



SO ORDERED,

A handwritten signature in blue ink that reads "Katharine M. Samson".

**Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: February 12, 2024**

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

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: IKECHUKWU H. OKORIE

CASE NO. 19-50379-KMS

DEBTOR

CHAPTER 7

ORDER DENYING MOTIONS FOR VIOLATION OF AUTOMATIC STAY

Before the Court are the motions for violation of the automatic stay filed by Debtor Ikechukwu H. Okorie against the Okaloosa County Tax Collector ("OCTC") (ECF Nos. 775,¹ 797), West Keegans Bayou Improvement District ("West Keegans") (ECF No. 776), Harris County, Texas (ECF No. 777), Alief Independent School District ("AISD") (ECF No. 778), and Destiny by the Sea Owners Association, Inc. ("Destiny") (ECF No. 798). Responses were filed by Kimberly R. Lentz, chapter 7 Trustee (ECF Nos. 807, 808, 809, 810, 811), OCTC (ECF No. 860), West Keegans (ECF No. 869), Harris County (ECF No. 865), AISD (ECF No. 868) and Destiny (ECF No. 864) (collectively "Respondents"). Dr. Okorie filed multiple replies (ECF Nos. 817, 818, 819, 820, 821, 873, 895, 896, 897, 898).

¹ This pleading is styled "Motion for Violation of the Automatic Stay by West Keegans Bayou Improvement District," but it asserts claims against OCTC.

During a telephonic status conference on October 12, 2023, the parties agreed that these matters would be taken under advisement without hearing. *See* ECF Nos. 903, 904, 905, 906, 907, 908; *see also Gordon v. Tese-Milner (In re Gordon)*, 577 B.R. 38, 49 (S.D.N.Y. 2017) (bankruptcy court has discretion to decide issue without evidentiary hearing). Motions for violation of the automatic stay are within the bankruptcy court’s core jurisdiction as “matters concerning the administration of the estate,” 28 U.S.C. § 157(b)(2)(A).

Dr. Okorie seeks a finding of contempt and imposition of sanctions against the taxing authorities and Destiny, a homeowners’ association, for alleged violations of the automatic stay. Specifically, he asserts that their acceptance of court-ordered lien payoffs from the sale of property in Florida and Texas violates the automatic stay. The Court finding no violation, the Motions are denied.

FINDINGS OF FACT

An in-depth analysis of the facts regarding Dr. Okorie’s bankruptcy can be found in this Court’s Opinion and Order on Debtor’s Objections to Claims, ECF No. 932, incorporated herein by reference. The following facts are relevant to the Motions:

On February 27, 2019, Dr. Okorie filed his individual petition for relief under chapter 11 of the Bankruptcy Code. ECF No. 1. On February 17, 2021, after spending two years in chapter 11 without confirming a plan, Dr. Okorie voluntarily converted his case to chapter 7. ECF Nos. 334, 339.

Respondents filed proofs of claims as follows:

Creditor	Date	Amount	Basis
OCTC (Cl. 5-2)	3/18/2019, amended 6/17/2019 ²	\$33,789.01	2018 and 2019 real estate taxes and attorneys' fees
Harris County, TX (Cl. 20-2)	6/17/2019, amended 2/20/2020	\$4,193.98	2018 and 2019 ad valorem taxes
AISD (Cl. 24-2)	8/5/2019, amended 1/21/2020	\$6,671.79	2018 and 2019 ad valorem taxes
West Keegans (Cl. 25-2)	8/05/2019, amended 1/21/2020	\$486.72	2018 and 2019 ad valorem taxes
OCTC (Cl. 28-1)	3/10/2021	\$64,385.23	2018, 2019, 2020 and 2021 real estate taxes and attorneys' fees
Harris County, TX (Cl. 30-1)	3/11/2021	\$2,152.48	2020 ad valorem taxes
Destiny (Cl. 33-1)	4/28/2021	\$16,210.17	2018-2021 HOA assessments

Upon conversion, Kimberly R. Lentz was appointed chapter 7 Trustee. ECF No. 340. She immediately began gathering and liquidating assets of the estate, including a condo in Destin ("Destin Condo") and a house in Houston, Texas ("Houston Property"). ECF Nos. 354, 381, 436.

The Trustee filed motions to sell both the Destin Condo and the Houston Property. ECF Nos. 381, 436. The motion to sell the Destin Condo itemized liens on the property to be paid at closing, including those of OCTC and Destiny.³ ECF No. 381 (itemizing OCTC lien of approximately \$64,385.23 and Destiny lien of approximately \$15,000). The motion to sell the Houston Property likewise itemized liens to be paid at closing, including those of Harris County,

² Once a claim is amended, the original claim is no longer the "live" claim. *United Indep. Sch. Dist. v. Vitro Asset Corp. (In re Vitro Asset Corp.)*, 656 F. App'x 717, 722 n.1 (5th Cir. 2016).

