



SO ORDERED,

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

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: August 21, 2019**

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:

HERITAGE REAL ESTATE INVESTMENT, INC.

CASE NO. 14-03603-NPO

DEBTOR.

CHAPTER 7

**STEPHEN SMITH, AS TRUSTEE FOR
HERITAGE REAL ESTATE INVESTMENT, INC.**

PLAINTIFF

VS.

ADV. PROC. 19-00021-NPO

CITIZENS TRUST BANK

DEFENDANT

ORDER DENYING MOTION TO STAY PROCEEDINGS

This matter came before the Court for hearing on July 25, 2019 (the “Hearing”), on the Motion to Stay Proceedings (the “Stay Motion”) (Adv. Dkt. 16)¹ filed by Citizens Trust Bank (“Citizens”); the Response to Citizens Trust Bank’s Motion to Stay Proceedings (Adv. Dkt. 20) filed by Stephen Smith (the “Trustee”), chapter 7 trustee for the estate of Heritage Real Estate Investment, Inc. (“Heritage”); and the Reply Brief in Support of Defendant’s Motion to Stay Proceedings (the “Reply Brief”) (Adv. Dkt. 21) filed by Citizens in the above-referenced adversary

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 proceedings are cited by the case number followed by the docket number.

proceeding (the “Citizens Adversary”). At the Hearing, Anna Little Morris represented Citizens, and Jim F. Spencer represented the Trustee. After considering the pleadings and arguments of counsel, the Court denied the Stay Motion from the bench. This Order memorializes and supplements the Court’s bench ruling.

Jurisdiction

This Court has jurisdiction over the parties to and subject matter of the Citizens Adversary pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Stay Motion was proper under the circumstances.

Facts²

1. Citizens asks the Court to stay the Citizens Adversary pending an appeal by Apostolic Association Assemblies, Inc. (“AAA”) and Greater Christ Temple Apostolic Church (the “Church”) from a final judgment rendered by this Court in *Smith v. Johnson (In re Heritage Real Estate Investment, Inc.)*, Adv. Proc. 16-00035-NPO (the “AAA/Church Adversary”). (Adv. Dkt. 16). Although separate adversary proceedings, both the Citizens Adversary and the AAA/Church Adversary are related to the above-styled bankruptcy case commenced by Heritage (the “Bankruptcy Case”) (Bankr. Dkt. 1) on November 6, 2014. Heritage and AAA are affiliated entities under the organizational umbrella of the Church. There are other affiliates of the Church, but only Heritage has filed a bankruptcy case. To provide context to the Stay Motion, a brief discussion of the procedural history of the AAA/Church Adversary is necessary.

² The following findings of fact and conclusions of law are made pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

AAA/Church Adversary

2. On August 25, 2011, Bruce Johnson (“Johnson”), Michael King (“King”), and William Harrison (“Harrison”) (together, the “Alabama Plaintiffs”) obtained a default judgment of \$6,599.648.00 against Heritage, Luke Edwards, Alabama-Mississippi Farm, Inc., and Apostolic Advancement Association, Inc.³ in the Circuit Court of Greene County, Alabama in *Johnson v. Edwards*, CV-2010-32 (the “Alabama Default Judgment”) (Adv. Proc. 16-00035-NPO, Dkt. 1-1). Thereafter, the Alabama Plaintiffs began to execute the Alabama Default Judgment against real property owned by Heritage, including a forty-three (43)-acre cemetery located in Greene County, Alabama (the “Greene County Cemetery”) (Adv. Proc. 16-00035-NPO, Dkt. 1, ¶ 7).

3. On February 24, 2014, the Sheriff of Greene County, Alabama (the “Sheriff”) conducted a foreclosure sale of the Greene County Cemetery. (*Id.*, Dkt. 1-2). The Alabama Plaintiffs bid \$90,000.00 of their Alabama Default Judgment and received a Sheriff’s Deed. (*Id.*). Pursuant to the right of redemption granted by section 6-5-248 of the Alabama Code, Heritage had the right to redeem the Greene County Cemetery by tendering the amount bid, plus any accrued interest, to the Alabama Plaintiffs within one (1) year from the date of the Sheriff’s sale. (*Id.*, Dkt. 1, ¶ 9).

