



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: June 21, 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:

DARLENE HAYNES,

CASE NO. 15-03241-NPO

DEBTOR.

CHAPTER 13

GREEN TREE SERVICING, LLC, ET AL.

PLAINTIFFS

VS.

ADV. PROC. NO. 16-00016-NPO

DARLENE HAYNES

DEFENDANT

ORDER STAYING ADVERSARY PROCEEDING

This matter came before the Court for hearing on June 7, 2016 (the “Hearing”), on the Defendant’s Motion to Stay All Proceedings Pending Ruling on Defendant’s Motion to Dismiss (the “Stay Motion”) (Adv. Dkt. 30)¹ filed by the debtor, Darlene Haynes (“Haynes”); the Memorandum in Support of Defendant’s Motion to Stay All Proceedings Pending Ruling on Defendant’s Motion to Dismiss or Consolidate (the “Stay Brief”) (Adv. Dkt. 31) filed by

¹ Citations to docket entries in the above-referenced adversary proceeding are cited as “(Adv. Dkt. ____)” and citations to docket entries in the above-styled bankruptcy case are cited as “(Bankr. Dkt. ____)”. Citations to docket entries in other unrelated cases are cited by the case name.

Haynes; and the Plaintiffs' Response in Opposition to Haynes' Motion to Stay Pending a Ruling on Motion to Dismiss [Dkt. ##30, 31] (the "Stay Response") (Adv. Dkt. 35) filed by Green Tree Servicing, LLC, *et al.* (collectively, "Green Tree") in the above-referenced adversary proceeding ("*Haynes II*"). At the Hearing, Blake A. Tyler and Mitchell D. Thomas represented Haynes, and Adam Stone, Kaytie M. Pickett, Jeffrey Ryan Barber, and Stephanie Bentley McLarty represented Green Tree.

Facts

Circuit Court Action

On September 11, 2015, Haynes filed a complaint in the Circuit Court of Smith County, Mississippi, Civil Action No. 2015-175 (the "Complaint") (Ex. 1, Adv. Dkt. 1-1), alleging in general that Green Tree, other defendants, and certain non-parties induced her to encumber her real property with substantial liens to finance the construction of a house by Jim Walter Homes, LLC² that was "substandard, incomplete, defective, and dangerous" (the "Circuit Court Action") (*Id.* at 8-9). In her request for relief in the Complaint, Haynes asked the circuit court, *inter alia*, to issue a declaration (a) cancelling all documents evidencing any security interests held by the defendants and setting aside the deed of trust; (b) prohibiting the defendants from instituting any foreclosure or collection proceedings against Haynes; and (c) suspending her obligation to make any further payments to the defendants until the case can be tried. (Ex. 1, Adv. Dkt. 1-1 at 31-33).

² Jim Walter Homes, LLC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 15, 2015, and, therefore, was not included as a defendant in the state court action. *See In re Jim Walter Homes, LLC*, No. 15-02762-TOM11 (Bankr. N.D. Ala. 2015).

Bankruptcy Case

On October 20, 2015, Haynes filed a petition for relief under chapter 13 of the Bankruptcy Code. (Bankr. Dkt. 1). In her bankruptcy schedules, Haynes listed the real property that is the subject of the Circuit Court Action in Schedule A—Real Property (Bankr. Dkt. 4 at 1). On November 27, 2015, “Ditech Financial LLC” filed a proof of claim (the “POC”) (Cl. 2-1) for money owed in the amount of \$34,470.69. According to the POC, the loan is secured by a deed of trust on real property owned by Haynes. Haynes did not file an objection to the POC. Her chapter 13 plan, which was confirmed on December 16, 2015 (Bankr. Dkt. 19), provides for ongoing monthly mortgage payments of \$413.92 to “Ditech Financial,” plus monthly payments of \$56.61 on an arrearage of \$3,396.72. Haynes did not disclose the Circuit Court Action in her bankruptcy schedules until March 31, 2016, when she amended Schedule A/B: Property (Bankr. Dkt. 29) to add a contingent and unliquidated claim, which she described as an “active lawsuit pending against Green Tree and multiple other defendants in the S.D. Miss. styled *Haynes v. Green Tree et al.*, 3:15-cv-896-DPJ-FKB.” (Bankr. Dkt. 29 at 5).

