



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: July 5, 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:

THOMAS EARL KEYES,

CASE NO. 14-03956-NPO

DEBTOR.

CHAPTER 13

GREEN TREE SERVICING, LLC, ET AL.

PLAINTIFFS

VS.

ADV. PROC. NO. 16-00024-NPO

THOMAS EARL KEYES

DEFENDANT

ORDER STAYING ADVERSARY PROCEEDING

This matter came before the Court on the Plaintiffs' Motion for Stay of Adversary Proceeding Pending Ruling on Motion to Withdraw the Reference [Dkt. #20] (the "Stay Motion") (Adv. Dkt. 23)¹ filed by Ditech Financial, LLC f/k/a Green Tree Servicing, LLC, *et al.* (collectively, "Green Tree") in the above-referenced adversary proceeding (the "Adversary").

Other pleadings related to the Stay Motion are the Motion to: (1) Withdraw the Reference of an

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.

Adversary Proceeding to the Bankruptcy Court; and (2) Terminate Automatic Stay to the Extent Necessary (the “Motion to Withdraw”) (Adv. Dkt. 20) filed by Green Tree; the Memorandum Brief in Support of Motion to: (1) Withdraw the Reference of an Adversary Proceeding to the Bankruptcy Court; and (2) Terminate Automatic Stay to the Extent Necessary (Adv. Dkt. 22) filed by Green Tree; the Motion to Dismiss Complaint, or Alternatively, to Transfer (the “Motion to Dismiss”) (Adv. Dkt. 14) filed by the debtor, Thomas Earl Keyes (“Keyes”); the Memorandum in Support of Motion to Dismiss Complaint, or Alternatively, to Transfer (Adv. Dkt. 15) filed by Keyes; the Plaintiffs’ Response to Defendant’s Motion to Dismiss Complaint, or Alternatively, to Transfer (Adv. Dkt. 25) filed by Green Tree; and the Brief in Support of Plaintiffs’ Response to Defendant’s Motion to Dismiss Complaint, or Alternatively, to Transfer [Dkt. ##14,15] (“Green Tree’s Brief”) (Adv. Dkt. 26) filed by Green Tree. Given that the core facts are undisputed, that no party has requested an evidentiary hearing, and that the interests of judicial efficiency would be served by entry of this Order without an evidentiary hearing, the Court finds that it is reasonable under these circumstances to enter this Order *sua sponte*. See 11 U.S.C. § 102(1)(A) (defining phrase “after notice and a hearing” to be “such notice as is appropriate in the particular circumstances”); 2 COLLIER ON BANKRUPTCY ¶ 102.02[2] (16th ed. 2016) (“[u]nder this flexible approach, bankruptcy courts are given discretion to mold events to fit the particular circumstances of the case”).

Pursuant to Rule 5011(c) of the Federal Rules of Bankruptcy Procedure (“Rule 5011”), Green Tree asks this Court to exercise its equitable powers to issue a stay pending the District Court’s disposition of the Motion to Withdraw. Rule 5011(c) provides that the filing of a motion to withdraw does not automatically stay proceedings but “the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion.” FED.

R. BANKR. P. 5011(c). “A motion for stay ordinarily shall be presented first to the bankruptcy judge.” (*Id.*).

As this Court recently noted in a similar case, its 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.” *Green Tree Servicing, LLC v. Haynes*, Adv. Proc. No. 16-00016-NPO, slip op. at 6 (Bankr. S.D. Miss. June 21, 2016) (Dkt. 45) (“*Haynes II*”) (citing *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936)). A determination of whether a stay is proper pending a decision on a motion to withdraw a proceeding follows the same standards as any motion for a stay. 9 COLLIER ON BANKRUPTCY ¶ 5011.03[2][b] (16th ed. 2016). The movant has the burden to demonstrate: (1) the likelihood of prevailing on the merits of the motion to withdraw the reference; (2) that the movant will suffer irreparable harm if the stay is denied; (3) that the other parties will not be substantially harmed by the stay; and (4) that the public interest will be served by granting the stay. *Id.*

