



**IT IS ORDERED as set forth below:**

**Date: July 31, 2015**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	:	CASE NUMBER:
	:	
<b>FOLASADE THERESA ADELUOLA,</b>	:	<b>12-56011-MGD</b>
	:	
Debtor.	:	CHAPTER 13
	:	
<b>COMMUNITY &amp; SOUTHERN BANK,</b>	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
<b>FOLASADE THERESA ADELUOLA,</b>	:	
	:	
Respondent.	:	

**ORDER GRANTING COMMUNITY & SOUTHERN BANK'S  
MOTION FOR ANNULMENT OF STAY**

A hearing was held on July 29, 2015 for Community & Southern Bank's Motion for Annulment of Automatic Stay (Doc. 27) (the "Motion"). Kimberly D. Rayborn appeared for Community & Southern Bank ("CSB"), and Arthur H. Marateck and David J. Casey appeared

for the Debtor. At the hearing, the Court granted the Motion from the bench, and this Order memorializes the Court's ruling. This matter is a core proceeding under 11 U.S.C. § 157(b)(2)(G) and venue is proper.

## **I. Background**

The parties do not dispute the following facts. Debtor filed a voluntary Chapter 13 petition on March 5, 2012. (Doc. 1). On her Statement of Financial Affairs Question 18, Debtor disclosed an interest in a business named "Eleganza Bello, Inc." described as an import business. (*Id.* at 8). Debtor did not disclose any stock or interest in incorporated businesses and did not disclose any inventory on her Schedule B. (*Id.* at 11). Debtor also did not disclose any unexpired leases on her Schedule G. Debtor did not list CSB or its predecessor-in-interest King's Crossing Management LLC ("King's Crossing") on her schedules or creditor matrix.

In January of 2009, Debtor leased property from King's Crossing located at 2851 Cobb Parkway, Suite 104, Kennesaw, Cobb County, Georgia 30144 (the "Property"). For reasons not material to this matter, CSB succeeded to King's Crossing's interest pre-petition. On February 27, 2012, CSB commenced a dispossessory action against Debtor. CSB obtained a Writ of Possession against Debtor on March 15, 2012, after the filing of the instant case. Debtor and all of the contents of the Property were evicted on April 13, 2012.

## **II. Discussion**

It is uncontested that the issuance of the writ and eviction were, while not willful, all actions made in violation of the automatic stay. Willful or not, "[a]ctions taken in violation of the automatic stay are void and without effect." *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982). "Nonetheless, § 362(d) expressly grants bankruptcy courts the

option, in fashioning appropriate relief, of ‘annulling’ the automatic stay, in addition to merely ‘terminating’ it.” *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675 (11th Cir. 1984).

The parties agree the proper standard for granting retroactive stay relief is the “balancing of the equities” test. *In re Howard*, 391 B.R. 511, 518 (Bankr. N.D. Ga. 2008) (citing *In re Myers*, 491 F.3d 120 (3d Cir.2007), *In re National Environmental Waste Corp.*, 129 F.3d 1052 (9th Cir.1997)). Under this standard, “the creditor’s awareness of the bankruptcy filing [and] the debtor’s unreasonable or inequitable conduct are considerations” but are not dispositive. *Id.* (citing *National Environmental Waste Corp.*, 129 F.3d at 1055).

As noted above, there is no dispute that neither CSB nor King’s Crossing were served with notice of the Chapter 13 filing, and Debtor does not allege that CSB otherwise had actual notice of the case. However, Debtor contends she had no notice that CSB had succeeded to King’s Crossing’s interest and was commencing dispossessory proceedings, and on balance it would be more reasonable to charge CSB with inquiring into whether a bankruptcy case had been filed than to charge Debtor with inquiring into whether her landlord had changed. The problem with this argument is that Debtor did not even serve King’s Crossing with notice of her filing. Even if Debtor had served King’s Crossing, the Court finds no basis to impose on CSB an affirmative duty to be aware of bankruptcy filings. Thus, this factor weighs in favor of annulling the stay.

The Court next considers Debtor’s conduct. Debtor twice failed to attend her meeting of creditors and did not pay in a single cent on her Chapter 13 plan. (Docs. 13, 18). While Debtor did disclose some interest in Eleganza Bello, Inc. on her Statement of Financial, she failed to

separately disclose any income from operation of her business and did not list any shares of stock or inventory on her schedules. At the time of the eviction, Debtor could not have established that staying the eviction of her business was necessary for an effective reorganization when she did not adequately disclose the extent of its operations. Debtor's conduct therefore also weighs in favor of annulling the stay.

Debtor filed three Chapter 13 cases subsequent to the instant case, each of which was dismissed based upon Debtor's failures to perform her duties under the Bankruptcy Code. (12-69725-MGD, 12-77651-MGD, 13-52222-MGD). In none of these cases did Debtor initiate any action against CSB. CSB's actions, while technical violations of the stay, were innocent. Further, given the amount of time that has passed, it would be unjust to address the violation now. Debtor is guilty of laches.

### **III. Conclusion**

For the foregoing reasons, the Court finds retroactive relief from the stay to be warranted in this case. Accordingly, it is

**ORDERED** that the Motion is **GRANTED** and the automatic stay of 11 U.S.C. § 362 is **ANNULLED** as to CSB, *nunc pro tunc* to the date of filing of the above-styled case.

The Clerk is directed to serve a copy of this Order upon the attached distribution list.

### **END OF DOCUMENT**

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