relief from the automatic stay "for cause." "Cause" is not defined by the Bankruptcy Code; therefore, the Court must determine whether relief is appropriate on a case-by-case basis. *Robbins,* 964 F.2d. at 345; *Parast,* 612 B.R. at 722. "The

court must balance potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied." *Robbins,* 964 F.2d. at 345 (citing *In re Peterson,* 116 B.R. 247, 249 (D. Colo. 1990)). The Fourth Circuit has instructed courts considering whether to lift the stay "for cause" to examine 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. (citing cases). As the party requesting relief from the automatic stay, Ms. Badalamenti bears the burden of proving that cause exists for such relief. *In re Flint,* 640 B.R. 869, 876 (Bankr. D.S.C. 2022). Upon making such a showing, the burden shifts to Debtor to demonstrate a lack of cause. 11 U.S.C. § 362(g); *In re Ebersole,* 440 B.R. 690, 693 (Bankr. W.D. Va. 2010); *In re Joyner,* 416 B.R. 190, 193 n.1 (Bankr. M.D.N.C. 2009).

Applying the first of the *Robbins* factors, the Court finds that the equitable division of the parties' marital assets is a matter of state law which falls decisively within the Family Court's expertise. The Fourth Circuit has confirmed that equitable distribution disputes fall within the category of cases in which "state courts have a special expertise and for which federal courts owe significant deference." *Id.* at 345; *Parast,* 612 B.R. at 723. The Family Court regularly makes valuation determinations and divides property in accordance with the factors provided under state law. *See* S.C. Code Ann. § 20-3-620 (setting forth the factors the court should consider when making a final equitable apportionment of the parties' marital property); *see also In re Johnson,* 655 B.R. 83, 92 (Bankr. D.S.C. 2023) (finding that "the Family Court has more specialized

expertise regarding equitable distribution determinations in domestic cases and thus is the more appropriate forum to make the equitable distribution determination under state law").

Debtor argues that the two primary assets in the bankruptcy estate—the Property and the Business—can be separated from the other marital property and issues concerning domestic or child support and dissolution of the marriage, so that the Bankruptcy Court can determine their value and the equitable division thereof. However, a review of the state law factors indicates that equitable apportionment is not as simple as determining the value of assets and dividing them evenly. Pursuant to S.C. Code Ann. § 20-3-620, the court is required to consider other factors in making the division, such as whether the parties have engaged in marital misconduct, whether separate maintenance or alimony has been awarded, tax consequences to the parties, and child custody arrangements and obligations. These are matters routinely and appropriately considered by the Family Court.

To support his argument that the Bankruptcy Court should deny relief from stay and conduct the equitable division of the parties' marital assets, Debtor relies on authority from outside of the Fourth Circuit, citing *Lawrence v. Lawrence (In re Lawrence),* 237 B.R. 61 (Bankr. D.N.J. 1999); *In re Becker,* 136 B.R. 113 (Bankr. D.N.J. 1992); and *Buccolo v. Buccolo (In re Buccolo),* Nos. 05-30789, 05-02819, 2006 Bankr. LEXIS 4078 (Bankr D.N.J. Jan. 11, 2006). In each of these cases, the bankruptcy court applied New Jersey law to determine equitable distribution of marital property. In New Jersey, it appears that the right to equitable distribution of marital property does not arise until the entry of the judgment of divorce. *Buccolo,* 2006 Bankr. LEXIS 4078 at *6 (citing N.J. Stat. Ann. § 2A:34-23) (noting that the prospective right to equitable distribution is not an interest that can defeat the superior rights of a trustee in bankruptcy). Under South Carolina law, the spouses' rights to marital property vest upon the filing of the complaint

seeking divorce in family court. S.C. Code Ann. § 20-3-610 ("During the marriage a spouse shall acquire . . . a *vested* special equity and ownership right in the marital property . . ., which equity and ownership right are subject to apportionment between the spouses by the family courts of this State *at the time marital litigation is filed or commenced* . . . .") (emphasis added). Here, the parties' rights to the marital property vested pre-petition. Moreover, the Property is titled in both of the parties' names. The Court does not find the cases from the New Jersey bankruptcy court persuasive to decide the issues currently before it. Moreover, the applicable authority in this jurisdiction instructs that deference should be given to the Family Court to decide equitable apportionment. *See Robbins,* 964 F.2d at 345-46; *Johnson,* 655 B.R. at 92; *Parast,* 612 B.R. at 723.