4. On November 6, 2014, Heritage filed a petition for relief under chapter 11 of the Bankruptcy Code. (Bankr. Dkt. 1). Heritage’s statutory right of redemption had not expired as of the date of its bankruptcy filing.

5. On January 21, 2015, the Court converted the Bankruptcy Case to a chapter 7 case, “thereby allowing for a prompt and orderly liquidation of the Debtor’s assets” (Bankr. Dkt. 75). Smith was appointed the Trustee.

³ Apostolic Advancement Association, Inc. should not to be confused with AAA.

6. Heritage transferred its interest in the Greene County Cemetery to the Church on February 20, 2015, through the execution of the Corporation Quit Claim Deed (the “Quitclaim Deed”) (Adv. Proc. 16-00035-NPO, Dkt. 1-3). The transfer occurred without the Trustee’s consent or knowledge and without approval from the Court.

7. On February 23, 2015, the Church and AAA tendered to Drayton Pruitt (“Pruitt”), counsel for the Alabama Plaintiffs, a check made payable to the order of the “Law office of Attorney Ira D. Pruitt” in the amount of \$96,750.00, for the purpose of redeeming the Greene County Cemetery from the Sheriff’s sale (the “Redemption Check”) (*Id.*, Dkt. 1-4). Pruitt thereafter agreed to hold the Redemption Check pending instructions from this Court.

8. The face of the Redemption Check indicates that it was drawn by Citizens and purchased by AAA and the Church, identified as the remitters. In the Citizens Adversary, the parties dispute whether the Redemption Check is a cashier’s check or a teller’s check. (Adv. Dkt. 20 at 2 n.2).

9. On June 15, 2016, the Trustee commenced the AAA/Church Adversary by filing the Complaint for Declaratory Judgment to Determine the Estate’s Interest in Property and Other Relief (the “AAA/Church Complaint”) (Adv. Proc. 16-00035-NPO, Dkt. 1) seeking declaratory relief against the Church, AAA, and the Alabama Plaintiffs regarding the parties’ rights to the Greene County Cemetery and the Redemption Check.

10. On June 22, 2016, AAA and the Church were served with process but failed to answer or otherwise respond to the AAA/Church Complaint. The Clerk issued entries of default against AAA and the Church on July 29, 2016 (*Id.*, Dkt. 13-14).

11. AAA and the Church each filed the Motion to Set Aside Entry of Default and to Quash Service (the “Motions to Set Aside Default”) (*Id.*, Dkt. 18-19). In the Motions to Set Aside

Default, the Church and AAA asked the Court to quash service of process as being ineffective or, in the alternative, to set aside the entries of default for “good cause.” On November 9, 2016, the Court entered the Order Denying: (1) Motion to Set Aside Entry of Default and to Quash Service on Greater Christ Temple Apostolic Church and (2) Motion to Set Aside Entry of Default and to Quash Service on Apostolic Association Assemblies, Inc. (the “Order Denying Motion to Set Aside Entry of Default”) (*Id.*, Dkt. 36). AAA and the Church appealed the Order Denying Motion to Set Aside Entry of Default to the U.S. District Court for the Southern District of Mississippi (the “District Court”) in *Smith v. Apostolic Association Assemblies, Inc. (In re Heritage Real Estate Investment, Inc.)*, 3:16-cv-00929-CWR-FKB. This appeal was the first of three appeals filed by AAA and the Church. On June 1, 2017, the District Court dismissed the appeal as premature. (Case No. 3:16-cv-00929-CWR-FKB, Dkt. 9).

12. King and Johnson also failed to answer or otherwise respond to the AAA/Church Complaint. At the Trustee’s request, the Clerk issued entries of default against King (Adv. Proc. 16-00035-NPO, Dkt. 64) and Johnson (*Id.*, Dkt. 65) on July 24, 2017.

13. On August 30, 2017, the Court entered the Default Judgment Against Apostolic Association Assemblies, Inc. and the Greater Christ Temple Apostolic Church (the “AAA/Church Default Judgment”) (*Id.*, Dkt. 73). By virtue of the AAA/Church Default Judgment, the following allegations of the AAA/Church Complaint were accepted as true: (a) Heritage had no authority to execute the Quitclaim Deed; (b) AAA and the Church are affiliated entities of Heritage; (c) the Redemption Proceeds belong to Heritage, and (d) neither AAA nor the Church has any interest in the Redemption Proceeds. The same day that the Court entered the AAA/Church Default Judgment, the Court also entered the Default Judgment Against Bruce Johnson and Michael L. King (the “Johnson/King Default Judgment”) (*Id.*, Dkt. 74).

