

ORDERED.

Dated: October 16, 2020



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	Case No. 6:20-bk-01346-KSJ
)	Chapter 11
Ellingsworth Residential Community)	
Association, Inc.,)	
)	
Debtor.)	
)	
)	

ORDER DENYING ALICE GUAN’S MOTIONS FOR RELIEF FROM STAY

Movant, Alice Guan (“Guan”), *pro se*, seeks relief from the automatic stay to continue state court litigation against the Debtor, Ellingsworth Residential Community Association, Inc. (“Debtor”).¹ Debtor argues Guan has not shown sufficient cause to lift the automatic stay. After balancing the interests and prejudices of all parties and considering the evidence,² Guan’s Motions for Relief from Stay are denied.

¹ Guan’s motions for relief from stay are Doc. Nos. 147 and 151. Debtor’s response is Doc. No. 236. Guan’s reply is Doc. No. 252.

² The trial occurred on August 21, 2020.

Debtor is a homeowner's association representing 80 homes in three separate developments. They have a gate, common area property, and a fountain but no other amenities, such as a pool, community center, or playground. All 80 homeowners pay the same quarterly assessment of \$420.

In 2016, the developer, Meritage Homes, managed the Debtor and, acting on behalf of the Debtor, sued Guan in Florida State Court.³ Guan owns a home in one of the managed developments and allegedly had violated association rules relating to landscaping on her property. In 2019, after years of extensive litigation, the Florida State Court dismissed the Debtor's lawsuit directing the Debtor to pay Guan's attorneys' fees and costs. Before the Florida State Court could assess these fees or resolve Guan's multi-count counterclaim (collectively the "Claims"),⁴ the Debtor filed this Chapter 11 bankruptcy case on March 3, 2020.⁵

Debtor has proposed a plan of reorganization⁶ offering to pay its unsecured creditors, *pro rata*, their allowed claims.⁷ Debtor will devote all net disposable income for three years, including a special assessment of \$300,000, to make these payments. An independent trustee will verify Debtor's net disposable income and will make all required distributions to unsecured creditors, including Guan. Simultaneously with the entry of this order, I am entering an order confirming this plan of reorganization.⁸ Bottom line, all creditors, including Guan, will receive more under this confirmed plan than through any other viable option.

³ The Florida State Court action is *Ellingsworth Residential Community Association, Inc. v. Alice Guan*, Case No. 2017-CA-002697 pending before the Circuit Court for Seminole County, Florida.

⁴ Guan's alleges she has counterclaims against the Debtor for (I) Abuse of Process, (II) RICO, (III) Intentional Infliction of Emotional Distress, (IV) Negligence, (V) Breach of Contract and (VI) Declaratory Judgment.

⁵ Doc. No. 1.

⁶ Doc. No. 294.

⁷ Doc. No. 54

⁸ Doc. Nos. 340 and 341. The trial to consider confirmation issues occurred on August 21 and September 10, 2020.

Guan, however, would prefer to return to state court to continue litigating her Claims. However, she voluntarily filed two unsecured proofs of claim in this bankruptcy case: Claim 4-3 for \$500,000 for her attorneys' fees and costs and Claim 5-2 for \$1,600,000 for her multi-count counterclaim. Debtor has objected to Guan's proofs of claim.⁹ Debtor has propounded discovery to Guan, and I have established a deadline for the parties to complete discovery of January 29, 2021.¹⁰ A trial is scheduled to resolve Guan's Claims on February 25, 2021. So, this Court can quickly and finally adjudicate the debt owed by the Debtor to Guan and then oversee the payment to her and other similarly situated unsecured creditors. Determination of Guan's claims are essential to the Debtor's performance under its confirmed plan of reorganization because no unsecured creditor can receive any payment until Guan's unsecured claim is liquidated.