Debtor also argues that he and the estate would be prejudiced by the Family Court's valuation of the marital assets because that court will value the property as of the date the divorce petition was filed in 2020, whereas a bankruptcy court would typically determine the value of property included in bankruptcy estate as of the date the bankruptcy petition was filed. Debtor argues that this is consequential because Debtor's Business has declined in value since the Family Court Action began, so the Family Court may divide the marital assets based on a much higher valuation of the Business than it is presently worth. Under South Carolina law, the general rule is that marital property subject to equitable distribution is valued as of the divorce filing date. *See Burch v. Burch,* 717 S.E.2d 757, 761 (S.C. 2011); *Fuller v. Fuller,* 636 S.E.2d 636 (S.C. Ct. App. 2006). However, the Family Court has flexibility to determine a different valuation date in furtherance of equity and public policy. *Burch,* 717 S.E.2d at 762 (citing *Fuller,* 636 S.E.2d at 660) (using final hearing date rather than divorce filing date to value an IRA account that passively increased in value); *Bowman v. Bowman,* 591 S.E.2d 654, 660 (S.C. Ct. App. 2004) (using filing

date to determine value of retirement account where the husband actively and intentionally depleted the account); *Dixon v. Dixon,* 512 S.E.2d 539, 545 (S.C. Ct. App. 1999) (using filing date to determine value of business where husband actively set out to destroy his business during the marital litigation); *Mallett v. Mallett,* 473 S.E.2d 804, 810 (S.C. Ct. App. 1996) (using hearing date to determine value of insurance business where its value decreased passively during marital litigation due to market forces). When determining the proper valuation date, the South Carolina Supreme Court has instructed family courts to examine whether there has been "active" or "passive" appreciation or depreciation of the marital assets. *Burch,* 717 S.E.2d at 761. Accordingly, to the extent that the value of Debtor's Business has declined due to market forces and not due to Debtor's activities after filing for divorce, the Family Court may determine the Business's value as of the later final hearing date. For these reasons, the first *Robbins* factor weighs in favor of lifting the stay.

The second factor—whether modifying the stay would promote judicial economy—also weighs in favor of lifting the stay. The marital litigation between the parties has been pending for more than four years in the Family Court, and the parties have nearly completed discovery after years of discovery disputes. Debtor's bankruptcy case has been pending in this Court for less than three months. Having conducted more than forty hearings with the parties, the Family Court is more familiar with the issues and factual background of their dispute than this Court. Moreover, the Family Court is well versed in the law governing the issues between the parties and was ready to proceed with a final divorce hearing since the trial was previously scheduled for February 2025 and was stayed by Debtor's bankruptcy filing. If this Court were to conduct the valuation and equitable division of the marital property, the matter could be further delayed because the parties may be allowed additional time for discovery and the Court would require more time to familiarize

itself with the history between the parties, resulting in an unnecessary duplication of efforts.[19] Under these circumstances, it appears that allowing the Family Court to proceed to trial would better promote judicial economy.

As to the third factor—whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court—the Court finds that this factor also supports granting relief from stay. The Court can protect the bankruptcy estate by placing conditions on the lifting of the stay, such as retaining jurisdiction to review the determination by the Family Court as it may relate to the bankruptcy estate and prohibiting any act to collect, recover, transfer, encumber, or liquidate any property of the estate without further order from this Court. This is a common approach taken by bankruptcy courts when addressing pending domestic litigation. *See*, *e.g.*, *Sapp,* 655 B.R. at 433; *Johnson,* 655 B.R. at 92-93; *Parast,* 612 B.R. at 723; *see also In re Holtzclaw*, 634 B.R. 920, 936 (Bankr. D.S.C. 2021) (requiring the non-filing spouse to seek relief from the bankruptcy court prior to the transfer of title of any property of the bankruptcy estate and prior to enforcement of any judgment regarding ownership of property that is property of the estate to adequately protect the estate).