³ Florida law allows a homeowners' association to record a claim of lien that secures all unpaid assessments due at the time of and that accrue after recording. Fla. Stat. Ann. § 720.3085.

AISD and West Keegans. ECF No. 436 (itemizing Harris County lien of approximately \$8,300, AISD lien of approximately \$15,000 and West Keegans lien of approximately \$1,000).

No one, including Dr. Okorie, objected to the sale motions, and orders authorizing the sales were entered. ECF Nos. 400, 441. As requested in the motions, the orders, entered in April and September 2021, specifically provided for the payment of the liens of Destiny, OCTC, West Keegans, Harris County and AISD from the closing proceeds. *Id.* Dr. Okorie did not appeal these orders.

Dr. Okorie received his discharge on October 5, 2021. ECF No. 447. Almost two years after the sale orders were entered without objection, he began filing the stay violation motions.

CONCLUSIONS OF LAW

The filing of a bankruptcy petition creates an automatic stay of actions to collect prepetition debt and of actions that affect property of the estate, including acts to create, perfect or enforce a lien against property of the estate. 11 U.S.C. § 362(a)(1), (a)(3), (a)(4), (a)(6).⁴ “The Bankruptcy Code’s automatic stay is designed to ensure the orderly distribution of assets by temporarily protecting the property of the debtor’s estate from the reach of creditors.” *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 300 (5th Cir. 2005).

A chapter 7 trustee is charged with collecting property of the estate, reducing the property to money and closing the estate as expeditiously as possible. 11 U.S.C. § 704(a)(1). The court must approve the trustee’s sale of the property. 11 U.S.C. § 363(b); *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 326 (5th Cir. 2019) (sale free and clear of liens under

⁴ The stay *does not* apply to “the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property . . . imposed by a governmental unit, if such tax or assessment comes due after the date of filing of the petition.” 11 U.S.C. § 362 (b)(18); 2 William R. Norton III, *Norton Bankr. L. & Prac.* 3d § 43:32, Westlaw (database updated Jan. 2024). Under both Texas and Florida law, ad valorem/real property taxes create a lien on real property on January 1 of each tax year. Tex. Tax Code Ann. § 32.01; Fla. Stat. Ann. § 197.122. The automatic stay does not apply to these tax liens regardless of whether they attached pre- or postpetition.

§ 363 requires court approval). “The Code makes clear” that assets in a chapter 7 liquidation must be distributed first to secured creditors under § 725 and then to other classes of creditors under § 726. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017); *Collier on Bankruptcy* ¶ 507.02[4][a] (Richard Levin & Henry J. Sommer eds., 16th ed.) (lien holders are “entitled to the first proceeds received from disposition of property” *before* payment to priority and unsecured creditors). And “[a]n order issued by the bankruptcy court authorizing the sale of part of the bankrupt estate is a final judgment even though the order neither closes the bankruptcy case nor disposes of any claim.” *Hendrick v. Avent*, 891 F.2d 583, 586 (5th Cir.1990).

Here, the Trustee filed two motions seeking to sell property of the estate. The motions clearly explained how the proceeds of the sales would be distributed. The Trustee gave notice of the motions and time for objection, ECF Nos. 383, 438; and when no objections were filed by the deadlines, the Court entered orders approving both motions, including the distributions to Respondents. Dr. Okorie did not object to the motions or appeal the sale orders.

Dr. Okorie asserts that he has no issue with the sales. Instead, he claims that the Respondents’ acceptance of the payoffs required by the sale orders is a violation of the automatic stay. *See, e.g.* ECF No. 820 at 2 (“The Debtor acknowledges the court orders referenced by the Trustee. However, the Debtor contends that notwithstanding such orders, the acceptance of payments by the [Respondents] during an automatic stay, as alleged, amounts to a violation.”).

In essence, he argues that creditors may not be paid from the chapter 7 bankruptcy estate without obtaining relief from the stay to accept the payments. He cites no support for this theory. And Dr. Okorie has the burden of proof on the Motions. *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008) (debtor must establish willful violation of stay).

“[A] number of courts . . . have found that an automatic stay has no effect on actions that are expressly allowed under the Bankruptcy Code.” *Id.* at 356. The Bankruptcy Code requires the chapter 7 trustee to gather assets, reduce them to money and distribute the funds to creditors in order of priority: first to secured creditors with liens on the property sold and then to priority and unsecured creditors. 11 U.S.C. §§ 704, 725, 726. The argument that Respondents should have sought relief from the stay before accepting payments required both by the court orders and the Bankruptcy Code subverts the orderly distribution scheme required by the Code and is absurd.

ORDER

Because the Respondents’ actions could not, as a matter of law, have violated the automatic stay, the Motions are **DENIED**.

##END##