14. AAA and the Church appealed the AAA/Church Default Judgment to the District Court in *Apostolic Association Assemblies v. Smith (In re Heritage Real Estate Investment, Inc.)*, 3:17-cv-00743-DPJ-FKB, and on June 20, 2018, the District Court dismissed the second appeal as premature since the Trustee held unresolved claims against Harrison. (Case No. 3:17-cv-00743-DPJ-FKB, Dkt. 16).

15. On January 30, 2018, during the pendency of the second appeal, AAA and the Church convinced Citizens to stop payment on the Redemption Check and return the funds (the “Redemption Proceeds”) to their account. (Bankr. Dkt. 367-3). Neither Citizens, AAA, nor the Church informed Pruitt, the Trustee, or this Court that Citizens had stopped payment on the Redemption Check. As a result, the AAA/Church Adversary proceeded forward as if the Redemption Proceeds remained in Pruitt’s possession.

16. Thereafter, Harrison, the only defendant in the AAA/Church Adversary who filed an answer to the AAA/Church Complaint (Adv. Proc. 16-00035-NPO, Dkt. 63), reached a settlement with the Trustee (*Id.*, Dkt. 93). They agreed that the Trustee would convey and quitclaim any interest he had in the Greene County Cemetery to the Alabama Plaintiffs in exchange for the Redemption Proceeds. By Order Granting Joint Motion to Approve Compromise and Settlement Pursuant to Rule 9019 (the “Settlement Order”) (*Id.*, Dkt. 125), the Court on September 13, 2018, approved the settlement and ordered Pruitt to “release the Redemption Proceeds to the Trustee.” (*Id.*, Dkt. 125 at 14). With the entry of the Settlement Order, the AAA/Church Default Judgment, and the Johnson/King Default Judgment, no further claims remained to be resolved in the AAA/Church Adversary, and the Court entered the Final Judgment (the “Final Judgment”) (*Id.*, Dkt. 126) on September 13, 2018.

17. AAA and the Church appealed the AAA/Church Default Judgment, the Settlement Order, and the Final Judgment to the District Court. (the “AAA/Church Appeal”) (*Id.*, Dkt. 129). This third appeal remains pending in the District Court in *Apostolic Association Assemblies, Inc. v. Smith (In re Heritage Real Estate Investment, Inc.)*, Case No. 3:18-cv-00675-DPJ-FKB. No party has sought or obtained a stay of the AAA/Church Adversary pending the AAA/Church Appeal.

Citizens Adversary

18. Consistent with the Settlement Order, Pruitt endorsed the Redemption Check to the Trustee on December 7, 2018. The Trustee, who was unaware that Citizens already had returned the funds to AAA and the Church, attempted to deposit the Redemption Check into his account at Rabobank N.A. (“Rabobank”) (Adv. Dkt. 1). According to the Trustee, Rabobank presented the Redemption Check to the drawee bank, the BOKF, N.A., Eufaula, OK, for payment, which then sent the Redemption Check to Citizens. (*Id.*). Citizens dishonored the Redemption Check and returned it unpaid to the Trustee. (*Id.*).

19. On May 10, 2019, the Trustee filed the Complaint (the “Citizens Complaint”) (Adv. Dkt. 1), asserting that Citizens wrongfully dishonored the Redemption Check under MISS. CODE ANN. § 75-3-414, and requesting a monetary judgment against Citizens in the amount of \$96,750.00, plus expenses, loss of interest, and consequential damages pursuant to MISS. CODE ANN. § 75-3-411. Citizens filed the Answer and Affirmative Defenses of Defendant Citizens Trust Bank (Adv. Dkt. 9), admitting that Citizens dishonored the Redemption Check but alleging numerous affirmative defenses. Among the affirmative defenses alleged by Citizens is: “[w]hether the plaintiff is entitled to the funds at issue in this case is the subject of a pending appeal, and the outcome of that appeal may moot these proceedings.” (Adv. Dkt. 9).