***Haynes I*—District Court Action**

On December 14, 2015, Green Tree removed the Circuit Court Action to the U.S. District Court for the Southern District of Mississippi. *See Haynes v. Green Tree Servicing LLC et al.* (“*Haynes I*”), 3:15-cv-00896-DPJ-FKB (S.D. Miss.). On December 28, 2015, Green Tree filed the Defendants Green Tree Servicing, LLC; Walter Investment Management Corp.; Best Insurors, Inc.; and W. Stewart Robison’s Motion to Compel Arbitration (the “Motion to Compel Arbitration”) (*Haynes I*, Dkt. 7), seeking to compel arbitration of the same claims raised later in *Haynes II*. The remaining defendants in *Haynes I* filed the Defendants Mid State Capital, LLC; Mid State Trusts II-XI; Mid-State Capital Corporation 2004-1, 2005-1, and 2006-1 Trusts; Mid-

State Capital Trust 2010-1; and Wilmington Trust Company's Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Compel Arbitration. (*Haynes I*, Dkt. 9).

In anticipation of the filing of a motion to remand by Haynes, the parties filed a Joint Motion to Extend Time to File Responsive Pleadings and Stay Litigation Pending the Outcome of the Court's Ruling on Plaintiffs' Motion to Remand to State Court (*Haynes I*, Dkt. 12). On January 6, 2016, the District Court entered the Agreed Order Extending Time for Plaintiffs to Respond to Defendants' Motions to Dismiss for Lack of Personal Jurisdiction and to Compel Arbitration (the "Agreed Order") (*Haynes I*, Dkt. 13). In the Agreed Order, the District Court stayed the Motion to Compel Arbitration as well as all other litigation, pending resolution of "the Plaintiff's Motion to Remand, which is due on or about January 13, 2016." (*Id.*). The Agreed Order also provided that "none of the Defendants will be prohibited from filing Motions to Compel Arbitration or to Dismiss this claim" during the stay, but that responses to any such motions filed will not become due until thirty (30) days after the date of the denial of the motion to remand. *Id.*

As expected, Haynes filed the Motion for Remand (the "Remand Motion") (*Haynes I*, Dkt. 17) on January 13, 2016. On January 19, 2016, the Magistrate Judge entered a text-only order staying all discovery except for remand-related discovery pending a ruling by the District Judge on the Remand Motion. No decision has been made on the Remand Motion in *Haynes I*.

***Haynes II*—Adversary Proceeding**

On March 15, 2016, Green Tree filed the Amended Complaint for Order Pursuant to 9 U.S.C. § 4 (the "Adversary Complaint") (Adv. Dkt. 5), thereby initiating *Haynes II*. In the

Adversary Complaint, Green Tree seeks an order from this Court, pursuant to 9 U.S.C. § 4,³ directing that arbitration proceed under the Building Contract (Ex. 3, Adv. Dkt. 1-2), purportedly signed by Haynes. On April 18, 2016, Haynes filed the Motion to Dismiss Complaint, or Alternatively, to Transfer (the “Motion to Dismiss Adversary”) (Adv. Dkt. 16) pursuant to FED. R. CIV. P. 12(b)(3) and (6).⁴ In the Motion to Dismiss Adversary, Haynes contended that Green Tree is judicially estopped from seeking an order compelling arbitration in *Haynes II*, given that Green Tree previously agreed to stay all litigation in *Haynes I*, including the Motion to Compel Arbitration, pending a ruling by the District Judge on the Remand Motion. Haynes also invoked the first-to-file rule, which provides that when related cases are pending before different federal courts, the court in which the last case was filed may refuse to hear it if the issues raised by the cases substantially overlap. *See, e.g., Cadle v. Whataburger of Alice, Inc.*, 174 F.3d 599, 601 (5th Cir. 1999). On April 26, 2016, Green Tree filed the Motion to Compel Arbitration (the “Motion to Compel Arbitration of Adversary”) (Adv. Dkt. 21). Haynes has not yet filed a response to the Motion to Compel Arbitration of Adversary.

On May 24, 2016, Haynes filed the Stay Motion, asking this Court to stay *Haynes II* pending its ruling on the Motion to Dismiss Adversary “because the earlier-filed Motion to

³ Section 4 of the Federal Arbitration Act provides:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in the agreement.

9 U.S.C. § 4.

⁴ FED. R. CIV. P. 12(b)-(i) is made applicable to adversary proceedings by FED. R. BANKR. P. 7012(b).

Dismiss [Adversary] is dispositive of this Action before this Court.” (Mot. to Stay at 1). Haynes noted in the Stay Brief that “[i]f this Court grants the Defendants’ Motion to Dismiss [Adversary], then Plaintiffs’ Motion to Compel Arbitration [of Adversary] will ultimately be decided in Haynes I, where it is already squarely before [the District] Court.” (Stay Br. at 3). As alternative relief, Haynes asked the Court for an additional fourteen (14) days to respond to the Motion to Compel Arbitration of Adversary.