Guan argues the Florida State Court must resolve the Claims because they are "non-core" and involve Florida law.¹¹ Guan further argues that cause is established because the Debtor has acted in bad faith because it filed this bankruptcy case and failed to timely disclose the correct revenues for 2018 and 2019.¹²

Section 362(d)(1) of the Bankruptcy Code¹³ provides for relief from the automatic stay "for cause."¹⁴ Cause is not defined in the Bankruptcy Code, so courts consider the totality of the circumstances to determine cause.¹⁵ The movant bears the initial burden to show that "cause" exists.¹⁶ There are no set of circumstances that bankruptcy courts must consider when evaluating cause under § 362(d)(1). Generally, courts "have looked to a variety of case-specific factors,

⁹ Doc. No. 313.

¹⁰ Doc. No. 308.

¹¹ Doc. No. 147, Par. 2; Doc. No. 151, Par. 30-31, 38.

¹² Doc. No. 252, pg. 8-9.

¹³ All references to the Bankruptcy Code refer to 11 U.S.C. S 101 *et seq.*

¹⁴ *In re R.J. Groover Const., LLC*, 411 B.R. 473, 477 (Bankr. S.D. Ga. 2008).

¹⁵ *In re Feingold*, 730 F.3d 1268, 1276 (11th Cir. 2013).

¹⁶ *In re R.J. Groover Const., LLC*, 411 B.R. at 477.

including (1) whether the [Debtors have] acted in bad faith; (2) the ‘hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code’; and (3) pending state court proceedings.”¹⁷ The Court also may consider “the proportionality of the harms from modifying or continuing the stay”¹⁸ by balancing the prejudice to the debtor against the hardship to the non-debtor movant and overall judicial economy.¹⁹

Judicial economy favors the Debtor. Guan has filed Claim 4-3 and Claim 5-2 in this Court. Debtor has objected to them. Having held a one-day trial on confirmation and other related matters, this Court is familiar with the facts. Debtor has propounded discovery to Guan on her Claims, and I have established a deadline for the parties to complete discovery of January 29, 2021.²⁰ A trial is scheduled to resolve Guan’s Claims on February 25, 2021. So, this Court can quickly and finally adjudicate the debt owed by the Debtor to Guan and then oversee the payment to her and other similarly situated unsecured creditors.

Conversely, the state court action has set no trial on the Claims, other than a canceled hearing to determine attorneys’ fee and costs. Guan admits her multi-count counterclaim is in early discovery stage before the state court.²¹ And with the recent COVID-19 pandemic, it is uncertain when the Florida State Court can schedule a trial on *all* of Guan’s claims. It certainly will not be before February 2021.

In balancing the harm to Guan versus the harm to the Debtor and similarly situated unsecured creditors, the scale tilts for resolving all claims in this Court. Under the Debtor’s

¹⁷ *In re Feingold*, 730 F.3d at 1276 (internal citations omitted).

¹⁸ *Id.* (internal citations and quotation marks omitted).

¹⁹ *In re Mack*, 347 B.R. 911, 916 (Bankr. M.D. Fla. 2006), order aff’d, appeal dismissed, No. 6:06CV1782ORL-19, 2007 WL 1222575 (M.D. Fla. Apr. 24, 2007).

²⁰ Doc. No. 308.

²¹ Doc. No. 151, par. 11.

confirmed plan, no distributions can occur until Guan's claim is determined. Other unsecured creditors are being held hostage by Guan's continued litigation.

Debtor's members also are begging for a finality to this litigation. Debtor consists of 80 homeowners who want to pay their unsecured creditors, including Guan. They have offered to devote all of their net disposable income for three years plus a special assessment of \$300,000. The years of litigation in state court have severely depleted their funds and abolished their reserves. They simply cannot afford litigation in two forums. And this Court can resolve the parties' dispute timely and efficiently.

On the argument that cause is shown because Guan's Claims are "noncore," she is wrong. Bankruptcy judges routinely determine disputes using state law and arising under the Title 11 including the "allowance or disallowance of claims against the estate."²² "[B]ankruptcy courts are not precluded from adjudicating state-law claims [as core proceedings] when such claims are at the heart of the administration of the bankruptcy estate."²³

Here, Guan voluntarily filed proofs of claim. She has filed several motions in this case seeking affirmative relief, including an adversary proceeding.²⁴ She has consented to jurisdiction before the bankruptcy court.²⁵ The Court's determination of Guan's claims is critical to the administration of this case. And although Guan mentions this Court must abstain from adjudicating

²² 28 U.S.C. § 157(b)(1).

