



SO ORDERED,

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

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 26, 2017**

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:

CALVIN C. HARRIS,

CASE NO. 17-00437-NPO

DEBTOR.

CHAPTER 13

**ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC
STAY AND FOR ABANDONMENT OF PROPERTY AND FOR OTHER RELIEF**

This matter came before the Court for hearing on March 20, 2017 (the "Hearing"), on the Motion for Relief from the Automatic Stay and for Abandonment of Property and for Other Relief (the "Motion") (Dkt. 19) filed by BancorpSouth Bank ("BancorpSouth") and the Response to Motion for Relief from Automatic Stay and for Abandonment (the "Response") (Dkt. 26) filed by Calvin C. Harris, the debtor (the "Debtor"), in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Tylvester O. Goss ("Goss") represented the Debtor and Les Alvis ("Alvis") represented BancorpSouth. After fully considering the matter, the Court finds as follows:

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 was proper under the circumstances.

Facts

1. The Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code on February 8, 2017 (the “Petition”) (Dkt. 1).

2. The Debtor filed his schedules on February 22, 2017 (Dkt. 11). On Schedule A/B: Property (“Schedule A/B”) (Schedules at 3-9), the Debtor indicated that he had an interest in property located at 1200 Highway 35 S., Forest, Mississippi 39074 (the “Commercial Property”), which had a purported value of \$0.00.¹ (Schedule A/B at 2). On Schedule D: Creditors who Have Claims Secured by Property (“Schedule D”) (Dkt. 11 at 12-14), the Debtor listed BancorpSouth as a secured creditor holding a claim in the amount of \$395,000.00. (Schedule D at 1). The property securing the claim, according to Schedule D, is the Commercial Property. (*Id.*). In his Statement of Financial Affairs for Individuals Filing for Bankruptcy (the “Statement”) (Dkt. 11 at 27-33), the Debtor indicated that he owns two (2) businesses: C. Harris Properties, LLC (“C. Harris Properties”) and C. Harris Trucking, LLC (“C. Harris Trucking”). According to the Statement, the business address of C. Harris Properties and C. Harris Trucking is 802 Cleveland Street, Forest, Mississippi. (Statement at 6-7).

3. In the Chapter 13 Plan (the “Plan”) (Dkt. 12), the Debtor proposed to pay BancorpSouth the \$395,000.00 approximate amount owed at a five-percent (5%) rate of interest.

¹ Goss stated at the Hearing that this valuation was made in error and that he would amend Scheduled A/B to reflect the correct value. After the Hearing, the Debtor filed the Amended Schedule A/B: Property (the “Amended Schedule A/B”) (Dkt. 38), which indicated the value of the Commercial Property is \$400,000.00. (Amended Schedule A/B at 2). On April 26, 2017, the Debtor filed the second Amended Schedule A/B (Dkt. 54), listing his property located at 5474 Lawrence Hazel Road Lawrence, MS 39336 as having a value of \$400,000.00, which is the purported value of the Commercial Property. The Court is unsure whether this address is a typographical error. The Court will continue to refer to and cite the Amended Schedule A/B.

(Plan at 2). BancorpSouth filed the Objection to Confirmation (“Confirmation Objection”) (Dkt. 18) on March 3, 2017, arguing that, in addition to the Commercial Property, the loan is secured by “a duly perfected first mortgage lien against a house and lot owned by Debtor, located at 802 Cleveland Street, Forest, Mississippi (the “Residential Property”).” (Conf. Obj. at 1-2). BancorpSouth objected to confirmation because the “Plan makes no provision for the Residential Property,” which is not listed on Schedule D. (*Id.* at 3). In sum, BancorpSouth claimed that the proposed payment of its claim in the Plan was insufficient to pay the amount owed by the Debtor. (*Id.* at 3-4). The Confirmation Objection is set to be heard on May 1, 2017, at 10:00 a.m. (Dkt. 22).

4. BancorpSouth filed the Motion on March 3, 2017. According to BancorpSouth, the loan in question had an unpaid balance of \$397,122.92 on the date the Petition was filed, excluding post-petition interest, late fees, costs and expenses of collection, attorneys’ fees, etc. (Mot. at 1). Apparently, BancorpSouth scheduled a foreclosure sale of the Residential Property and the Commercial Property for February 9, 2017, the day after the Petition was filed. (*Id.* at 3). After the Petition was filed, BancorpSouth halted the foreclosure sale of the Residential Property and BancorpSouth’s attorney, Alvis, contacted the Debtor’s attorney, Goss, regarding the Debtor’s “position on the applicability of the automatic stay to the [Commercial Property] and was advised of the Debtor’s position that foreclosure of the [Commercial Property] would violate the automatic stay.” (*Id.*). Thus, BancorpSouth “halted the sale of the [Commercial Property] out of [an] abundance of caution.” (*Id.* at 4). BancorpSouth contended that because the Debtor has no interest in the Commercial Property, which is wholly owned by C. Harris Properties, it is not property of the estate subject to the automatic stay. (*Id.*). BancorpSouth also argued that relief is

appropriate because insurance on the Commercial Property lapsed on February 14, 2017, “and ad valorem taxes on the [Commercial Property] are delinquent for the years 2014, 2015 and 2016.” (*Id.* at 5).

