


ORDERED.

Dated: February 07, 2019



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re	)	
	)	
RONALD E. SCHERER,	)	Case No. 6:17-bk-2004-KSJ
	)	Chapter 11
Debtor.	)	
_____	)	

**ORDER DENYING HOLMES' MOTION FOR RELIEF FROM STAY RE: DISTRICT COURT LITIGATION**

This case came before the Court on January 29, 2019, to consider Douglas Holmes' Motion for Relief from Stay re: District Court Litigation and the related responses.<sup>1</sup> Mr. Holmes is the Trustee of a family trust and a former employee of the Debtor's father. He seeks stay relief to pursue a declaratory judgment against the Debtor, Ronald Scherer, in a lawsuit filed before the Orlando federal court in October 2018 ("District Court Litigation").<sup>2</sup>

<sup>1</sup> Doc. Nos. 367, 373, 375, 393, 399.

<sup>2</sup> Case No. 18-cv-1678 pending in the United States District Court for the Middle District of Florida. The Court notes that Mr. Holmes was appointed Trustee of the family trust in 2013. He waited over five years to seek the "clarification" requested in the District Court Litigation. The Court also notes the District Court Litigation was filed on the eve of a trial, scheduled for April 3-4, 2019, to determine how the Debtor will pay his outstanding federal tax liability to the United States.

Mr. Holmes articulates no cause to lift the stay.<sup>3</sup> The issues asserted in the District Court Litigation directly relate to the issues involved in this Chapter 11 case filed on in March 2017, almost two years ago.<sup>4</sup> These issues involve the Debtor's treatment of the claim for substantial delinquent tax liability owed to the United States of America—this is the cornerstone of the Debtor's Plan of Reorganization and will be considered by this Court at the upcoming trial and confirmation hearing.<sup>5</sup> Debtor also has filed a related adversary proceeding asserting similar issues against the United States of America.<sup>6</sup>

Even though the Debtor consents to stay relief to allow the District Court Litigation to proceed, the Court finds this "consent" is largely collusive. A friendly party filed the District Court Litigation to manipulate claims pending in this Chapter 11 case. Allowing the District Court Litigation to proceed would impair this Court's ability to resolve the pending bankruptcy case, could result in inconsistent decisions, and would be a significant distraction from the main issues in this case approaching its zenith. I conclude that the District Court Litigation was belatedly filed to delay this bankruptcy case by shifting forums and sowing confusion. Such tactics do not establish cause to modify the automatic stay.

The other defendant in the District Court Litigation, Linda Sue Hayner, however, is not subject to the automatic stay. Mr. Holmes may proceed against Ms. Hayner because there is no connection between Ms. Hayner's defense to the District Court Litigation and this bankruptcy proceeding.

Accordingly, it is

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<sup>3</sup> Bankruptcy courts may grant relief from the stay on "request of a party in interest ... for cause[.]" "Cause" is not defined in the Bankruptcy Code, so bankruptcy courts should consider the totality of the circumstances to determine if there is cause in each case. *In re Feingold*, 730 F.3d 1268, 1276–77 (11th Cir. 2013).

<sup>4</sup> Debtor filed his petition initiating this Chapter 11 case on March 29, 2017. Doc. No. 1.

<sup>5</sup> Trial is scheduled for April 3 and 4, 2019. Debtor's Plan of Reorganization is Doc. No. 283.

<sup>6</sup> The adversary proceeding number is 6:17-ap-00110-KSJ.

**ORDERED** that Holmes' Motion for Relief from Stay re: District Court Litigation is **DENIED.**

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The Clerk is directed to serve a copy of this order on all interested parties.