UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 09-09040-JW
	Chapter 13
Brenda D. Eichelberger,	**ORDER**
Debtor(s).	

This matter comes before the Court upon an Amended Motion for Relief from Stay (the "Motion") filed by Patrick Eichelberger ("Patrick") and Wateree Plaza. The Motion sought an order pursuant to § 362(d) terminating the stay or, alternatively, annulling the stay retroactively. Both Debtor and the Chapter 13 Trustee filed objections. Pursuant to Fed. R. Civ. P. 52, which is made applicable to these proceedings by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on December 3, 2009.

2. Prior to Debtor filing her petition, she was named the personal representative for the probate estate of her mother, Gertrude R. Eichelberger.

3. Debtor and Patrick both obtained interests in two real properties as beneficiaries of Gertrude R. Eichelberger's Estate (the "Probate Estate"). Among other assets, Debtor inherited an undivided, one-half interest in the real property located at 2257 Lake Murray Boulevard, Columbia, South Carolina (the "Lake Murray Property") and an undivided, one-fourth interest in 1236 Lexington Avenue, Irmo, South Carolina (the "Lexington Avenue Property"). These property interests were listed on Debtor's Schedule A. Among other assets, Patrick also inherited an undivided, one-half interest in the Lake Murray Property and an

undivided, one-fourth interest in the Lexington Avenue Property. A deed of distribution effectuating the inheritances was filed on July 14, 2009 with the Lexington County Register of Deeds.

4. On May 29, 2009, Debtor, as personal representative of the Probate Estate, filed an accounting statement in the Lexington County Probate Court, which stated that from June 7, 2009 through May 29, 2009, Debtor had made $52,056.27 in disbursements from the Probate Estate. These disbursements resulted in an ending cash balance of $0.00.

5. A dispute arose between Patrick and Debtor as to whether Debtor had maladministered funds of the Probate Estate. On January 27, 2010, without seeking relief from the Bankruptcy Court, Patrick filed a request for a hearing with the Lexington County Probate Court.[1]

6. A hearing on Patrick's request was held in the Lexington County Probate Court on May 13, 2010.[2] Both Patrick and Debtor appeared *pro se* at the hearing. Prior to the hearing, Patrick learned that Debtor had filed for bankruptcy. Additionally, it is uncontroverted that the Probate Court learned of Debtor's pending bankruptcy case at the hearing, yet the hearing went forward nonetheless. Pursuant to its findings at the hearing, the Probate Court issued an order on June 11, 2010. The Probate Court Order found that Debtor could not account for $24,661.47 in Probate Estate funds and that Patrick would have been entitled to half this amount absent Debtor's "inability to correct her maladministration of the liquid assets." The Probate Court thus found it necessary "for the real estate to be redistributed to make equal distributions." Although the Probate Court found that Debtor's interest in the Lexington Avenue Property may be worth

[1] Debtor did not list Patrick as a creditor in her schedules and statements.
[2] An initial hearing before the Probate Court was held on April 12, 2010, but was later continued in order to give Debtor an opportunity to bring documentation to support the disbursements made pursuant to the accounting statement.

more than the $12,330.74 owed to Patrick, the Probate Court ordered Debtor to convey her undivided one-fourth interest in that property to Patrick.

7. Upon learning of the Probate Court Order, the Chapter 13 Trustee, in a letter to the Probate Court Judge dated July 12, 2010, stated that it was the Trustee's belief that the Probate Court Order was a violation of the stay and requested that the Probate Court consider the entry of an additional order staying any action regarding the property interest at issue until Debtor was no longer in bankruptcy.

8. In March 2011, Patrick entered into a contract with Wateree Plaza, LP to convey a one-half undivided interest in the Lexington Avenue Property.

9. In a prior order entered on May 31, 2011, this Court granted relief from stay to allow Patrick and Wateree Plaza to initiate a state court partition action in order to liquidate and divide Patrick's interests as a tenant in common in the Lake Murray and Lexington Avenue Properties. In that Order, Patrick's ownership rights in the Lexington Avenue Property (aka the Irmo Property) was stated to be an undivided one-fourth interest. The Order further provided that any proceeds due to Debtor as a result of the partition action would be paid to the Chapter 13 Trustee.

10. At the hearing on the Motion before this Court, Patrick admitted that he was aware prior to the May 13, 2010 hearing before the Probate Court that Debtor had a pending bankruptcy case. Additionally, Debtor testified that she informed the Probate Court Judge at the May 13, 2010 hearing that she had a pending bankruptcy case.

CONCLUSIONS OF LAW

Upon the filing of a bankruptcy petition, the automatic stay of 11 U.S.C. § 362 "operates as a stay, applicable to all entities, of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against that debtor . . . to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1). The term "claim" is broadly defined under the Bankruptcy Code as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." § 101(5)(A). Based upon the evidence before the Court, it appears that Patrick's petition to the Probate Court and the resulting Probate Court Order requiring Debtor to transfer her individual interest in the Lexington Avenue Property to Patrick violated the automatic stay under § 362(a).

This Court is cognizant of the fact that Patrick and Wateree Plaza assert that Patrick is entitled to the imposition of a constructive trust on Debtor's interest in the Lexington Avenue Property as a result of the maladministration of Probate Estate funds to which Patrick may have been entitled. Patrick and Wateree Plaza contend that the Probate Court's Order effectively imposed a constructive trust on the real property at issue, which therefore removes it from the bankruptcy estate.