Debtor argues that the bankruptcy estate would be prejudiced by the lifting of the stay to allow the Family Court to determine the equitable division of the assets. He argues that if the equitable division was conducted by the Family Court, the bankruptcy estate would be harmed because it is likely that his equity in the Property would be "offset" by his equity in the Business as of the 2020 Family Court Action commencement date. The Court understands Debtor's argument to be that in deciding how to divide the parties' marital property, the Family Court would

[19] While it is not clear under what posture the dispute would be brought before this Court, it is also possible that such litigation would have to be commenced as an adversary proceeding under Fed. R. Bankr. P. 7001, which would lead to other procedural requirements that may add additional time to resolve the issues being adjudicated.

value the Business as of the date the marital litigation commenced, which may result in a higher value than what the Business is worth today. If the Family Court then determines that Ms. Badalamenti's interest in the Business is roughly equivalent to Debtor's interest in the Property, the Family Court would likely award full ownership of the Property to Ms. Badalamenti and full ownership of the Business to Debtor, leaving him without any assets he could liquidate to pay his unsecured creditors. According to Debtor, the Property currently may have more value and substantial equity which could be converted to liquid funds for the benefit of the estate, whereas the Business is currently worth $0.00 and would add nothing to the estate.[20] That argument, however, is faulty for a few reasons.

First, Debtor is assuming what the Family Court would decide, without any viable justification for doing so. The offset may not occur because the Family Court can make appropriate adjustments to the valuation date if it is equitable to do so. *See Burch,* 717 S.E.2d at 762 (finding that passive post-filing changes in the appreciation or depreciation of marital assets may be considered in determining an equitable apportionment of the marital estate); *Mallett,* 473 S.E.2d at 810 (holding that where the husband's insurance business decreased passively because of market forces, the proper valuation date was the date of the hearing rather than the filing date). If Debtor's Business is in fact worth nothing and its decline in value since the commencement of the domestic litigation is due to market forces, then the Family Court may use a current value of the Business and divide the equity in the Property evenly. Second, Debtor is similarly assuming—without any justifiable reason—that this Court would decide differently than the Family Court. Third, it is not clear what value Debtor's equity in the Property would add to the estate, if any.

[20] While not entirely clear, Debtor also appeared to be arguing that in conducting the "best interest test" analysis for confirmation, if the offset of the Property and the Business occurred and Debtor were awarded the Business, it would lead to a lower value of assets to be considered—because the Business according to Debtor is now worth $0—also leading to lower recoveries for creditors.

Debtor has indicated that he wishes to sell the Property through the bankruptcy process and use the proceeds to pay his debts. However, due to Ms. Badalamenti's vested interest in the Property, absent her consent, Debtor would have to exercise the rights of a chapter 13 trustee under 11 U.S.C. § 363(h) to compel the sale the Property free and clear of her interest, but Debtor may lack standing to do so. *In re Sliwinski,* No. 24-00802-5, Adv. No. 24-00118-5, 2025 WL 762699 (Bankr. E.D.N.C. Mar. 10, 2025) (adopting majority view that a chapter 13 debtor does not have standing to pursue an action under § 363(h)).[21] Moreover, Debtor has indicated that the Property has only approximately $150,000.00 to $200,000.00 in equity, and he has claimed a homestead exemption of $76,125. After paying for the costs of sale from the proceeds and dividing the remainder into equal shares, it appears that Debtor's share of the proceeds could be approximately $80,000, leaving little—if anything, once Debtors' exemptions are accounted for—to pay unsecured creditors.

The Court is not persuaded by Debtor's arguments that lifting the stay would harm the bankruptcy estate or the interests of other creditors. "Until equitable distribution is accomplished, this Court is unable to discern not only the interest of the Debtor in the Property but also his interest in other estate assets." *Sapp,* 655 B.R. at 434 (quoting *In re Chandler,* 441 B.R. 452, 464 (Bankr. E.D. Pa. 2010). Once the Family Court determines the amount of the parties' respective claims to the marital property at issue, this Court will be able to determine the allowance of claims and oversee any distributions of assets from the estate. While it is clear that Debtor views the bankruptcy court as the more favorable forum, this is not a sufficient basis for denial of the motion for relief from stay.

[21] The parties did not make any argument as to whether a Chapter 13 debtor has standing to compel the sale of co-owned property under 11 U.S.C. § 363(h). The issue is one on which bankruptcy courts are divided. By mentioning it here, the Court is not taking a position on this controversial issue; rather, it is expressing possible hurdles that Debtor would have to overcome if he tried to sell the Property in bankruptcy court prior to a decision on the equitable division.

