



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 13, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JERRY L. STEWARD,

CASE NO. 11-03009-NPO

DEBTOR.

CHAPTER 13

**ORDER GRANTING MOTION TO TERMINATE
AUTOMATIC STAY TO THE EXTENT APPLICABLE**

This matter came before the Court for hearing on November 28, 2016 (the "Hearing"), on the Motion to Terminate Automatic Stay to the Extent Applicable (the "Motion") (Dkt. 95) filed by Green Tree Servicing, LLC, *et al.* (the "Movants"), the Response in Opposition to Motion to Terminate Automatic Stay to the Extent Applicable (Dkt. 102) filed by James L. Henley, the standing chapter 13 panel trustee (the "Trustee"), and the debtor, Jerry L. Steward (the "Debtor"), and the Movants' Reply to Response to Motion to Terminate Automatic Stay to the Extent Applicable [*Dkt. #102*] (Dkt. 104) filed by the Movants in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Mitchell D. Thomas and Blake A. Tyler represented the Trustee and Jeffrey Ryan Barber and Adam Stone represented the Movants. After fully considering the matter and being fully advised in the premises, the Court granted the Motion from the bench. This Order memorializes and supplements the Court's bench ruling.

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Notice of the Motion was proper under the circumstances.

Facts

The Movants filed the Motion on October 3, 2016, seeking relief from the automatic stay to enforce an arbitration provision contained in a contract the Debtor signed in 2000. (Mot. at 2-3). The facts of the Bankruptcy Case and its related matters are extensive and complex. The Court will refer only to those facts that are relevant to the Motion currently before the Court. The following facts are based upon the recitation of facts provided by the Movants at the Hearing, which the Trustee agreed was an accurate representation of the relevant facts and procedural history.

I. Relevant Background

The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on August 30, 2011. (Dkt. 1). In 2014, the Trustee brought suit in the Circuit Court of Smith County (the “State Court”) against the Movants and Jim Walter Homes, LLC and Walter Energy Company (collectively, “Walter Company”) on behalf of three (3) estates: the Debtor’s estate in the Bankruptcy Case, the estate of the debtor in *In re Ducksworth*, Case No. 10-03532-NPO, and the estate of the debtor in *In re Madison*, Case No. 10-02849-NPO (collectively, the “State Court Action”). The *In re Ducksworth* case pre-dates the arbitration clause at issue, and, therefore, the Movants did not file a motion for relief in that case. A similar arbitration clause is at issue in *In re Madison*, which is the subject of a separate Order.

The Movants removed the State Court Action to the United States District Court for the Southern District of Mississippi (the “District Court”) (collectively, the “Removed Action”), which was assigned to Judge Henry T. Wingate. (*Henley v. Jim Walter Homes, LLC, et al.*, Case No. 14-cv-00376-HTW-LRA). The Movants did not answer the complaint after the State Court Action was removed to the District Court. Instead, the Movants filed motions to compel arbitration. Subsequently, the Trustee filed motions to remand the Removed Action, which the District Court granted. While a motion to reconsider the remand order was pending, Walter Company filed a chapter 11 petition for relief in Alabama. In the meantime, the Trustee filed twelve (12) additional lawsuits against the Movants, all of which were removed to District Court and assigned to various District Court Judges.¹ The Movants filed motions to compel arbitration in each of those cases. At that point, all of these cases were assigned randomly to different District Judges in the District Court. Chief Judge Guirola ordered that all of these cases be reassigned to Judge Barbour and that all new cases automatically be assigned to Judge Barbour.²

¹ There are essentially two groups of cases involved: the cases that comprise the State Court Action, and the additional lawsuits initiated by the Trustee. All of these cases were reassigned to Senior United States District Judges William H. Barbour, Jr. and Magistrate Judge John C. Gargiulo by Chief United States District Judge Louis Guirola, Jr. in the Order Reassigning Cases (the “Reassignment Order”) (*In re Green Tree Servicing LLC Pre-Fabricated Home Financing Litigation*, Case No. 3:14-cv-00376-WHB-JCG (Dkt. 76) (S.D. Miss. Aug. 2., 2016)).

² In the Reassignment Order, Chief Judge Guirola assigned all cases that were pending at that time as well as “any future cases filed in the United States District Court for the Southern District of Mississippi that appear to the Clerk to share similar factual, legal, and/or jurisdictional issues, and which also name Green Tree as a party shall also be assigned to Judges Barbour and Gargiulo.” Pursuant to the Reassignment Order, the State Court Action as well as the twelve (12) additional cases were all assigned to Judge Barbour. According to the Reassignment Order, the following cases were assigned to Judge Barbour:

Charles v. Ranchers & Farmers Ins. Co., et al., Case No. 2:15-cv-00039-DPJ-FKB;
Henley, et al. v. Jim Walter Homes, LLC, et al., Case No. 3:14-cv-00376-HTW-LRA;
Horne, et al. v. Jim Walter Homes, LLC, et al., Case No. 3:15-cv-00187-CWR-FKB;

Judge Barbour granted the Movants' motions to compel arbitration in several of the cases pending before him, as well as motions to reconsider the remand orders. Judge Barbour denied the motion to reconsider the remand of the State Court Action, and it was remanded to State Court. (*Henley v. Jim Walter Homes, LLC, et al.*, Case No. 14-cv-00376-HTW-LRA (Dkt. 85)). Thus, the State Court Action is currently pending before the State Court.

