
SO ORDERED,




Judge Jason D. Woodard
United States Bankruptcy Judge

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

In re:

WILMESIA LAFATIA
ROBERSON,

Debtor.

)
)
)
)
)
)

Case No.: 22-11269-JDW

Chapter 13

**MEMORANDUM OPINION AND ORDER GRANTING MOTION FOR
CONFIRMATION OF TERMINATION OF AUTOMATIC STAY (DKT. # 64)**

This matter came before the Court on the *Motion for Confirmation of Termination of Automatic Stay*¹ filed by the United States of America. The government asserts that its False Claims Act civil action, filed against the

¹ (Dkt. # 64).

debtor in the district court, is excepted from the automatic bankruptcy stay because it falls within the police and regulatory power exception to the stay.² That civil action centers around alleged fraud by the debtor in obtaining a loan under the Paycheck Protection Program (“PPP”) administered during the COVID-19 pandemic. The government seeks to obtain a judgment against the debtor in the district court, which will become an unsecured claim in the bankruptcy case where the government will share pro rata in any recovery with the other unsecured creditors.

A non-evidentiary hearing was held on the motion and counsel for both the government and the debtor appeared and made legal arguments.³ The Court has considered the pleadings and relevant law and concludes that the motion is due to be granted.

I. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157(a), and 1334, and the *United States District Court for the Northern District of Mississippi’s Order of Reference of Bankruptcy Cases and Proceedings Nunc*

² Although the title of the motion suggests the government is seeking a finding that the automatic stay has been terminated, a reading of the motion makes clear the government is actually seeking confirmation that the stay never went into effect with regard to the civil action.

³ The parties do not dispute the limited facts necessary to decide this motion. There is a dispute as to whether the deadline to object to the dischargeability of any judgment that may be obtained by the government has passed. That issue is not before the Court now and all arguments as to that issue are preserved for the appropriate time, should it arise.

Pro Tunc dated August 6, 1984. This is a core proceeding as set forth in 28 U.S.C. § 157(b)(2)(A), (B), (G), and (O).

II. LIMITED FACTS AND RELEVANT PROCEDURAL HISTORY

In May of 2021, the debtor received PPP funds through the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act put in place by the federal government to provide emergency financial assistance during the COVID-19 pandemic. A year later, on June 2, 2022, she filed her chapter 13 bankruptcy case.⁴ The government then filed a civil action against her under the False Claims Act⁵ on January 10, 2024, alleging that she knowingly obtained an “SBA-guaranteed PPP loan which [was] not supplied in compliance with the PPP rules, and . . . subsequently obtain[ed] forgiveness of such loan.”⁶ A month later, the government filed this motion seeking a determination that the automatic stay does not apply to the False Claims Act case.⁷

⁴ (Dkt. # 1).

⁵ 31 U.S.C. § 3729-33.

⁶ *United States v. Roberson*, 3:24-cv-00010-SA-JMV (Jan. 10, 2024) (Dkt. # 1).

⁷ (Dkt. # 64).

III. CONCLUSIONS OF LAW

In accordance with § 362 of the Bankruptcy Code⁸, virtually all proceedings to collect prepetition claims against a debtor are stayed during the pendency of a bankruptcy case. Subsection 362(a) provides, in relevant part:

“[e]xcept as provided in subsection (b) of this section, a petition filed under section 301 . . . operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title”⁹

The automatic stay, to the extent it applies, remains in effect throughout the case, unless a party is granted relief from the stay under § 362(d).

While most actions are barred, there are exceptions to the automatic stay, including an exception to allow the government to enforce its police and regulatory powers. Subsection 362(b)(4) provides the exception for:

“the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit’s or organization’s police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the

⁸ Bankruptcy Code” refers to 11 U.S.C. §§ 101-1532. Unless otherwise noted, all statutory references herein are to the Bankruptcy Code.

⁹ 11 U.S.C. § 362(a)(1).

governmental unit to enforce such governmental unit's or organization's police or regulatory power"¹⁰

The United States Court of Appeals for the Fifth Circuit has noted that this exception is to prevent wrongdoers from seeking a haven in the bankruptcy courts.¹¹ Generally, the automatic stay is meant "to protect the debtor's assets, provide temporary relief from creditors, and further equity of distribution among the creditors by forestalling a race to the courthouse."¹² This exception ensures "that debtors do not use a declaration of bankruptcy to avoid the consequences of their actions that threaten the public interest."¹³

The moving party must first show that it falls within the definition of "governmental unit," which is defined in § 101(27) of the Bankruptcy Code. The moving party here is the United States, who is explicitly named in the Bankruptcy Code's definition of a governmental unit.¹⁴

Next, to determine whether the exception applies, "courts have applied two 'related, and somewhat overlapping' tests: the pecuniary purpose test and the public policy test."¹⁵ Both tests "contemplate that the bankruptcy court, after assessing the totality of the circumstances, [will] determine whether the particular regulatory proceeding at issue is designed primarily to protect the

¹⁰ 11 U.S.C. § 362(b)(4).