Finally, Debtor argues that he and the estate would be prejudiced if the stay were lifted because he is no longer represented by counsel in the Family Court Action but has counsel representing him in this Court. This Court has previously found that a debtor's reluctance to incur attorney's fees to pursue a matter in family court is outweighed by his spouse's right to seek relief from the Family Court, especially on matters that are expressly excluded from the automatic stay, such as determinations of alimony, child custody and support. *Johnson,* 655 B.R. 83, 92 (Bankr. D.S.C. Oct. 27, 2023); *see also In re Becker,* No. 20-33765, 2021 WL 4617974 (Bankr. E.D. Va. Oct. 6, 2021) (finding that the debtor's difficulty, financial or otherwise, in retaining an attorney to represent her in state court was insufficient to overcome the hardship to the non-filing spouse that would result from denying relief from stay). Thus, the Court is not swayed by such argument.

Having considered each of the *Robbins* factors, the Court finds that cause exists to modify the automatic stay to permit the Family Court to proceed with the divorce proceeding and determine equitable distribution of the parties' marital assets. The Court also finds that discovery may proceed in the Family Court to the extent it specifically relates to the matters permitted to be commenced or continued in the Family Court by this Order, subject to the limitations and conditions set forth herein and to matters expressly excepted from the automatic stay under § 362(b). The granting of this relief contemplates that the forum for discovery disputes shall be the Family Court, and those disputes shall not be duplicated in this Court.

From what it can discern from the Transcript and the arguments of counsel at the hearing on the Motion, the Court notes that the Family Court litigation has been plagued by various discovery disputes resulting in motions to compel and motions for contempt, some of which may still be outstanding. The parties did not raise any arguments as to what effect the stay would have on Debtor possibly being held in civil or criminal contempt to the extent he did not comply with

orders of the Family Court. While generally criminal contempt orders are not stayed by 11 U.S.C. § 362(a), civil contempt actions may not be exempt from the automatic stay and specific relief from the stay would have to be granted. *See*, *e.g.*, *Parast,* 612 B.R. at 721 (citing cases) (finding that without authorization from the bankruptcy court, § 362 stays a family court action against a debtor for civil contempt that is designed to enforce and compel a prepetition payment obligation under a family court order from property of the estate, but lifting the stay to permit estranged wife to petition the family court to hold the debtor in civil contempt); *In re Evans,* No. 5:22-cv-00026, 2023 WL 2571854 (Bankr. W.D. Va. 2023) (finding there is no exception to the automatic stay for the commencement of civil contempt enforcement litigation with respect to domestic support obligations). The Court is not well versed on the discovery disputes that have transpired in the Family Court and what stage they had reached prior to Debtor's bankruptcy filing. Moreover, Ms. Badalamenti has not specifically sought relief from stay for any specific enforcement of civil contempt as a result of pending motions to compel. Thus, the Court is not going to make any decisions at this time in a vacuum on whether relief from stay should be granted to permit Debtor to be held in civil contempt as a result of violating the Family Court's orders compelling him to respond to discovery requests.

As a final matter, Fed. R. Bankr. P. 4001(a)(4) provides that "[u]nless the court orders otherwise, an order granting a motion for relief from the automatic stay . . . is stayed for 14 days after it is entered." When questioned by the Court at the hearing regarding the application of Rule 4001(a)(4) in this case, Debtor took no position on whether the order should be stayed. The Court finds that the expeditious resolution of the matters in Family Court would benefit the parties and allow Debtor to formulate a plan and make progress in his bankruptcy case. Accordingly, the Court finds that the 14-day stay under Rule 4001(a)(4) should not apply.

CONCLUSION

Based on the foregoing, it is hereby ORDERED:

1. The Motion is granted, and the stay is modified to allow the Family Court to determine the equitable apportionment of the parties' marital assets and liabilities along with other matters excluded from the automatic stay, including the dissolution of marriage; the establishment of paternity; the establishment or modification of an order for domestic support obligations (which may include separate maintenance and support, child support, alimony, and/or other maintenance and support); child custody or visitation; and/or domestic violence. However, the stay shall otherwise remain in effect to prohibit any act to collect, recover, transfer, encumber, or liquidate any property of the bankruptcy estate without further order of this Court, and this Court retains the ability to review the determination by the Family Court as it may relate to property of the bankruptcy estate.

2. The relief granted by this Order shall also encompass discovery, pretrial proceedings, if any, and trial as set forth herein.

3. The 14-day stay under Fed. R. Bankr. P. 4001(a)(4) does not apply.

AND IT IS SO ORDERED.

FILED BY THE COURT
03/20/2025

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Elisabetta G. M. Gasparini
US Bankruptcy Judge
District of South Carolina

Entered: 03/20/2025