After the State Court Action was remanded to State Court, the Movants filed the Motion seeking to have the automatic stay terminated so they can "file a complaint in the District Court for an Order pursuant to 9 U.S.C. § 4 (Section 4 of the Federal Arbitration Act) directing that arbitration proceed in the manner provided by the parties' arbitration agreement and for an Order pursuant to 9 U.S.C. § 3 staying proceedings in the State Court Action." (Mot. at 4-5).

II. Hearing Arguments

At the Hearing, the Movants argued that the Motion should be granted so that Judge

Keyes, et al. v. Jim Walter Homes, LLC, et al., Case No. 3:14-cv-00245-HTW-LRA;
Bender, et al. v. Jim Walter Homes, LLC, et al., Case No. 3:15-cv-00284-DPJ-FKB;
Ducksworth, et al. v. Jim Walter Homes, LLC, et al., Case No. 3:15-cv-00507-DPJ-FKB;
Patrick, et al. v. Green Tree Servicing, LLC, et al., Case No. 3:15-cv-00723-DPJ-FKB;
Haynes v. Green Tree Servicing, LLC, et al., Case No. 3:15-cv-00896-DPJ-FKB;
Green Tree Servicing, LLC, et al. v. Miller, et al., Case No. 3:16-cv-00311-HTW-LRA;
Green Tree Servicing, LLC, et al. v. Dove, et al., Case No. 3:16-cv-00312-HTW-LRA;
Green Tree Servicing, LLC, et al. v. Floyd, et al., Case No. 3:16-cv-00313-HTW-LRA;
Green Tree Servicing, LLC, et al. v. Mathis, Case No. 3:16-cv-00315-CWR-FKB;
Green Tree Servicing, LLC, et al. v. House, et al., Case No. 3:16-cv-00316-TSL-RHW;
Green Tree Servicing, LLC, et al. v. Brown, Case No. 3:16-cv-00317-HTW-LRA;
Dove, et al. v. Green Tree Servicing, LLC, et al., Case No. 3:16-cv-00319-HTW-LRA;
Brown, et al. v. Green Tree Servicing, LLC, et al., Case No. 3:16-cv-00320-HTW-LRA;
Green Tree Servicing, LLC, et al. v. Robinson, Case No. 3:16-cv-00321-TSL-RHW;
Green Tree Servicing, LLC, et al. v. Campbell, Case No. 3:16-cv-00325-CWR-LRA;
Green Tree Servicing, LLC, et al. v. Brimage, 3:16-cv-00452-CWR-LRA;
Green Tree Servicing, LLC, et al. v. Haynes, 3:16-cv-00551-CWR-FKB; and
Green Tree Servicing, LLC, et al. v. Keyes, Case No. 3:16-cv-00552-HTW-LRA.

Barbour can decide whether to compel arbitration. The Movants clarified that they are not seeking the Court's determination regarding whether arbitration should be compelled, but instead desire the relief requested in the Motion so that they can make their arguments to Judge Barbour. The Trustee argued that because Judge Barbour remanded the State Court Action to State Court, the Movants have a state court forum to litigate the arbitration clause. According to the Trustee, the Court should decline to terminate the automatic stay and allow litigation to continue in State Court. The Trustee contended that it was not requesting that the Court rule on the arbitration issue, but that the Court act as a gatekeeper and keep the stay in effect.

Discussion

At this point, the Court is not tasked with resolving difficult issues regarding the enforceability of the arbitration provision contained in a contract to which the Debtor is a party. Instead, the Court must determine whether the automatic stay should be terminated so that the Movants can seek a determination from Judge Barbour regarding the arbitration provision *via* direct action. Upon the filing of a bankruptcy petition, the automatic stay arises, prohibiting creditors from taking certain actions against a debtor or against property of the estate. 11 U.S.C. § 362. The automatic stay includes a broad stay of legal proceedings against a debtor. 11 U.S.C. § 362(a)(1)-(2). The stay may be terminated for cause “when necessary to permit litigation to be concluded in another forum, particularly if the nonbankruptcy suit involves multiple parties or is ready for trial.” 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (16th ed. 2016); *see* 11 U.S.C. § 362(d)(1).

Chief Judge Guirola ordered in the Reassignment Order that every current and future case raising the same or similar issues involving the Movants be assigned to Judge Barbour. The

Court will not exercise its discretion or substitute its judgement for that of Chief Judge Guirola, who has already determined that Judge Barbour should resolve issues like the one currently before this Court. While the facts appear complicated and convoluted, the only fact that impacts the Court's decision to grant the Motion is that Chief Judge Guirola has ordered that Judge Barbour hear these types of issues. Judge Barbour has a more complete understanding of the facts of the State Court Action, and all related cases, that puts him in a superior position to determine the merits of the arbitration provisions. Judge Barbour is familiar with the facts of the State Court Action and considered those facts when determining that the State Court Action should be remanded. It should be Judge Barbour, therefore, who determines whether to compel arbitration, or whether that decision should be left to the discretion of the State Court.

Although the Trustee asked this Court to act as a gatekeeper and deny the Motion so that the State Court can determine the enforceability of the arbitration provisions, Chief Judge Guirola assigned a gatekeeper: Judge Barbour. Accordingly, the Court will grant the Motion to allow the Movants to initiate a direction action to Judge Barbour to determine the forum that should hear the merits of the arbitration provision. In granting the Motion to authorize the Movants to initiate a direct action to the District Court, the Court expresses no opinion regarding the merits of the arbitration provision. The Court holds only that the automatic stay should be terminated for cause to the extent applicable so that the parties can make their arguments regarding arbitration to Judge Barbour.

IT IS, THEREFORE, ORDERED that the Motion is hereby granted.

##END OF ORDER##