

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

**MEMORANDUM ON MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

APPEARANCES: STEPHEN M. ELFELT
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East Lansing, Michigan 48823
Pro se Movant

DONALD A. TANGWALL
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Maryville, Tennessee 37801
Pro se Debtor

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This action is before the court on a motion entitled "Motion for Relief From the Automatic Stay Under 11 USC § 362(D)(1)" (Motion for Relief), filed by Stephen M. Elfelt, *pro se*, on March 11, 2003. In his Motion for Relief, Mr. Elfelt requests that the court "explicitly authorize the Arenac County Circuit Court [of Michigan] to adjudicate a pending action to quiet title under Michigan law" by either holding that the automatic stay under 11 U.S.C.A. § 362(a) (West 1993 & Supp. 2003) had no effect on real property located in the State of Michigan or, alternatively, by granting him relief from the automatic stay pursuant to 11 U.S.C.A. § 362(d)(1) (West 1993 & Supp. 2003). The Debtor has not filed a response to the Motion for Relief.

The court initially set the Motion for Relief for hearing on April 3, 2003, but subsequently determined that an evidentiary hearing was not required. The hearing was accordingly stricken pursuant to an Order entered on March 31, 2003. The court will accept the factual averments contained in the Motion for Relief and in certain attachments thereto as true and will base its ruling on orders and documents of record in the Debtor's case file. See FED. R. OF EVID. 201.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (G), (O) (West 1993).

I

Mr. Elfelt purchased certain real property and improvements located at 120 Huron, Omer, Michigan (the Real Property),¹ on May 5, 1998, at a tax sale for the purchase price of \$1,517.22, representing the unpaid 1995 ad valorem real property taxes. Additionally, on May 18, 1999, Mr.

¹ The Real Property is more specifically described by Mr. Elfelt in the Motion for Relief as Section 18 Township 19N Range 6E, Township of Au Gres, Arenac County, Michigan, being Tax # 06-003-0-018-300-030; E 200 Ft of E 1360 ft of N 495 ft of NW 1/4 of SW 1/4; 2.27 acres.

Elfelt purchased a tax sale interest in the Real Property for the unpaid 1996 ad valorem real property taxes in the amount of \$1,570.91. On February 11, 2002, Mr. Elfelt paid the ad valorem real property taxes for 1997 and 1998 in the aggregate amount of \$4,027.88 in order to redeem the Real Property. At the time he purchased the Real Property, the last grantee in the regularly recorded chain of title with the Register of Deeds for Arenac County, Michigan, was Warren Keefer. A Notice of Intent to Claim Title Under Tax Deed was issued and delivered to the Arenac County Sheriff's Department for service upon Mr. Keefer. The deputy attempting service was unable to complete service, however, as Mr. Keefer was deceased, and the Real Property was vacant. The State of Michigan issued a Tax Deed regarding Mr. Elfelt's purchase of the Real Property on June 15, 2002, and subsequently, Mr. Keefer's heirs conveyed any interest in the Real Property to Mr. Elfelt by virtue of Quit Claim Deeds recorded with the Arenac County Register of Deeds on August 4, 2000, and November 20, 2000.

On or about May 7, 2002, Mr. Elfelt filed a Complaint to Quiet Title in the Circuit Court of Arenac County, Michigan (the Elfelt Lawsuit). Mr. Elfelt amended his Complaint in September 2001 to add the Debtor because the Debtor had allegedly resided upon the Real Property for some period of time between Mr. Keefer's death in April 1991 and 1996.² Additionally, Mr. Elfelt added The Silverleaf Trust as a defendant based upon a letter he received in June 2001 from the Debtor's attorney, claiming that the Debtor was the Successor Trustee to the Trust, and the Trust

² Mr. Elfelt based this belief upon the Debtor's prior consent to entry of an order requiring his transfer of title in the Real Property to Phyllis Jean Dalby in a lawsuit commenced in the Arenac County Circuit Court in 1998, case number 98-005840-NZ (the Dalby Lawsuit). The Debtor later represented to the state court in the Dalby Lawsuit that he had no interest in the Real Property to transfer to Ms. Dalby; however, in the Elfelt Lawsuit, the Debtor filed a Counter-Complaint on July 16, 2002, whereby he alleged that The Silverleaf Trust owned the Real Property.

had an interest in the Real Property by virtue of a Warranty Deed dated July 23, 1991, between Mr. Keefer's probate estate and Charles W. Ploe, Trustee of the Silverleaf Trust. The Warranty Deed was recorded with the Arenac County Register of Deeds on September 20, 2001. Although the Debtor initially claimed an interest in the Real Property, the Chapter 7 Trustee in the Debtor's bankruptcy estate filed a Notice of Abandonment on August 30, 2002, whereby he abandoned any interest that the Debtor's bankruptcy estate possibly held in the Real Property.³

In his Motion for Relief, Mr. Elfelt states that he was instructed by the Arenac County Circuit Court to obtain an order from this court authorizing the state court to adjudicate the claims set forth in the currently pending Elfelt Lawsuit. Mr. Elfelt requests that this court expressly authorize the Michigan state court to continue adjudication of the Elfelt Lawsuit by either holding that the automatic stay had no effect on the Real Property or, in the alternative, by granting him relief from the automatic stay. In either event, Mr. Elfelt does not request that the bankruptcy court make any adjudication of the issues pending before the Arenac County Circuit Court.