1. Whether Green Tree Is Likely to Succeed on its Motion to Withdraw

In its Motion to Withdraw, Green Tree seeks either mandatory or discretionary withdrawal of the Adversary from this Court to the District Court under 28 U.S.C. § 157(d). Section 157(d) provides for mandatory withdrawal of the reference if consideration of certain other federal statutes is necessary or for permissive withdrawal of the reference upon a showing of cause. 28 U.S.C. § 157(d). As grounds for mandatory withdrawal, Green Tree asserts that the Adversary involves a question of non-bankruptcy law regulating interstate commerce—the Federal Arbitration Act. (Mot. to Withdraw at 5). Alternatively, Green Tree seeks discretionary

withdrawal on the ground that there are several similar proceedings pending before the District Court.² (*Id.* at 2 note 2 & 5). “In light of the Court’s decision in [*Haynes II*], withdrawal of the reference of these cases will provide consistent determination in a single court system, thereby promoting uniformity in bankruptcy administration.” (Stay Motion ¶ 10). After considering the matter, the Court finds that the District Court will likely conclude that cause exists for permissive withdrawal of the Adversary, if not mandatory withdrawal, for the reasons set forth by Green Tree.

2. Whether Green Tree Will Suffer Irreparable Harm If the Stay Motion Is Denied

If the Stay Motion is denied and the Motion to Withdraw is granted, Green Tree will incur the duplicative expense of litigating the Adversary, including the expense of attorney’s fees and costs arising out of the hearing on the Motion to Dismiss set for July 20, 2016, even though this Court has already indicated in a similar case that it will not consider the arbitration issue. *Haynes II*, Adv. Proc. No. 16-00016-NPO (Dkt. 45 at 7) (explaining that a stay of the adversary was appropriate to “prevent[] any ruling that may encroach on the authority of the District Judge”). For that reason, the Court finds that Green Tree has established irreparable harm if the Stay Motion is denied.

² See, e.g., *Green Tree Servicing, LLC v. Charles*, Civil Action No. 3:16cv00050-WHB-JCG (S.D. Miss.); *Clayton v. Green Tree Servicing, LLC*, Civil Action No. 3:15cv00712-WHB-JCG (S.D. Miss.); *Green Tree Servicing, LLC v. Clayton*, Civil Action 3:16cv00059-WHB-JCG (S.D. Miss.); *Green Tree Servicing, LLC v. Ducksworth*, Civil Action No. 3:16cv00048-WHB-JCG (S.D. Miss.); *Green Tree Servicing, LLC v. Horne*, Civil Action No. 3:16cv00047-WHB-JCG (S.D. Miss.); *Green Tree Servicing, LLC v. Keyes*, Civil Action No. 3:16cv00058-WHB-JCG (S.D. Miss.); *Green Tree Servicing, LLC v. Sanders*, Civil Action No. 3:16cv00067-WHB-JCG (S.D. Miss.).

3. Whether Keyes Will Be Harmed If the Stay Motion Is Granted

Because the Adversary is relatively new, the Court finds that a stay will not prejudice Keyes. Also, in his Motion to Dismiss, Keyes asks this Court to dismiss the Adversary or, in the alternative, to transfer the Adversary to the District Court for consolidation with other similar cases.³ According to Keyes, dismissing or transferring the Adversary will “allow Green Tree’s issues to be decided by a single court.” (Mot. to Dismiss at 2). Because the relief Keyes requests in the Motion to Dismiss is similar to the relief requested by Green Tree in the Stay Motion, the Court finds that granting the Stay Motion will not harm Keyes.

4. Whether the Public Interest Will Be Served by Granting the Stay

The Court finds that a stay will achieve greater judicial economy by conserving the resources of the parties and this Court. In the interests of judicial economy and efficiency, it is important to maintain a single forum for adjudication of the arbitration issue to avoid burdening the federal judiciary.

Conclusion

For the foregoing reasons, the Court finds that the Adversary should be stayed until the disposition of the Motion to Withdraw pending further order of this Court.

IT IS, THEREFORE, ORDERED that the Adversary is hereby stayed until further order of this Court.

##END OF ORDER##

³ In Green Tree’s Brief, Green Tree maintained that this Court lacks authority to transfer the Adversary to the District Court but “[i]f transfer were a viable option, [Green Tree] would not oppose it.” (Green Tree Br. at 5).