5. The following documents were attached to the Motion: (1) the Unconditional and Continuing Guaranty (the “GUARANTY”) (the “Personal Guaranty”) (Mot. Ex. A) executed by the Debtor; (2) the Note (the “Note”) (Mot. Ex. B) executed by C. Harris Properties, to which the Personal Guaranty applies; (3) the Real Estate Deed of Trust (Mot. Ex. C) showing that the Debtor is the owner of the Residential Property and evidencing the fact that the Residential Property serves as the Debtor’s collateral for the Personal Guaranty of the Note; and (4) the Real Estate Deed of Trust (Mot. Ex. D) showing that C. Harris Properties owns the Commercial Property and evidencing the fact that the Commercial Property serves as C. Harris Properties’ collateral for the Note. In other words, the exhibits to the Motion show that C. Harris Properties took out a loan from BancorpSouth (Note at 1), which the Debtor personally guaranteed (Personal Guaranty at 1). The Note is secured by the Commercial Property (Commercial Property Deed at 2) and the Personal Guaranty is secured by the Residential Property (Residential Property Deed at 2).

6. On March 10, 2017, the Debtor filed the Response, simply admitting and denying certain paragraphs in the Motion. (Resp. at 1). Comparing the two, it appears that the Debtor admitted that the loan is secured by both the Residential Property and the Commercial Property. (*Id.*). The Debtor denied, however, that BancorpSouth is entitled to relief from the automatic stay. (*Id.*).

7. At the Hearing, Alvis explained that the loan is secured by the Residential Property and the Commercial Property, but the automatic stay does not apply to the Commercial Property,

which is wholly owned by C. Harris Properties. Alvis argued that the Commercial Property is property of C. Harris Properties, not property of the Debtor's estate.

8. Goss argued at the Hearing that because the Debtor personally guaranteed the loan and because he has a legal and equitable interest in C. Harris Properties, the Commercial Property is subject to the automatic stay. According to Goss, the Debtor is a long-term client of BancorpSouth and the loan had a balloon payment, but BancorpSouth would not renew the loan. Goss clarified that the Debtor is claiming the Commercial Property is subject to the automatic stay of § 362² rather than § 105.

9. On Amended Schedule A/B, filed after the Hearing, the Debtor indicated that he possesses a 100% ownership interest in C. Harris Properties and C. Harris Trucking. (Amended Schedule A/B at 4-5).

Discussion

BancorpSouth argues that it is permitted to foreclose on the Commercial Property because it is not property of the Debtor's estate since it is wholly owned by C. Harris Properties. The Debtor argues that because he executed the Personal Guaranty and is the 100% owner of C. Harris Properties, the automatic stay applies to the Commercial Property. For purposes of determining the proper disposition of the Motion, the Court must decide whether the § 362 automatic stay applies to the Commercial Property. If the § 362 automatic stay is inapplicable to the Commercial Property, the Motion should be granted.

“When a bankruptcy petition is filed, an automatic stay operates as a self-executing injunction” that prevents creditors from pursuing collection efforts against the debtor or the

² Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the United States Code unless indicated otherwise.

property of the debtor's estate for pre-petition debts. *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348-354-55 (5th Cir. 2008). The automatic stay provides "breathing room" for a debtor and enables "the equitable disbursement of estate property among creditors." *Templeton Mortg. Corp. v. Chesnut (In re Chesnut)*, 422 F.3d 298, 301 (5th Cir. 2005) (citations omitted). The automatic stay only applies to property of the estate. *In re Chesnut*, 422 F.3d at 302. Thus, § 362 allows "by negative implication . . . 'any act to obtain possession' of property that is *not* 'property of the estate.'" *Id.* The question here is whether § 362 applies to the Commercial Property, which is owned by C. Harris Properties.

Of particular relevance to the Court's analysis is the "elementary principle of corporate law that a corporation and its stockholders are separate entities that title to corporate property is vested in the corporation and not in the owners of the corporate stock." *In re HSM Kennewick, L.P.*, 347 B.R. 569, 571 (N.D. Tex. 2006) (citations omitted). "Even where one hundred percent of a subsidiary's stock is owned by the shareholder in question, that shareholder has not acquired, and has no property interest in, specific assets of the subsidiary." *Id.* (citations omitted). The district court, therefore, determined that a member of the Limited Liability Company ("LLC") had no property interests in the LLC's specific assets, but only "an interest to its share in the surplus after all debts are paid." *Id.* at 572. "[T]he automatic stay provisions of section 362(a) may not be construed more expansively than is necessary to effectuate legislative purpose." *Id.* (citation omitted). A proposed lawsuit against one of the LLC member's interest would not affect its interest, "as its interest in the property will remain intact." *Id.* The district court noted that interpreting § 362(a)(3) to apply the automatic stay to the member "would construe section 362(a)(3) more expansively than the express language of the provision. The statute applies to

protect debtors from actions which seek to exercise control of the property of the debtor's estate.” *Id.* (citation omitted). The member did “not possess an interest to specific assets of property of [the LLC], as it is only a member of the LLC; thus the automatic stay does not operate to protect it.” *Id.*