II

The Debtor filed the voluntary petition commencing his Chapter 7 bankruptcy case on February 11, 2000, and he was granted a discharge on June 15, 2000. The filing of a bankruptcy

³ The effect of a Chapter 7 trustee abandoning property is that the bankruptcy estate no longer has any interest in the property, and all interest reverts back to the debtor. *First Ga. Bank v. FNB So. (In re Moody)*, 277 B.R. 858, 861 (Bankr. S.D. Ga. 2001). Generally, a trustee abandons the estate's interest in property when "it is burdensome to the estate or . . . is of inconsequential value and benefit to the estate." 11 U.S.C.A. § 554(a) (West 1993). Once property is abandoned by the estate, it is available to the debtor's creditors "to the extent that they have [an] interest in the property under state law." *Moody*, 277 B.R. at 861.

case under any chapter of the Bankruptcy Code triggers the protection of the automatic stay provisions set forth in § 362(a), which states:

(a) Except as provided in subsection (b) of this section,^[4] a petition filed under section 301, . . . 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;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained 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;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C.A. § 362(a) (West 1993 & Supp. 2003). The automatic stay provisions of 11 U.S.C.A. § 362(a) provide debtors with 'a breathing spell' from collection efforts and [] shield individual

⁴ None of the exceptions set forth in subsection (b) apply in this instance.

creditors from the effects of a ‘race to the courthouse,’ thereby promoting the equal treatment of creditors.” *In re Printup*, 264 B.R. 169, 173 (Bankr. E.D. Tenn. 2001).

Actions taken in violation of the automatic stay are “invalid and voidable and shall be voided absent limited equitable circumstances.” *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993). These circumstances are set forth in 11 U.S.C.A. § 362(d), through which relief from the automatic stay is accomplished, and which provides, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

11 U.S.C.A. § 362(d) (West 1993 & Supp. 2003). A creditor seeking relief from the automatic stay under § 362(d)(1) “bears the burden of producing evidence establishing a legally sufficient basis for such relief” *In re Planned Sys., Inc.*, 78 B.R. 852, 860 (Bankr. E.D. Ohio 1987).

Additionally,

only where the debtor unreasonably withholds notice of the stay and the creditor would be prejudiced if the debtor is able to raise the stay as a defense, or where the debtor is attempting to use the stay unfairly as a shield to avoid an unfavorable result, will the protections of section 362(a) be unavailable to the debtor.

Easley, 990 F.2d at 911.

The automatic stay remains in effect throughout a debtor’s bankruptcy. The natural termination of the automatic stay is set forth in 11 U.S.C.A. § 362(c), which provides:

(c) Except as provided in subsections (d), (e), and (f) of this section^[5]—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual . . . , the time a discharge is granted or denied.

11 U.S.C.A. § 362(c) (West 1993).

In the case presently before the court, Mr. Elfelt's state court action to quiet title does not fall within the scope of § 362(a). The automatic stay terminated as to all action described under § 362(a), except for an act against property of the estate, when the Debtor's discharge was granted on June 15, 2000. Additionally, the Chapter 7 Trustee in the Debtor's case abandoned any interest of the estate in the Real Property on August 30, 2002. Accordingly, on March 11, 2003, the date on which Mr. Elfelt filed his Motion for Relief, there was no automatic stay in effect as to either the Debtor or the Real Property, and Mr. Elfelt's adding the Debtor as a party-defendant to the Elfelt Lawsuit in September 2001 did not violate the automatic stay. Mr. Elfelt's Motion for Relief is accordingly moot.

⁵ These subsections concern obtaining relief from the automatic stay.

Moreover,

[s]ince there was no automatic stay in effect, there was no issue for the court to decide; there was no stay for the court to lift. Even were the Court to hear the motion for relief from stay, any Order it might issue would be meaningless: a denial of the motion would not reinstate the automatic stay. The automatic stay was already dissolved by statute.

Cooper v. Walker (In re Walker), 151 B.R. 1009, 1011 (Bankr. E.D. Ark. 1993).

Since the automatic stay had been statutorily terminated, Mr. Elfelt's prosecution of the action to quiet title is not a violation. However, to provide a complete picture of the effect of a discharge in bankruptcy, the court must address other issues regarding the state court quiet title action.