20. On June 28, 2019, Citizens filed the Stay Motion, requesting that the Court stay the Citizens Adversary during the pendency of the AAA/Church Appeal. (Adv. Dkt. 16.) The Trustee opposes the stay on numerous grounds. (Adv. Dkt. 20).

Discussion

“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Although a court possesses the authority “to regulate its flow of cases,” the Fifth Circuit has cautioned that “this authority . . . must not be abused.” *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985) (citing *Landis*, 299 U.S. at 254-55 and *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1984)). In determining whether a stay is appropriate, courts consider three factors: “(1) any potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources saved by avoiding duplicative litigation.” *B&D Produce Sales, LLC v. Packman I, Inc.*, Case No. SA-16-CV-99-XR, 2016 WL 4435275, at *1 (W.D. Tex. Aug. 19, 2016). “The proponent of a stay bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

A. Potential Prejudice to the Trustee

In the Stay Motion, Citizens argues that the first factor for determining whether a stay is appropriate weighs in favor of granting a stay of the Citizens Adversary because the litigation is in its infancy and, therefore, any prejudice to the Trustee is minimal. In that regard, Citizens points out that it answered the Citizens Complaint only ten days before filing the Stay Motion. (Adv. Dkt. 16). Citizens’ argument, however, fails to consider the prejudicial effect of a stay on the Trustee’s administration of the Bankruptcy Case.

The Supreme Court of the United States “has long recognized that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.” *Katchen v. Landy*, 382 U.S. 323, 328-29 (1966) (citation & quotation omitted). Granting the Stay Motion would circumvent this principle by delaying the Trustee in collecting assets of Heritage’s estate in the Bankruptcy Case, which has been pending since November 6, 2014.

Citizens suggests in the Stay Motion that the length of the delay would be insignificant because the Citizens Adversary will be rendered moot if the Trustee loses the AAA/Church Appeal. (Adv. Dkt. 16 at 1-2). The Court disagrees. The Statement of the Issues in the Brief of Appellant filed by AAA and the Church in the AAA/Church Appeal consists of a list of eight questions, including whether this Court abused its discretion in granting the AAA/Church Default Judgment and whether it violated their equal protection rights. (Case No. 3:18-cv-00675-DPJ-FKB, Dkt. 5 at 7-8). Clearly, the parties’ rights to the Redemption Check is not before the District Court in the AAA/Church Appeal. Indeed, in the Brief of Appellant, the only relief requested by AAA and the Church is a remand of the proceedings to this Court for a full trial on the merits. (Case No. 18-cv-00675-DPJ-FKB, Dkt. 5 at 52-53). Thus, although the Stay Motion on its face seeks a stay pending the AAA/Church Appeal, Citizens actually seeks a stay pending the outcome of a trial on the merits of the AAA/Church Adversary should the District Court set aside the Default Judgment. Even Citizens recognizes in the Reply Brief that if the AAA/Church Appeal is decided in favor of AAA and the Church, “that case will be tried on the merits to determine the parties’ rights to the [Redemption] Check.” (Adv. Dkt. 21 at 1-2). The Court, therefore, finds that the delay caused the Trustee in administering the Bankruptcy Case could last for a significant period

of time and for that reason, further finds that the Trustee faces a substantial likelihood of prejudice if a stay is granted.

B. Hardship and Inequity to Citizens if the AAA/Church Adversary Is Not Stayed

Citizens asserts that due to the AAA/Church Appeal, the “legal rights to the proceeds of the [Redemption] Check are in question.” (Adv. Dkt. 16 ¶ 3). It argues that if the Stay Motion is denied, “it will be forced to litigate and incur legal expenses that may prove unnecessary based upon the outcome of the Appeal.” (Adv. Dkt. 16 ¶¶ 8-9).