¹¹ *Halo Wireless, Inc. v. Alenco Comm'n's (In re Halo Wireless, Inc.)*, 684 F.3d 581, 588 (5th Cir. 2012).

¹² *Reliant Energy Serv.'s, Inc. v. Enron Can. Corp.*, 349 F.3d 816, 825 (5th Cir. 2003).

¹³ *Halo* at 588.

¹⁴ "The term 'governmental unit' means United States. . . ." 11 U.S.C. § 101(27).

¹⁵ *Halo* at 588 (citations omitted); 3 COLLIER ON BANKRUPTCY ¶ 362.05[5] (16th ed. 2024).

public safety and welfare, or represents a governmental attempt to recover from property of the debtor estate, whether on its own claim, or on the nongovernmental debts of private parties.”¹⁶

The pecuniary purpose test asks whether enforcement is an effort to protect a pecuniary governmental interest in the debtor’s property rather than protecting the public health and safety.¹⁷ Typically, courts find that the police and regulatory powers exception does not apply when the government’s action stems from “a debt arising from normal commercial transaction[s].”¹⁸ Here, the transaction at issue is not a normal commercial transaction where the borrower simply defaulted on its repayment obligations. Instead, the government asserts that the debtor obtained public funds by fraud. Further, there is no pecuniary advantage to the government above that of other creditors of the debtor. At the hearing, the government made clear it is seeking to liquidate its prepetition claim against the debtor, which must be done in some forum. The government is not claiming any secured status or priority over other unsecured claims, and any resulting judgment will be administered in this Court. The government meets the pecuniary purpose test.

¹⁶ *Halo* at 588.

¹⁷ *Id.*

¹⁸ *In re RGV Smiles by Rocky L. Salinas D.D.S. P.A.*, 626 B.R. 278, 285 (Bankr. S.D. Tex. 2021) (quoting *Diaz v. Texas (In re Gandy)*, 327 B.R. 796, 804 (Bankr. S.D. Tex. 2005)).

The public policy test measures whether the government’s claim is being advanced to effect public policy or to adjudicate private rights.¹⁹ The government asserts that the purpose of the False Claims Act action is “to deter fraudulent billing and the submission of fraudulent documents for payment, which falls within ‘[t]he purpose of the FCA—policing the integrity of the government’s dealings with those to whom it pays money.’”²⁰ The government is not attempting to litigate any private rights, but rather to prosecute its claim to protect the public interest. The government also meets the public policy test.

Finally, the debtor argues that a prior decision from this district limits the exception “to governmental units or any organizations exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction,” which would not apply to the present scenario.²¹ “However, it has been cogently explained—based upon the statute’s legislative history—that when Congress amended § 362(b) in 1998, it combined former subsections (b)(4) and (b)(5) into a single new subsection—§ 362(b)(4)—and intended to expand the scope of the statute, not curtail it.”²²

¹⁹ *Id.*

²⁰ *Unites States v. Vanguard Healthcare, LLC*, 565 B.R. 627, 633 (M.D. Tenn. 2017).

²¹ *In re Finley*, 237 B.R. 890, 894 (Bankr. N.D. Miss. 1999).

²² *Vanguard* at 631 (citations omitted).

IV. CONCLUSION

The debtor is alleged to have violated the False Claims Act by knowingly obtaining an “SBA-guaranteed PPP loan which [was] not supplied in compliance with the PPP rules, and . . . subsequently obtain[ed] forgiveness of such loan.”²³ The government has satisfied all elements to fall within the police and regulatory exception to the automatic stay. Further, the Court notes that the government’s False Claims Act action must be litigated in some forum in order to liquidate the claim. Even if the case did not fall within the exception to the automatic stay, the Court would lift the stay for cause to allow the government to liquidate the claim.²⁴ Accordingly, it is hereby,

ORDERED, ADJUDGED, and DECREED that the *Motion* (Dkt. # 64) is **GRANTED** to the extent necessary to allow the government to prosecute its False Claims Act action to conclusion. Any resulting judgment may be administered only in this Court.

##END OF ORDER##

²³ *United States v. Roberson*, 3:24-cv-00010-SA-JMV (Jan. 10, 2024) (Dkt. # 1).

²⁴ 11 U.S.C. § 362(d)(1).