

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **24-02376-eg**

**Order Denying Motion for Relief from Automatic Stay Upon Conditions**


The relief set forth on the following pages, for a total of 12 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT  
09/18/2024**



Entered: 09/18/2024

  
Elisabetta G. M. Gasparini  
US Bankruptcy Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF SOUTH CAROLINA**

IN RE:

Aretha Laverne Canty

Debtor.

C/A No. 24-02376-eg

Chapter 13

**ORDER DENYING MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
UPON CONDITIONS**

**THIS MATTER** came before the Court on the Motion for Relief from Automatic Stay (the “Motion”) filed by Robert Barnett, as Trustee of the RH 401(k) Plan (“Movant”).<sup>1</sup> The Debtor, Aretha Laverne Canty (“Debtor”) objected to the Motion.<sup>2</sup> Appearances at the hearing were made by Debtor, Debtor’s counsel, and Movant’s counsel. After considering the pleadings, evidence presented, the arguments of the parties at the hearing, and applicable law, the Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052:

**FINDINGS OF FACT**

Movant is the holder of a promissory note (the “Note”) in the original principal amount of \$348,000.00, which is secured by a mortgage (the “Mortgage”) on property in which Debtor claims an ownership interest, at 695 Fair Spring Drive, Charleston, South Carolina 29414 (the “Property”). The Note was executed on January 13, 2012 by Kenneth Canty, Debtor’s spouse (“Mr. Canty”). The Mortgage was executed on the same date by both Debtor and Kenneth Canty and was recorded on January 17, 2012 in the Charleston County Register of Deeds.

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<sup>1</sup> ECF No. 16, filed July 12, 2024.

<sup>2</sup> ECF No. 22, filed July 24, 2024.

Movant obtained a judgment of foreclosure and sale of the Property in state court on December 13, 2023, and a foreclosure sale was scheduled for February 6, 2024.

Mr. Canty filed for relief under Chapter 13 of the Bankruptcy Code on January 29, 2024<sup>3</sup> (Case No. 24-00315-eg) without representation of counsel. His case was dismissed by Order entered April 12, 2024, as a result of Mr. Canty's failure to appear before the Court in proper prosecution of the case and to cure case deficiencies.

A second foreclosure sale of the Property was scheduled for May 7, 2024. That sale was cancelled when Mr. Canty filed a second Chapter 13 bankruptcy case on May 6, 2024<sup>4</sup> (Case No. 24-01656-eg), again *pro se*. His second case was dismissed with prejudice as to cases filed under Chapters 11, 12, and 13 for a period of one year by order entered June 6, 2024,<sup>5</sup> based upon Mr. Canty's successive bankruptcy filings and apparent abuse of the bankruptcy process.

A third foreclosure sale of the Property was scheduled for July 2, 2024. The third sale was cancelled when Debtor, *pro se*, filed a voluntary petition for relief under Chapter 13 of Bankruptcy Code on July 1, 2024 (Case No. 24-02376-eg) (the "Petition Date").<sup>6</sup>

On July 12, 2024, Movant filed the Motion seeking relief from the automatic stay and served the Motion on Debtor.<sup>7</sup> On the same date, Movant filed a Motion to Terminate Co-Debtor Stay as to Mr. Canty<sup>8</sup> under 11 U.S.C. § 1301 regarding the Property ("1301 Motion"). The 1301 Motion was served on Debtor and Mr. Canty.

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<sup>3</sup> C/A No. 24-00315-eg

<sup>4</sup> C/A No. 24-01656-eg

<sup>5</sup> C/A No. 24-1656-eg, ECF No. 29.

<sup>6</sup> ECF No. 1, filed July 01, 2024

<sup>7</sup> ECF No. 16.

<sup>8</sup> ECF No. 17.

