

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

IN RE:

Helen Marie Rizzo,

Debtor(s).

C/A No. 19-01303-JW

Chapter 13

**SUPPLEMENTAL ORDER
EXTENDING RELIEF FROM THE
AUTOMATIC STAY¹**

This matter comes before the Court upon the hearing on the Motion to Authorize Release of Funds (“Motion to Release Funds”) filed by Olivia Austin and Michele Dinatale, as Co-Executors for the Estate of Albert Robert Scansaroli (“Movants”) held on September 3, 2020. The Motion to Release Funds seeks to release funds held by the Master-in-Equity for Beaufort County as part of state court litigation (“State Court Action”) between Movants and Helen Marie Rizzo (“Debtor”) in which the Master-in-Equity had entered an order on August 6, 2020. In defense of the Motion, Debtor asserted that she has filed an appeal of the Master-in-Equity’s order on August 13, 2020 and that a release of the funds is premature until an appeals court addresses her appeal. In response, Movants argued at the hearing that Debtor’s appeal was in violation of the automatic stay. The Court finds it necessary to address Movants’ argument through a separate order.

History of the Proceedings

Prepetition, in July of 2018, Movants, as representative of Albert Robert Scansaroli, commenced the State Court Action against Debtor to recover \$250,000 that Debtor had withdrawn from a joint bank account with Mr. Scansaroli. On March 5, 2019, Debtor filed a petition for relief under chapter 13 of the Bankruptcy Code, which, pursuant to § 362(a), stayed the State Court Action between Movants and Debtor. In Debtor’s bankruptcy case, multiple disputes arose

¹ This Order supplements the Order Denying the Motion to Authorize Release of Funds entered on September 4, 2020 (CM/ECF No. 101).

between the parties related to the State Court Action, including the filing of an objection to confirmation, an objection to claim and an adversary proceeding.

On May 13, 2019, Movants filed a motion for relief from stay to continue their prosecution of the State Court Action. After holding multiple hearings on the motion for relief from stay and receiving assurances from Movant's counsel that the State Court Action could be finally concluded within six months, the Court entered an Order that granted relief from the stay ("Relief Order") to permit the Master-in-Equity to conduct a bench trial to determine the rights of the parties as to the \$250,000 in dispute and any claim to damages or attorney's fees between the parties within six-months from the entry of Relief Order, subject to a further extension. The Relief Order also provided that the contested matters in the Bankruptcy Court are "stayed until the entry of a final order or judgment by the State Court or until January 27, 2020, whichever occurs first."

On September 10, 2019, Debtor confirmed a chapter 13 plan, the terms of which are dependent upon the determinations of the rights and obligations of the parties in the State Court Action. The confirmed plan also provided that "the chapter 13 trustee shall have no responsibility regarding the use or maintenance of property of the estate," as possession of estate property remained with Debtor.

On January 20, 2020, Movants filed a Motion to Extend Relief from the Automatic Stay ("First Motion to Extend") as the State Court Action had not concluded within the time frame set forth in the Relief Order. The Court issued a hearing notice for the First Motion to Extend on January 23, 2020 and a hearing was held on February 6, 2020. After the expiration of the stay relief in the Relief Order, the Court issued an Order on February 7, 2020 ("First Extension Order") which provided an extension of the relief from the stay for an additional 90 days until May 7, 2020 to permit "the state court to reach a final adjudication of the parties' litigation."

On the day that stay relief expired under the First Extension Order, May 7, 2020, Movants filed a second Motion to Extend Relief from the Automatic Stay (“Second Motion to Extend”). On May 13, 2020, the Court issued a hearing notice for the Second Motion to Extend and a hearing was held on June 10, 2020. More than a month after the expiration of the stay relief under the First Extension Order, the Court entered a Second Order Extending Relief from the Automatic Stay on June 11, 2020 (“Second Extension Order”), which granted an additional 90 days, until August 7, 2020, the State Court to complete a final adjudication of the State Court Action.

On July 22, 2020, Movants filed a third Motion to Extend Relief from the Automatic Stay (“Third Motion to Extend”). The Court issued a hearing notice on the Third Motion to Extend on July 29, 2020 setting a hearing on the Third Motion to Extend for September 3, 2020. On August 6, 2020, one day prior to the expiration of the stay under the Second Extension Order, the Master-in-Equity entered an order, which was drafted by Movant. On August 10, 2020, Movants filed a withdrawal of the Third Motion to Extend, without any indication of the consent of Debtor, stating erroneously that the extension was “No Longer Needed [sic]; State Court Action has concluded.” Thereafter, Movants filed the Motion to Release Funds. Debtor filed an objection to the Motion to Release Funds which indicated that a final adjudication of the State Court Action has not occurred, that Debtor has filed an appeal of the August 6, 2020 order of the Master-in-Equity, and that relief from the automatic stay should be continued to allow the appeals process to be completed.