III

Once a discharge is granted in a Chapter 7 case, the debtor is generally no longer liable for any debts arising prepetition or arising postpetition but resulting from the debtor's prepetition actions.⁶ 11 U.S.C.A. § 727 (West 1993) expressly provides, in material part,

Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is

⁶ Parties in interest may object to a Chapter 7 debtor's discharge. 11 U.S.C.A. § 727(a)(1) - (10). Similarly, a party in interest may seek a determination from the court as to the dischargeability of a specific debt. 11 U.S.C.A. § 523(a)(1) - (19) (West 1993 & Supp. 2003). See 11 U.S.C.A. § 727(c)(1) and FED. R. BANKR. P. 7001(4) (for objections to discharge under § 727(a)); see 11 U.S.C.A. § 523(c) and FED. R. BANKR. P. 7001(6) (for determination of dischargeability under § 523(a)).

filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.^[7]

11 U.S.C.A. § 727(b). Discharge accomplishes the Bankruptcy Code’s primary goal of relieving an honest but unfortunate debtor of his indebtedness so that he may make a fresh start. See *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989) (citing *Local Loan Co. v. Hunt*, 54 S. Ct. 695, 699 (1934)). “A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt.” *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 53 (5th Cir. 1993).

Section 727 allows a Chapter 7 debtor to obtain a discharge and directs the court to enter an order granting a debtor’s discharge, but it does not govern the effect of a discharge. The effects of discharge, as pertinent to the action currently before this court, are as follows:

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, . . . of this title, . . . ;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, . . . [.]

. . . .

(e) Except as provided in subsection (a)(3) of this section,^[8] discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

⁷ Section 501 allows creditors to file proofs of claim, which are deemed allowed by § 502 unless objected to.

⁸ This subsection concerns community or marital property.

11 U.S.C.A. § 524 (West 1993).⁹ Section 524(a) creates a permanent injunction preventing a debtor from being liable for prepetition debts once the court grants a discharge, so entry of the discharge order is generally the Chapter 7 debtor's ultimate goal. "Section 524(a) was designed to ensure that once a debt is discharged, the debtor will not be pressured in any way to repay it." *Stoneking v. Histed (In re Stoneking)*, 222 B.R. 650, 652 (Bankr. M.D. Fla. 1998) (quoting H.R. REP., NO. 595, 95th Cong., 1st Sess. 364 (1977)).

On the other hand, "[a]s is evident from the plain language of the statute, the discharge injunction applies to *in personam* actions. It does not apply to *in rem* actions." *Bank One Wis. N.A. v. Annen (In re Annen)*, 246 B.R. 337, 340 (B.A.P. 8th Cir. 2000); see also *In re Ketelsen*, 282 B.R. 208, 214 (Bankr. E.D. Tenn. 2001) ("Discharge of the debtor does not eradicate in rem liability which may exist against assets[.]"); *Stoneking*, 222 B.R. at 652 n.2 ("[E]nforcement of in rem rights are not precluded [by § 524(a)]."). Accordingly, parties in interest proceeding in actions to adjudicate issues regarding a discharged chapter 7 debtor other than liability do not violate the § 524(a) injunction, as it pertains to pre-petition debt only with respect to the personal liability of the debtor.'" *In re Schultz*, 251 B.R. 823, 828 (Bankr. E.D. Tex. 2000) (quoting 11 U.S.C. § 524(a)(2)). Actions by creditors to foreclose pursuant to mortgage or lien rights survive bankruptcy. *Johnson v. Home State Bank*, 111 S. Ct. 2150, 2153 (1991). Similarly, landlords may proceed with eviction actions against delinquent debtor-tenants, even though they may not attempt to collect the delinquent rents owed. *In re Dabrowski*, 257 B.R. 394, 415 (Bankr.

⁹ "[T]he automatic nature of the discharge injunction may be likened to the automatic stay contained in § 362[, as both forestall unauthorized collection efforts and promote the fundamental protections and fresh start afforded a debtor by the Bankruptcy Code, albeit the former during the course of the bankruptcy case and the latter following entry of the general discharge." *Stoneking v. Histed (In re Stoneking)*, 222 B.R. 650, 652 n.1 (Bankr. M.D. Fla. 1998).

S.D.N.Y. 2001). Likewise, the discharge injunction does not “preclude a determination of the debtor’s liability on the basis of which indemnification would be owed by another party.” *Schultz*, 251 B.R. at 828 (quoting *In re Shondel*, 950 F.2d 1301, 1306 (7th Cir. 1991)).