On or about July 15, 2024,<sup>9</sup> Debtor obtained counsel to represent her in the bankruptcy case. With the assistance of counsel, Debtor filed an Objection to the Motion on July 25, 2024,<sup>10</sup> and four days later, on July 29, 2024, she filed her bankruptcy schedules, statement of financial affairs, and chapter 13 plan (the “Original Plan”).<sup>11</sup>

No objection to the 1301 Motion was filed, and an Order Granting Motion for Relief from Co-Debtor Stay was entered on August 2, 2024.<sup>12</sup>

On Schedule A/B (Property), Debtor indicates the Property is jointly owned by her and Mr. Canty and has a value of \$800,000.00. Debtor further lists ownership of a second property at 2193 Becky Rd, Charleston SC 29414 (the “Second Property”), with a current value of \$435,000.00, which is also jointly owned with Mr. Canty. Schedule D lists the following liens on the Property: (1) Movant’s lien in the amount of \$352,829.33; (2) a judgment held by Aegis Security Insurance Company in the amount of \$469,965.59; and (3) a judgment held by Fidelity and Deposit Company of Maryland in the amount of \$298,711.38. Claims have not been filed by Aegis Security Insurance Company or Fidelity And Deposit Company of Maryland.<sup>13</sup> Movant’s lien is senior in priority to the other liens on the Property. The filed claims do not indicate any other liens on the Property. According to its proof of claim, U.S. Bank Trust National Association holds a lien on the Second Property in the amount of \$270,226.87.<sup>14</sup>

Debtor’s Original Plan was a conduit plan and proposes to pay \$9,035.00 per month to the Chapter 13 Trustee for sixty (60) months, who will, in turn, make ongoing monthly payments as

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<sup>9</sup> ECF No. 19.

<sup>10</sup> ECF No. 22.

<sup>11</sup> ECF Nos. 23 and 24.

<sup>12</sup> ECF No. 31, filed August 02, 2024.

<sup>13</sup> Proof of Claims for non-governmental entities were due by Sept. 9, 2024; *see* ECF No. 4, filed July 01, 2024

<sup>14</sup> Proof of Claim 3-1, filed Sept. 9, 2024.

well as monthly payments on the pre-petition arrearage to Movant on behalf of Debtor.<sup>15</sup> At the time of the hearing, Debtor was current on her payments due to the Chapter 13 Trustee; however, the Plan has not yet been confirmed.<sup>16</sup>

At the initial hearing on the Motion, both Debtor and Mr. Canty testified regarding the necessity of the Property to Debtor's reorganization. Debtor testified that her dependent daughter is disabled and lives in the home. Mr. Canty further explained that both of their children are autistic—one nonverbal—and any move would disrupt their routine and halt their progress. When questioned whether Debtor could use the Second Property as her residence, she testified that it is a rental property which Mr. Canty manages. Mr. Canty testified that the Second Property is presently leased to a third party for \$2,050.00 per month. He further testified that he has sufficient income to help make the plan payments in this case. At the conclusion of the initial hearing, the parties indicated that they would like additional time to settle the matter and the hearing was continued to September 4, 2024.

On August 21, 2024, Movant filed Claim No. 2-1 for \$353,138.83, secured by the Property and listed Debtor's pre-petition arrearage on the claim listed as \$83,339.52 (the "Claim"). The Claim and Motion allege that Debtor is contractually due for the February 2023 payment.

The parties were unable to settle the Motion; therefore, the Court conducted a final hearing on the Motion on September 4, 2024.

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<sup>15</sup> Debtor's Original Plan estimated the pre-petition arrearage at \$55,000.00. Movant's Proof of Claim asserts the pre-petition arrearage is \$83,339.52.

<sup>16</sup> Debtor filed an amended plan on September 13, 2024 (ECF No. 48). The Amended Plan provides for monthly payments to the Trustee of \$5,355.00 for 60 months. The confirmation hearing is presently scheduled for October 16, 2024.

## DISCUSSION AND CONCLUSIONS OF LAW

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G), and the Court may enter a final order.

Movant seeks relief from stay pursuant to 11 U.S.C. § 362(d)(1) and/or 11 U.S.C. § 362(d)(2).<sup>17</sup> Section 362(d)(1) provides that the Court shall grant relief from stay “for cause, including the lack of adequate protection of an interest in property of” the party requesting relief from stay. 11 U.S.C. § 362(d)(1). Alternatively, pursuant to 11 U.S.C. § 362(d)(2), the Court may grant relief “with respect to a stay of an act against property under subsection (a) of this section, if—(A) the debtor does not have equity in such property; and (B) such property is not necessary to an effective reorganization.”

“The party requesting relief has the initial burden of proving cause exists for relief from the automatic stay, including lack of adequate protection, and lack of equity in the property.” *In re Hamilton*, 651 B.R. 499 (Bankr. D.S.C. 2023) (quoting *In re Morgan*, 630 B.R. 476, 479 (Bankr. D.S.C. 2021) (citing 11 U.S.C. § 362(g)); *see also In re Johnson*, 655 B.R. 83, 87 (Bankr. D.S.C. 2023); *In re Toomer*, C/A No. 10-07273-JW, 2011 WL 8899488, at \*2 (Bankr. D.S.C. Oct. 5, 2011)). “Once the creditor makes a *prima facie* case, the burden shifts to the debtor on all other issues.” *Id.* (quoting *In re Garcia*, 584 B.R. 483, 488-89 (Bankr. S.D.N.Y. 2018)).

The Court concludes that cause does not exist to grant relief from stay pursuant to § 362(d)(1) or § 362(d)(2) at this time.

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<sup>17</sup> Movant has not sought in rem relief pursuant to 11 U.S.C. § 362(d)(4).

**11 U.S.C. § 362(d)(1)**

Movant asserts relief should be granted pursuant to 11 U.S.C. § 362(d)(1) for cause, including lack of adequate protection, due to Debtor’s default under the terms of the underlying Note and Mortgage for failure to make payments to Movant since February 2023. At the initial hearing on the Motion, Movant also argued it was not adequately protected due to Debtor’s failure to provide insurance on the Property and because the property taxes had not been paid.<sup>18</sup> Debtor submitted evidence at the continued hearing that the property taxes had been paid and that a property insurance policy had been written and bound for the Property after the Motion was filed. Debtor proposes in her chapter 13 Plan—as amended—to continue making regular monthly mortgage payments as well as making payments on the arrearage owed to Movant. At the time of the hearing, Debtor was current on her plan payments to the Trustee.

As a secured creditor, Movant is entitled to adequate protection of its interest while Debtor’s bankruptcy case is pending. *In re The West Nottingham Academy in Cecil County*, No. 23-13830, 2024 WL 3738924, at \*9 (Bankr. D.Md. Aug. 9, 2024). Section 361 of the Bankruptcy Code states that adequate protection may be provided by:

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361.

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<sup>18</sup> According to the Movant’s Proof of Claim, payment for taxes and insurance are included in the escrow payment.

In addition to Debtor's cure of the taxes and insurance and monthly payments through the Trustee, Debtor asserts that Movant is adequately protected by the equity cushion in the Property. Courts have previously held that adequate protection may be provided by a creditor's equity cushion in certain circumstances. *In re The West Nottingham Academy in Cecil County*, No. 23-13830, 2024 WL 3738924, at \*9 ("Courts carefully scrutinize requests to use an equity cushion as adequate protection, and under certain circumstances, will authorize such use."); *In re O'Farrill*, 569 B.R. 586, 591 (Bankr. S.D.N.Y. 2017) (observing that an equity cushion may serve as adequate protection where the equity is significant and is not rapidly eroding); *see also In re Henderson*, 396 B.R. 893, 899 (Bankr. D.S.C. 2008) (noting that adequate protection may be provided by a creditor's equity cushion). "An equity cushion exists if the value of the collateral available to the creditor exceeds by a comfortable margin the amount of the creditor's claim." 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (2024).

While there is no dispute that Debtor does not have equity in the Property when considering the debt owed to the Movant as well as the judgment liens of Aegis Security Insurance Company and Fidelity And Deposit Company of Maryland, Movant holds a first mortgage on the property and has priority status over all other judgment creditors, and therefore its interest is protected by the Property's value. *See id.* (noting that "[e]quity cushion in [the adequate protection] context does not necessarily require that the debtor have equity in the collateral" and explaining that the debtor may have property that only provides a sufficient equity cushion to the senior creditor but not the junior, since the senior creditor is entitled to full satisfaction of its claim before the junior creditor may receive any payment from the proceeds). Debtor asserts the Property has a value of \$800,000.00 and Movant's claim is for only \$353,138.83.<sup>19</sup> The equity cushion is therefore in

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<sup>19</sup> *See* Movant Proof of Claim 2-1, filed Aug. 21, 2024.



excess of 100% of the value of its claim. Movant has not disputed Debtor's valuation of the Property.

As previously stated, Debtor is current on her conduit Plan payments to the Trustee. Should this case fail and be dismissed, Movant would receive payment of the funds received by the Chapter 13 Trustee thus far in the case pursuant to SC LBR 3070-1(b).<sup>20</sup> It further appears that Movant's lien would likely be satisfied in full at a judicial sale of the Property. Accordingly, Movant is adequately protected by the equity cushion in the Property when considering its first mortgage priority status.

For the reasons stated above, the Court finds that Movant is adequately protected and therefore declines to grant Movant relief under § 362(d)(1) at this time.

**11 U.S.C. § 362(d)(2)**

Movant further argues that relief should be granted pursuant to 11 U.S.C. § 362(d)(2). 11 U.S.C. § 362(d)(2) contains a two-part test that requires the Court to determine if (1) Debtor has equity in the Property and (2) if the Property is necessary to an effective reorganization. Both prongs must be satisfied for relief to be granted pursuant to 11 U.S.C. § 362(d)(2).

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<sup>20</sup> SC LBR 3070-1(b) provides:

- b. Upon the dismissal of a case, the chapter 13 trustee shall, after first paying the balance of any sanctions as directed by the Court, dispose of funds in the following manner, unless otherwise ordered by the Court:
  1. If there is a confirmed plan in the case, the chapter 13 trustee shall pay any funds received prior to or on the date of the dismissal of the case to creditors according to the terms of the plan. All funds received thereafter shall be paid to the debtor.
  2. If there is neither a confirmed plan nor an order directing otherwise, funds received prior to or on the date of the entry of an order of dismissal shall be disbursed as follows:
    - A. First, in a Conduit Plan, the applicable mortgage creditor(s) shall be paid a Mortgage Payment for each full monthly payment received from the debtor as a Gap Payment and/or Conduit Mortgage Payment. No payment shall be made for partial payments received from the debtor, and no payment shall be made unless a Compliant Proof of Claim or proof of claim filed pursuant to 11 U.S.C. § 501(c) has been filed on behalf of the mortgage creditor(s); . . . .

It is undisputed that the Property is valued at \$800,000.00. There is also no dispute, and Debtor conceded at the hearing, that the total liens against the Property—totaling over \$1.1 million—exceed its value. Thus, Debtor has no equity in the Property.<sup>21</sup>

Turning to the issue of whether the Property is necessary to an effective reorganization pursuant to 11 U.S.C. § 362(d)(2)(B), Debtor asserts that she can properly address the debt owed to Movant in this case. “In order to meet the requirement set forth in § 362(d)(2)(B) that the property be ‘necessary for an effective reorganization,’ the party opposing the relief must show: ‘(1) that the property is essential to the reorganization effort; and (2) that there is a reasonable possibility of a successful reorganization in a reasonable time.’” *In re Ford*, 522 B.R. 829 (Bankr. D.S.C. 2014) (citing cases); *see also In re Partners In Hope, Inc.*, 660 B.R. 366, 378 (Bankr. D.S.C. 2024); *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363 (5th Cir. 1987) (“Courts have consistently construed § 362(d)(2)(B) to require a showing by the debtor that there is a reasonable possibility of a successful reorganization within a reasonable time.”). This Court has previously recognized that in chapter 13 cases where the debtor’s primary purpose in filing the petition is to save her home, there is an irrebuttable presumption that the property is necessary to an effective reorganization. *In re Ford*, 522 B.R. at 839. The evidence presented at the hearing further supports the conclusion that the Property is necessary to Debtor’s reorganization since the Property serves as the primary residence for her disabled children and loss of the home may have a detrimental effect on their wellbeing.

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<sup>21</sup> Movant asserts the total liens against the property are approximately \$4,827,439.06. However, this includes judgments that were rendered only against Mr. Canty and not against Debtor.

Debtor has filed a Chapter 13 Plan that proposes to cure the arrearage<sup>22</sup> owed to Movant and provides for payment of the ongoing mortgage payments to Movant through the Chapter 13 Trustee. While the proposed plan payments are significant in amount and rely on contributions from Mr. Canty, Debtor has made all required trustee payments that have come due at the time of the hearing in the amount of \$9,035.00 each and is current on her obligations to the Chapter 13 Trustee.<sup>23</sup> Mr. Canty testified that he believed he has sufficient income to make the proposed plan payments, he is expecting his income to increase, and he is confident that he can make the ongoing mortgage payment and other payments proposed in this case. Debtor's on-time payments of her Chapter 13 Plan payments thus far in this case support a finding that there is a reasonable possibility of a successful reorganization within a reasonable time. During the hearings, the Chapter 13 Trustee did not identify any significant obstacles that might prevent Debtor from obtaining confirmation of her chapter 13 plan. The Court observes that this case is still in its initial stages as the confirmation hearing has not yet occurred. The record reflects that Debtor has a realistic chance of obtaining confirmation of a chapter 13 plan within the next few months. Determining a relief from stay motion does not require the Court to conduct a mini confirmation hearing—Debtor must simply show that the plan has a reasonable possibility of being confirmed. *In re Windwood Heights, Inc.*, 385 B.R. 832, 838 (N.D. W.Va. 2008). Therefore, Debtor has met her burden of demonstrating that the Property is necessary for an effective reorganization. The Court, however, is cognizant of the fact that Movant has not received a payment since February

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<sup>22</sup> Debtor's initial chapter 13 plan had an estimated arrearage less than the arrearage claimed in Movant's proof of claim (Proof of Claim No. 2-1). The Amended Plan filed on September 13, 2024 (ECF No. 48) proposes to pay pre-petition arrearage of \$83,339.52—the amount of arrearage claimed on Movant's proof of claim.

<sup>23</sup> Debtor's plan has not been confirmed and no payments have been disbursed by the Chapter 13 Trustee to Movant or any other creditor.

2023, and while Debtor is making payments to the Trustee, Movant will not receive payments until a plan is confirmed.

For the reasons stated above, the Court finds no grounds for relief under 11 U.S.C. § 362(d)(2) at this time.

### **CONCLUSION**

**IT IS THEREFORE, ORDERED** that:

1. Relief from the automatic stay of 11 U.S.C. § 362(a) is denied pursuant to 11 U.S.C. § 362(d)(1) and 362(d)(2) with respect to the Property located at 695 Fair Spring Drive, Charleston, SC 29414, subject to the following conditions:
  - a. Debtor shall maintain property insurance that is satisfactory to Movant on the Property located at 695 Fair Spring Drive, Charleston, SC 29414, and provide proof of same within one (1) business day of it being requested;
  - b. An Order Confirming Chapter 13 Plan must be entered on or before December 1, 2024, unless otherwise ordered by the Court;
  - c. Debtor must remain current on her Chapter 13 Plan Payments and any obligations owed to Movant, unless otherwise ordered by the Court.
2. Should Debtor default on any of the conditions listed above within the first 24 months of the case being filed, Movant may file an Affidavit of Default and Request for Further Hearing so that the Court may further consider whether relief from stay should be granted as requested in the Motion.<sup>24</sup>

**AND IT IS SO ORDERED.**

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<sup>24</sup> ECF No. 16, filed July 12, 2024.