Argument of Movant

At the hearing on the Motion to Release Funds, Movants argued that the State Court Action is completed as they assert Debtor’s notice of appeal is void as being in violation of the stay (as it was filed after August 7, 2020) and should not be considered. This Court disagrees.

First, under the Court's prior orders modifying the automatic stay, including the several extensions, it was clear that the parties were to reach a full and complete final adjudication of the State Court Action. Implicit in the relief from stay orders was that all parties have the full opportunity to prosecute and defend the disputed issues. This relief would include the determination of any appeal of the Master-in-Equity's orders. Additionally, in this case, the confirmed plan contemplated the full consideration of the State Court Action and address any benefit to Debtor's creditors. Furthermore, an objection to claim and an adversary proceeding was stayed pending those determinations in State Court in order to determine how those bankruptcy proceedings should be resolved. It would serve little benefit to the Court, the parties, and Debtor's creditors to rely in the Bankruptcy Case upon the determinations of the Master-in-Equity when those determinations remain subject to being potentially overturned by a South Carolina appeals court. In order to allow the parties a full and complete final adjudication of the matter, this Court freely gave extensions to the relief of the automatic stay as the Movant requested multiple times after the relief expired pursuant to a prior order of the Court.

Under Rule 203 of the South Carolina Rules on Appellate Practice, the deadline to serve an appeal of a Master-in-Equity's order is no later than thirty days after receipt of the written notice of entry of the order.² Therefore, based on the Court's intention for its orders, the final adjudication of the State Court Action is not the entry of an order by the Master-in-Equity but is either the passing of the deadline to appeal that order or if an appeal is filed, the final determination of the issues by the applicable appeals court.

As the State Court Action had not yet been fully and finally adjudicated, the Court finds that the Movant's withdrawal of the Third Motion to Extend erroneously indicated that the State

² Under S.C. R. App. Prac. 203(d), an appeal may be filed with the clerk of court within 10 days after the service of the appeal on the opposing parties.

Court Action was concluded. Combined with the fact that the withdrawal did not indicate it was with the consent of Debtor or her counsel, the Court finds a further written extension of relief from the stay should be considered by the Court. In the present matter, considering the Bankruptcy Court's intent to receive a full and complete final adjudication of the State Court Action, which is central to many of the pending matters in the Bankruptcy Court, the State Court should be permitted to consider and address Debtor's timely filed appeal.

The Court also notes that that Fed. R. Bankr. P. 6009 provides that “[w]ith or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the state before any tribunal.” The Fourth Circuit has held in *Wilson v. Dollar General Corp.*, 717 F.3d 337, 344 (4th Cir. 2013) that a chapter 13 debtor “steps into the role of trustee and exercises concurrent authority to sue and be sued on behalf of the estate” under Fed. R. Bankr. P. 6009. Accordingly, under Fed. R. Bankr. P. 6009, Debtor, as a chapter 13 debtor, may without approval of the Court, defend herself in a state court proceeding, including filing an appeal to the Master-in-Equity's August 6, 2020 order.

Nonetheless, to the extent it is necessary and to provide clarification as to the effect of the automatic stay on Debtor's notice of appeal filed on August 13, 2020, the Court finds cause to extend, effective as of August 7, 2020, the relief from the automatic stay until the completion of the appeals process in the State Court Action (and any further proceedings before the Master-in-Equity as may be required by the appellate courts) and there is a full and complete final adjudication of the State Court Action.³

³ As a practical matter, the Court notes that it appears that the appeals period for the August 6, 2020 order has not passed as of the date of this Order and that even if the Court were to find Debtor's notice of appeal served on August 13, 2020 to be void, Debtor would still have an opportunity to file a timely appeal based upon an order modifying the automatic stay. Specifically, it appears that under Rules 203(b)(4) and 263(a) of the South Carolina

The parties are hereby instructed to file correspondence with the Court providing an update of the status of the State Court Action no later than 90 days after the entry of this Order.

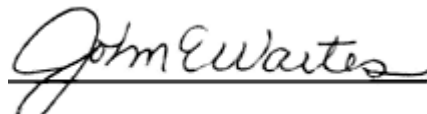
AND IT IS SO ORDERED.

Columbia, South Carolina
September 4, 2020

**FILED BY THE COURT
09/04/2020**



Entered: 09/04/2020



US Bankruptcy Judge
District of South Carolina

Rules of Appellate Practice, she would have, at the earliest, until September 8, 2020 to serve an appeal. While it is not necessary for Debtor to re-serve her notice of appeal in the State Court Action based upon the holding of this Order, Debtor may nonetheless re-serve and file the notice of appeal.