After he purchased the Real Property at a tax sale, Mr. Elfelt was entitled to file an action to quiet title pursuant to Michigan Compiled Laws section 211.72, which provides, in pertinent part:

Upon presentation of the purchaser's certificate of sale prescribed by section 71 to the state treasurer or his or her authorized representative after the expiration of the time provided by law for the redemption of lands sold for the nonpayment of taxes, the state treasurer shall cause a tax deed of conveyance of the land described in the certificate of sale to be executed and delivered to the purchaser, or his or her heirs or assigns, unless the sale was redeemed or annulled as provided by law. . . . The tax deed may be recorded in the office of the register of deeds of the proper county in the same manner and with like effect as other deeds duly witnessed, acknowledged, and certified. The tax deeds convey an absolute title to the land sold, and constitute conclusive evidence of title, in fee, in the grantee, subject, however, to all taxes assessed and levied on the land subsequent to the taxes for which the land was bid off. This title also is subject to unpaid special assessments and unpaid installments of special assessments. *A person holding a state tax deed of lands executed for nonpayment of taxes may commence an action in the circuit court of the county where the lands lie to quiet his or her title to the land without taking possession of the lands and all parties who have, claim to have, or appear of record in the register's office in the county where the lands are situated to have, any interest in the land or who may be in possession of the land may be made defendants in the action; and no outstanding unrecorded deed, mortgage, or claim shall be of any effect as against the title or right of the plaintiff as fixed and declared by the order made in the case. . . .* However, the proceedings in these cases shall be conducted in the same manner as and in conformity with the practice for the foreclosure of mortgages.

MICH. COMP. LAWS § 211.72 (2002) (emphasis added). Actions to quiet title are governed by Michigan Compiled Laws section 600.2932, which states:

(1) Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of

land, may bring an action in the circuit courts against any other person who claims [or might claim] any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

(2) No action may be maintained under [subsection] (1) by a mortgagee, his assigns, or representatives for recovery of the mortgaged premises, until the title to the mortgaged premises has become absolute, or by a person for the recovery of possession of premises, which were sold on land contracted, to whom relief is available under subdivision (1) of section 5634.

(3) If the plaintiff established his title to the lands, the defendant shall be ordered to release to the plaintiff all claims thereto. In an appropriate case the court may issue a writ of possession or restitution to the sheriff or other proper officer of any county in this state in which the premises recovered are situated.

(4) Any tenant or tenants in common who recovers any undivided interest in lands in an action under subsection (1) against a person or persons who may be in possession thereof, but who does not show in the trial of such action that he or they have any interest therein or title thereto, may take possession of the entire premises subject to all of the rights and interest of the other tenant or tenants in common therein.

(5) Actions under this section are equitable in nature.

MICH. COMP. LAWS § 600.2932 (2002).

The Debtor's attorney sent a letter to Mr. Elfelt in June 2001, in which the Debtor, as successor trustee to The Silverleaf Trust, asserted an interest in the Real Property. Under Michigan law, an action to quiet title must be filed against any party asserting an interest in the subject real property to which quiet title is being sought. Accordingly, the Debtor, as successor trustee of The Silverleaf Trust, is a proper party to the Elfelt Lawsuit. Moreover, the action to quiet title does not violate the injunctive provisions of the Bankruptcy Code because it does not seek to "collect, recover or offset any debt as a personal liability of the [D]ebtor." 11 U.S.C.A. § 524(a)(2). Instead, the Elfelt Lawsuit is an in rem proceeding against the Real Property. See,

e.g., Hall v. Kellogg, 16 Mich. 135, 138 (Mich. 1867). When the Chapter 7 Trustee of the Debtor's bankruptcy estate abandoned the estate's interest in the Real Property on August 30, 2002, the Debtor's interest therein, if any, reverted back to the Debtor. Only by virtue of the Trustee's abandonment of any interest of the bankruptcy estate in the Real Property, supplemented with Michigan law, is the Debtor a party to the Elfelt Lawsuit. There is no violation of the discharge injunction of § 524(a).

IV

In summary, there was no automatic stay in effect when Mr. Elfelt filed his Motion for Relief and, as such, his Motion for Relief shall be denied as moot. Additionally, the Elfelt Lawsuit currently pending in the Arenac County Circuit Court to quiet title on the Real Property purchased by Mr. Elfelt at a tax sale does not violate the permanent discharge injunction provided for by 11 U.S.C.A. § 524(a)(2). Mr. Elfelt's prosecution of his state court action to quiet title does not offend any section of title 11.

An order consistent with this Memorandum will be entered.

FILED: April 8, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-30531

DONALD A. TANGWALL

Debtor

ORDER

For the reasons stated in the Memorandum on Motion for Relief From the Automatic Stay filed this date, the court directs that the Motion for Relief From the Automatic Stay Under 11 USC § 362(D)(1) [sic] filed by Stephen M. Elfelt, *pro se*, on March 11, 2003, is DENIED.

SO ORDERED.

ENTER: April 8, 2003

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE