



IT IS ORDERED as set forth below:

Date: August 1, 2013

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: 13-64407-MGD
	:	
Cherlyn Josephine Mitchell,	:	Chapter 7
	:	
Debtor.	:	Judge Diehl
-----	:	
Calvin Court Atlanta, Inc.,	:	
	:	
Movant,	:	
v.	:	CONTESTED MATTER
	:	
Cherlyn Josephine Mitchell and Neil	:	
C. Gordon, Trustee,	:	
	:	
Respondents	:	

ORDER REGARDING THE AUTOMATIC STAY

This matter came on for hearing August 1, 2013, on Calvin Court Atlanta Inc.'s Motion for

Relief From Stay (Docket No. 11). Movant, Calvin Court Atlanta Inc., seeks an order that terminates the automatic stay to allow it to proceed with an eviction action in Fulton County Magistrate Court.

J. Mike Williams appeared for the Movant and Cherlyn Jospehine Mitchell appeared *pro se*. Movant is the lessor of the premises where Debtor resides. Pre-petition, on May 9, 2013, Fulton County Magistrate Court granted Movant a writ of possession. Debtor filed the above-styled case on July 1, 2013. On her petition, Debtor made certain certifications that relate to the requirements of 11 U.S.C. § 362(l). Debtor certified that Movant has a judgment for possession against her. She also certified (and paid) the rent that would be due within 30 days of the petition. Debtor did not certify, or otherwise assert at the hearing,¹ that there is applicable nonbankruptcy law that would allow her to cure the monetary default giving rise to the judgment for possession after it was entered.

Movant seeks relief from the stay to proceed with an eviction action in state court. Section 362(b)(22) provides for an exception to the stay that is applicable to these facts. Section 362(b)(22) reads in relevant part:

The filing of a petition under section 301, 302, or 303 of this title . . . does not operate as a stay--(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor

11 U.S.C. § 362(b)(22). The facts, as noted above, satisfy this exception to the automatic stay subject to § 362(l).

Section 362(l) provides an exception to the automatic stay exception if a debtor certifies and serves on the lessor (1) that there is applicable nonbankruptcy law that would allow the debtor to

¹ Debtor filed a written response the morning of the hearing, yet it did not appear on the docket at the time of the hearing (Docket No. 14). Although Debtor's written response denies some of the facts, Debtor did not dispute the facts at the hearing.

cure the monetary default giving rise to the judgment for possession after it was entered and (2) that the debtor deposited owing rent in the court registry. However, § 362(l) only delays the impact of § 362(b)(22) for a period of 30 days.

Here, Movant is not precluded by the automatic stay to pursue the eviction action against Debtor in the state court proceedings. Debtor did not make the required certifications regarding her ability to cure the monetary default after the writ of possession had been entered, and the court is not aware of any authority allowing her to do so. Therefore, the 30-day delay provided under § 362(l) is not in effect. Since § 362(b)(22) provides an exception to the automatic stay for the type of action Movant seeks to pursue, there is no relief to grant Movant. Additionally, even if Debtor was protected by § 362(l) for a period of 30-days after the commencement of the case, that period has now expired. Accordingly, it is

ORDERED that the automatic stay is not in effect with respect to Calvin Court Atlanta Inc.'s continuation of eviction actions in the Fulton County Magistrate Court with respect to Debtor and the leased residential property at 479 E. Paces Ferry Road, NE, Apartment #422, Atlanta, Georgia 30305. Movant may proceed with the pending dispossessory action and exercise all its state law rights and remedies with respect to the property.

The Clerk shall serve a copy of this Order upon the Movant's counsel, Debtor, and Chapter 7 Trustee.

END OF DOCUMENT