An abundance of persuasive case law guides the Court's decision on the Motion. In *Assocs. Comm. Corp. v. Rodio (In re Rodio)*, 257 B.R. 699 (Bankr. Conn. 2001), cited by BancorpSouth, a Connecticut bankruptcy case factually similar to the Bankruptcy Case, the debtor guaranteed a loan obtained by a company in which the debtor held a membership interest. *In re Rodio*, 257 B.R. at 700. To secure the guaranty, the debtor pledged as collateral a tractor, which was titled in the company's name. *Id.* at 701. The debtor filed for bankruptcy and argued that the automatic stay applied to the tractor because he used it to produce revenue for the company, which paid him the income he would use to fund his chapter 13 plan. *Id.* The bankruptcy court concluded that § 362(a) “does not stay the creditor's action to foreclose its lien on the tractor owned by [the company] and the creditor is entitled to relief from stay as to the debtor's possession of the tractor” *Id.* at 702.

Similarly, in *Manson v. Friedberg*, the New York district court noted that an “LLC is a separate legal entity, and as such it can own property, enter into contracts, and be sued.” *Manson v. Friedberg*, No. 08 Civ. 3890(RO), 2013 WL 2896971, at *3 (S.D. New York June 13, 2013). Accordingly, “[w]hatever legal or equitable interest an individual has in an LLC is personal property within the meaning of the bankruptcy estate under § 541. But property of the LLC is *not property of individual members* and members of an LLC have no interest in the specific property of the LLC.” *Id.* (citing *In re Rodio*, 257 B.R. at 701) (emphasis added). In *Manson*, the plaintiff

sued two defendants, an LLC defendant and an individual defendant, under federal and state law for sexual harassment. *Id.*, at *1. Subsequently, the individual defendant filed for bankruptcy and the lawsuit was stayed as to him, but a default judgment was entered against the employer. *Id.* The district court was tasked with determining the extent to which the automatic stay applied to certain assets. *Id.*, at *3. The automatic stay of § 362 applies “only to the property of the debtor or property of the estate and as such does not apply to stay proceedings against non-debtors.” *Id.* (citations omitted).

Essentially, the individual defendant in *Manson* argued that the automatic stay should apply to the employer’s assets because he had an interest in the LLC and its property, which was part of his bankruptcy estate under § 541. *Id.* The district court concluded that individuals holding a membership interest in the LLC do not have an interest in specific property of the LLC. *Id.* “The fact that [the individual defendant] holds an ownership interest in a subsidiary entity does not give him an ownership interest in assets owned by that entity.” *Id.* (citations omitted). The LLC’s assets were not protected by § 362 simply because the individual defendant, who was in bankruptcy, was an owner of the LLC. *Id.*, at *4.

The Debtor argued at the Hearing that the automatic stay applies to the Commercial Property in part because he personally guaranteed the loan. Like the debtor in *In re Rodio*, the debtor in *In re Burgess* personally guaranteed an LLC’s loan and had a one hundred percent (100%) ownership interest in an LLC, which was scheduled as property of the estate. *In re Burgess*, 2010 Bankr. LEXIS 1352, at *2 (Bankr. M.D. Tenn. 2010). The bankruptcy court determined that although the debtor’s ownership interest in the LLC was property of the estate, the property of the LLC was not property of the debtor’s estate. *Id.*, at *2-3. An LLC is a “separate

entity from the debtor, and in bankruptcy, the separate legal existence of a corporation is respected.” *Id.*, at *3 (citation omitted). The automatic stay, therefore, “simply does not stay actions against separate entities associated with the debtor.” *Id.* (citation omitted). “To allow a separate entity that has not filed for bankruptcy protection to be protected by the debtor’s bankruptcy case goes against the Bankruptcy Code” *Id.*

The Court agrees with the aforementioned courts, and many others, and holds that the automatic stay of § 362 does not apply to property owned solely by an LLC in which a debtor has an interest. It is well-settled that an LLC is a separate legal entity that can own property, enter into contracts, and be sued. The fact that an individual debtor, like the Debtor in the Bankruptcy Case, holds an ownership interest in an LLC does not give him an ownership interest in assets owned by that entity. The assets of C. Harris Properties are not protected by § 362 simply because the Debtor maintains an ownership interest in it. Stated differently, the Debtor holds an ownership interest in C. Harris Properties, not in its assets. While the Debtor’s membership interest in C. Harris Properties is property of the estate under § 541, the Commercial Property, which is owned by C. Harris Properties, is not. Accordingly, the automatic stay does not apply to the Commercial Property. The Motion, therefore, should be granted.

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

##END OF ORDER##