Discussion

A court’s power to stay proceedings “is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for the litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936). “When ruling on a motion to stay proceedings, a court must consider: ‘(1) hardship and inequity on the moving party without a stay; (2) prejudice the non-moving party will suffer if a stay is granted; and (3) judicial economy.’” *736 Bldg. Owner, LLC v. Regions Bank*, Civil Action No. 3:14-cv-222-DCB-MTP, 2014 U.S. Dist. LEXIS 143314, at *2 (S.D. Miss. Oct. 8, 2014) (citation omitted). “[B]efore granting a stay pending the resolution of another case, the court must carefully consider the time reasonably expected for resolution of the ‘other case,’ in light of the principal that ‘stay orders will be reversed when they are found to be immoderate or of an indefinite duration.’” *Wedgeworth v. Fireboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983). More succinctly stated, the issue is whether a stay of proceedings serves the interests of judicial economy and efficiency. *Hood ex rel. Miss. v. Microsoft Corp.*, 428 F. Supp. 2d 537, 541 (S.D. Miss. 2006).

Applying these standards, the Court finds that a stay of *Haynes II* pending final resolution of *Haynes I* is appropriate under these circumstances where scheduling orders have already been entered in *Haynes I* that provide for consideration of the arbitration issue. It is important to maintain a single forum for adjudication of the arbitration issue to avoid burdening the federal judiciary and preventing any ruling that may encroach on the authority of the District Judge.⁵

In the Stay Response, Green Tree explained why it believed the Motion to Compel Arbitration of Adversary was consistent with the procedural posture of *Haynes I*: “[T]here is no genuine inconsistency to say that jurisdiction comes first in [*Haynes I*] where jurisdiction is in issue [for the reasons set forth in the Remand Motion], but [also] to say that arbitration must be decided immediately in [*Haynes II*] where jurisdiction is not in issue.” (Stay Resp. at 4). In other words, Green Tree wants the arbitration issue decided now in *Haynes II* where jurisdiction is not in issue rather than later, after resolution of the pending Remand Motion in *Haynes I*. Jurisdiction, however, is not a prerequisite to granting a stay. At best, jurisdiction is only a factor for a court to consider in determining whether a stay will maximize judicial economy and efficiency. Here, this Court in *Haynes II* may not render a decision on arbitration faster than resolution of the Remand Motion in *Haynes I*, and, regardless, this Court will not exercise its

⁵ Indeed, in two (2) separate companion cases filed by Green Tree involving issues similar to *Haynes II*—*Green Tree Servicing LLC, et al. v. Keyes* (“*Keyes II*”), 3:16-cv-00058-CWR-LRA (S.D. Miss. Mar. 7, 2016) (Dkt. 19) and *Green Tree Servicing, LLC, et al. v. Norris* (“*Norris II*”), 3:16-cv-00049-CWR-FKB (S.D. Miss. Mar. 7, 2016) (Dkt. 21)—Judge Carlton W. Reeves, “[r]ecognizing the Court’s interest in avoiding inconsistent decision,” transferred *Keyes II* and *Norris II* to Judge Henry T. Wingate, where these issues were first raised in earlier-filed civil actions. See *Keyes v. Jim Walter Homes, LLC et al.* (“*Keyes I*”), 3:15-cv-245-HTW-LRA (S.D. Miss. Apr. 2, 2015); *Norris v. Green Tree Servicing LLC, et al.* (“*Norris I*”), 3:15-cv-728-HTW-LRA (S.D. Miss. Oct. 9, 2015). Thereafter, Chief Judge Louis Guirola, Jr. reassigned *Keyes II* and *Norris II* to Judge William H. Barbour, Jr. “to effectuate efficient administration and disposition of the pending matter[s].” *Keyes II*, 3:16-cv-00058 (Dkt. 24) (S.D. Miss. Apr. 1, 2016); *Norris II*, 3:16-cv-00049 (Dkt. 22) (S.D. Miss. Apr. 1, 2016).

discretion to disturb the schedule that is already in place in *Haynes I* for the District Judge to render that decision.

In opposition to the Stay Motion, Green Tree cited in the Stay Response the holding in *Dahiya v. Talmidge Int'l, Ltd.*, 371 F.3d 207 (5th Cir. 2004), that “only the most exceptional circumstances will justify any action . . . that serves to impede arbitration of an arbitrable dispute.” *Dahiya*, 371 F.3d at 216 (quoting *Tai Ping Ins. Co. v. M/V WARSCHAU*, 731 F.2d 1141, 1146 (5th Cir. 1984)). By staying all proceedings in *Haynes II*, however, the Court is not impeding arbitration but deferring the decision to *Haynes I*. For all of the foregoing reasons, the Court finds that *Haynes II* should be stayed until the disposition of *Haynes I* pending further order of this Court.

IT IS, THEREFORE, ORDERED that *Haynes II* is hereby stayed until further order of this Court.

##END OF ORDER##