²³ *Central Vermont Public Service Corp. v. Herbert*, 341 F.3d 186, 191 (2d Cir. 2003)(quoting *Ben Cooper, Inc. v. Ins. Co. of the State of Pa. (In re Ben Cooper)*, 896 F.2d 1394, 1399 (2d Cir.), vacated, 498 U.S. 964, 111 S.Ct. 425, 112 L.Ed.2d 408 (1990), reinstated, 924 F.2d 36 (2d Cir.1991)).

²⁴ *Guan v. Ellingsworth Residential Cmty. Ass'n*, Case No. 6:20-ap-00055-KSJ filed on August 19, 2020.

²⁵ By filing proofs of claim, Guan submitted to this Court's jurisdiction. *In re Scrub Island Dev. Grp. Ltd.*, 523 B.R. 862, 873 (Bankr. M.D. Fla. 2015) ("[Bank] submitted itself to the jurisdiction of this Court by filing proofs of claim and seeking other affirmative relief in this bankruptcy.") See also *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990)("[B]y filing a claim against a bankruptcy estate the creditor triggers the process of allowance and disallowance of claims, thereby subjecting himself to the bankruptcy court's equitable power.")(internal quotations omitted); *In re Pearlman*, 493 B.R. 878, 886 (Bankr.M.D.Fla.2013) ("Once a claim is filed, the creditor is entitled to a resolution in equity only. The cause of action becomes part of the larger bankruptcy scheme because the proof of claim triggered the claim allowance and disallowance process.")(citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989)).

any “personal injury tort claim,” Guan did not demonstrate how *her* Claims—which appear to arise from a contractual relationship with the Debtor—qualify as “personal injury tort claim” subject to 28 U.S.C. § 157(b)(5).²⁶

Guan also has shown no bad faith by the Debtor. It quickly amended its schedules to list their 2018 and 2019 revenues.²⁷ It promptly filed and confirmed a plan of reorganization that will pay creditors’ claims as required. Finding absolutely no bad faith, the Court concludes the Debtor is trying desperately to pay its creditors and resume normal operations. Retaining the protection of the automatic stay is critical to achieving that goal.

Guan has shown no cause to modify the stay. She can prove her Claims at a full trial set for February 2021. Meanwhile, the Debtor will gather the funds to pay creditor claims and will enjoy the protections of the automatic stay while the Claims are litigated. And, judicial economy is promoted by involving only one court, instead of two. After considering the totality of the circumstances, the proportionality of the harms of continuing or modifying the stay to the Debtors and Guan, and other equitable considerations, the Court finds Guan has failed to show sufficient cause to justify stay relief.

Accordingly, it is **ORDERED** that Guans’ Motions for Relief from Stay (Doc. Nos. 147 and 151) are **DENIED**.

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The Clerk is directed to serve a copy of this Order on interested parties who are non-CM/ECF users.

²⁶ See *In re Residential Capital, LLC*, 536 B.R. 566 (Bankr. S.D. N.Y. 2015)(holding intentional infliction of emotional distress claim based on allegations of wrongful foreclosure, denial of loan modification and false representations is not a personal injury tort under 28 U.S.C. § 157(b)(5)); *Lang v. Lang (In re Lang)*, 166 B.R. 964, 966-67 (D. Utah 1994)(bankruptcy court retained jurisdiction of intentional infliction of emotional distress claim); *Bertholet v. Harman*, 126 B.R. 413, 416 (Bankr. D. N.H. 1991)(emotional distress claim did not raise to the level of psychiatric impairment to implicate 28 U.S.C. § 157(b)).

²⁷ Doc. No. 70. “A voluntary petition, list, schedule or statement may be amended by the debtor as a matter of course at any time before the case is closed.” Fed. R. Bankr. P. 1009(a).