Without citing any legal authority, Citizens maintains that “if the Trustee has no right to the [Redemption] Check, then the Trustee has no claim against Citizens for any alleged misconduct in processing the [Redemption] Check.” (Adv. Dkt. 21 at 5). But whether Citizens may defend its potential liability to the Trustee for its alleged wrongful dishonor of the Redemption Check by raising the defenses of AAA and the Church is governed by Mississippi’s version of the Uniform Commercial Code. At this early stage of litigation, when the parties cannot agree whether the Redemption Check is a cashier’s check under MISS. CODE ANN. § 75-3-104(g) or a teller’s check under MISS. CODE ANN. § 75-3-104(h), the Court is not certain that the issues in the AAA/Church Appeal and the Citizens Adversary overlap as seamlessly as Citizens’ argument in support of a stay presupposes. *See, e.g.*, MISS. CODE ANN. § 75-3-310(b)(3).

In addition to questioning whether litigation of the Citizens Adversary would prove unnecessary based upon the outcome of the AAA/Church Appeal, the Court is concerned that a stay under similar facts may disrupt the flow of commerce in other circumstances. In that regard, the Court notes that none of the cases cited by Citizens in the Reply Brief involve analogous facts. (Adv. Dkt. 21 at 6-7); *see Coker v. Select Energy Servs., LLC*, 161 F. Supp. 3d 492, 495 (S.D. Tex. 2015) (issuing a stay in action alleging a violation of the Fair Labor Standards Act in anticipation

of a legal ruling by the Fifth Circuit germane to the legal issues raised in the stayed case); *Fed. Home Loan Mortg. Corp. v. Kama*, Civil Action No. 14-00137, 2014 WL 4980967 (D. Haw. Oct. 3, 2014) (denying a stay pending unrelated appeals where plaintiff alleged that his bank violated the state's foreclosure laws); *Second Ave. Holdings, LLC v. Latimer (In re Latimer)*, 489 B.R. 844, 866-67 (Bankr. N.D. Ala. 2013) (issuing a stay in action to determine dischargeability of debt to allow the arbitration of the parties' commercial lease dispute); *Wilson v. Scruggs*, 371 F. Supp. 2d 837, 844 (S.D. Miss. 2005) (issuing a stay in action to impose constructive trust during pendency of state court action that would determine any amount owed to former law partner from the settlement of asbestos cases). In summary, the Court finds that these concerns outweigh the hardship or inequity that Citizens may suffer absent a stay, especially given the possibility of recourse against AAA and the Church if the Trustee prevails in the Citizens Adversary and also the possibility of restitution against the Trustee if he loses the Citizens Adversary, the AAA/Church Appeal, and a trial on the merits in the AAA/Church Adversary. *See Landis*, 299 U.S. at 255 (“[T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.”).

C. Judicial Economy

As discussed above, the Court is not certain at this point that the outcome of a trial on the merits in the AAA/Church Adversary, assuming that AAA and the Church succeed in the AAA/Church Appeal, will simplify the issues, proof, or questions of law in the Citizens Adversary. In short, Citizens has not met its burden of showing that a stay will serve judicial economy.

Conclusion

“Where a discretionary stay is proposed, something close to genuine necessity should be the mother of its invocation.” *See Coastal*, 761 F.2d at 203 n.6. Here, the Court concludes that a stay of the Citizens Adversary is not warranted given that the duration of a stay potentially hinges on completion of both the AAA/Church Appeal and a trial on the merits in the AAA/Church Adversary that could delay the administration of the Bankruptcy Case indefinitely and also given that there is no “clear case of hardship or inequity [on Citizens] in being required to go forward.” *See Landis*, 299 U.S. at 255. For the foregoing reasons, the Court finds that the Stay Motion should be denied. To the extent the Court has not addressed any of the parties’ other arguments or positions, it has considered them and determined that they would not alter the result.⁴

IT IS, THEREFORE, ORDERED that the Stay Motion is denied.

##END OF ORDER##

⁴ Citizens also contends that the Stay Motion should be granted under the first-filed rule. (Adv. Dkt. 21 at 8-9). Under this rule, a court may refuse to hear a case when two actions involving overlapping issues and parties are pending in two federal courts. *See Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999). Because the AAA/Church Appeal and the Citizens Adversary were initiated by different parties in the same federal bankruptcy court, the case cited by Citizens, *PDVSA Services, Inc. v. Transeguro C.A. de Seguros*, No. H-09-364, 2010 WL 1994195, at *1 (S.D. Tex. May 17, 2010), is inapposite, and the first-filed rule does not apply.