However, since Patrick did not seek relief from this Court prior to the Probate Court hearing, and because both Patrick and the Probate Court were aware of Debtor's bankruptcy case at the time of that hearing, the Probate Court Order, including its factual findings of maladministration and its command that Debtor transfer her interest in the Lexington Avenue Property, is void *ab initio* and has no legal effect. See Weatherford v. Timmark (In re Weatherford), 413 B.R. 273, 283 (Bankr. D.S.C. 2009) ("[I]n this District, courts have

consistently held that actions taken in violation of the automatic stay are void ab initio and thus not legally effective.") (citing McGuffin v. Barman (In re BHB Enters., LLC), No. 97-01975-JW, Adv. 97-80201, 1997 WL 33344249, at *4 (Bankr. D.S.C. Aug 27, 1997)); Ex Parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 663 (S.C. 1993) (stating that the automatic stay deprives a state court "of subject matter jurisdiction to take any action inconsistent with the stay"). The record also demonstrates that the value of Debtor's property interest in question exceeds Patrick's share of the Probate Estate assets asserted to have been maladministered.[3] Therefore, the effect of the Probate Court Order would be to deprive Debtor and her creditors of value beyond that asserted to be covered by a constructive trust.

Alternatively, counsel for Patrick and Wateree Plaza argues that the stay should be annulled retroactively to effectuate the Probate Court's Order based on the factors listed in In re Scott, 260 B.R. 375, 382 (Bankr. D.S.C. 2001). While such a remedy is within the "'wide latitude' of the court," "[c]ourts are in agreement that allowing retroactive relief from the stay is the exception rather than the rule." Id. at 381 (quoting In re Syed, 238 B.R. 133, 144 (Bankr. N.D. Ill. 1999)). Any decision to grant such relief should be made on a case by case basis. Id.; see also Moore v. U.S. Dep't of Hous. and Urban Dev. (In re Moore), 350 B.R. 650, 655 (Bankr. W.D. Va. 2006) (stating that a court is to balance the equities when determining whether to annul the automatic stay, but that in doing so, "the significance of the automatic stay weighs heavily against the party seeking an annulment").

This Court finds that it would be improper to grant retroactive relief from the stay under the facts presented by this case, particularly because both Patrick and the Probate Court had actual knowledge of Debtor's bankruptcy case at the time of the May 13, 2010 hearing and prior

[3] The Probate Court, in its Order, found that Debtor's interest in the Lexington Avenue Property "may have a higher value than is owed to [Patrick]."

to the issuance of the Probate Court's Order.[4] A review of case law from other jurisdictions lends support to this conclusion. See In re Moore, 350 B.R. at 655 ("An oft-cited example of when it is appropriate to grant an annulment is the situation where a creditor violates the stay but does so in good faith and without knowledge thereof.") (citation omitted); In re Allen, 300 B.R. 105, 121 (Bankr. D.D.C. 2003) (annulling the stay to validate a deed of trust foreclosure that took place after the bankruptcy petition was filed and when the creditor had no knowledge of bankruptcy, debtor's interest in collateral was unenforceable against the creditor, and debtor failed to assert his status before foreclosure action despite knowledge thereof); In re Giddens, 298 B.R. 329, 340–41 (Bankr. N.D. Ill. 2003) (refusing to annul the stay in order to retroactively validate tax deed issued in willful violation of the stay).

Further, the Chapter 13 Trustee, who was not noticed of the May 13, 2010 hearing before the Probate Court, did not have an opportunity to be heard prior to Debtor being ordered to transfer her interest in the Lexington Avenue Property to Patrick. The Trustee, as representative of the estate and armed with the capacity to sue and be sued, should be given the opportunity to be heard on an issue that could have significant consequences for the bankruptcy estate and Debtor's creditors. See §§ 323(a)–(b), 541(a).

In light of the following: 1) the fact that the parties appeared *pro se* in the Probate Court; 2) the Probate Court Order is void *ab initio*; 3) Debtor's interest in the Lexington Avenue Property appears to have value beyond the alleged maladministered amount, which may benefit the bankruptcy estate and may be realized upon the conclusion of the partition action; 4) Patrick's claim against Debtor may involve various bankruptcy law issues; and, 5) any further proceedings should include the Chapter 13 Trustee, this Court will deny Patrick and Wateree

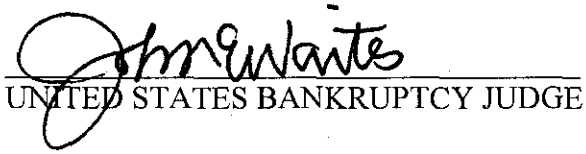
[4] This court is mindful that "knowledge of the bankruptcy is 'the legal equivalent of knowledge of the stay'" and that a violation of the stay does not require specific intent but mere knowledge of the case. In re Weatherford, 413 B.R. at 284–85 (citation omitted).

Plaza's Motion for Relief from Stay and, if necessary, will hold an additional hearing to determine the relief, if any, to which Patrick is entitled.[5]

CONCLUSION

For the reasons stated herein, Patrick and Wateree Plaza's Motion for relief from Stay is hereby denied. An additional hearing will be scheduled by the Court after consultation with counsel for the parties and the Chapter 13 Trustee, if necessary.

AND IT IS SO ORDERED.



UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 31, 2012

[5] While the Movants argue that the imposition of a constructive trust as the result of maladministration of a probate estate is a matter of state law best addressed by the Probate Court, this Court is concerned that granting relief from the stay might result in the rubber stamping of the Probate Court's prior Order, thereby nullifying the essential protections provided by the automatic stay.