



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

**Date: March 30, 2016**

**Barbara Ellis-Monro  
U.S. Bankruptcy Court Judge**

---

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

IN RE:

G.A.M.E.S., LLC,

Debtor.

SALEEM HAKIM and AFRICA HAKIM,

Movants,

v.

RAYMOND KING,

Respondent.

CASE NO. 13-73725-BEM

CHAPTER 7

Contested Matter

**ORDER**

This matter comes before the Court on Movants' "Motion for Order Reopening Chapter 7 Case" (the "Motion") [Doc. 25] and Respondent's "Response in Opposition to Amended Motion for Order Reopening Chapter 7 Case and Memorandum of Law in Support Thereof" [Doc. 29]. Movants ask to reopen the case to seek sanctions against Respondent for

violation of the automatic stay. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(2)(G). The Court held a hearing on the Motion on December 9, 2015, at which time it asked the parties to submit supplemental briefs on the issue of whether Movants have standing to assert a claim for a stay violation. Having considered the briefs [Docs. 31, 32] and the relevant legal authorities, the Court now considers the Motion to Reopen.

## **I. Background**

Movant Saleem Hakim is the sole member and the managing member of Debtor. [Doc. 25 ¶ 1; Doc. 31 ¶ 1]. Movant Africa Hakim is Saleem Hakim's wife. [Doc. 31 ¶ 1]. Ms. Hakim leased real property located at 29 Wrenfield Lane, S.E., Smyrna, Georgia (the "Residence") from Respondent. [Doc. 25 ¶ 2; Doc. 31 ¶ 2; Doc. 29 Ex. A]. Debtor was not a party to the lease. [Doc. 29 ¶ 2]. Debtor's principal place of business was located at the Residence [Doc. 25 ¶ 1]. Movants' personal property and Debtor's business equipment were kept at the Residence. [Doc. 25 ¶ 1; Doc. 31 ¶ 1].

A dispute arose among the parties resulting in Respondent filing an eviction action against Movants in the Magistrate Court of Cobb County. [Doc. 25 ¶ 3; Doc. 31 ¶¶ 2, 3]. On October 25, 2013, the Magistrate Court entered judgment in favor of Respondent and ordered a writ of execution to evict Movants from the Residence. [Doc. 25 ¶ 3; Doc. 31 ¶ 3] Movants filed an appeal on October 28, 2013. [Doc. 25 ¶ 3; Doc. 31 ¶ 3].

On November 1, 2013, Debtor filed its bankruptcy petition. [Doc. 25 ¶ 4; Doc. 31 ¶ 4]. A notice of bankruptcy was filed in the Magistrate Court and served on Respondent. [Doc. 25 ¶ 4; Doc. 31 ¶ 4]. On November 21, 2013, Respondent filed a Notice of Disclaimer of Creditor Status in the bankruptcy case. [Doc. 25 ¶ 5; Doc. 31 ¶ 5]. On November 26, 2013, Debtor filed its schedules. On Schedule A, Debtor listed an "Equity" interest in the Residence

with a value of \$30,000. [Doc. 10]. On Schedule B, Debtor listed personal property of “Desk, 3 Chairs, Book Case, Conference Equipment and Gym” with a value of \$10,000. *Id.* On Schedule D, Debtor listed Respondent as a secured creditor with a claim of \$160,000. *Id.*

On December 2, 2013, Respondent executed on his writ of possession.<sup>1</sup> [Doc. 25 ¶ 6; Doc. 31 ¶ 6]. Respondent hired a moving company to empty the Residence. [Doc. 25 ¶ 6; Doc. 31 ¶ 6]. The moving company removed the personal property of Debtor and Movants from the Residence, leaving it on the lawn, curb, and driveway. [Doc. 25 ¶ 6; Doc. 31 ¶ 6]. The eviction deprived Debtor of its principal place of business, disabled Debtor’s business equipment, and rendered Debtor inoperable as a going concern. [Doc. 25 ¶ 9]. After the eviction was complete, Movants inventoried their property and Debtor’s property. [Doc. 25 ¶ 10; Doc. 31 ¶ 9]. They contend they discovered numerous small luxury items were missing, primarily jewelry, with a value of \$92,750.16. [Doc. 25 ¶ 10; Doc. 31 ¶ 9].

On February 6, 2014, Debtor filed an Amended Schedule B with an attached spreadsheet listing individual items of office equipment, including a conference table, four leather chairs, a custom built Apple server, a server cabinet, a television set, two office chairs, a printer, two Mac computers, and an iPad with a total value of \$23,377. [Doc. 14]. On March 13, 2014, Debtor’s counsel made his first appearance in the case by way of filing an Amended Petition to add his signature. [Doc. 17]. On June 6, 2014, the Chapter 7 Trustee filed a report of no distribution, and on June 9, 2014, the case was closed.

On December 22, 2014, Movants filed a lawsuit against Respondent in the Superior Court of Fulton County, Georgia, to recover damages for violation of the automatic stay. [Doc. 25 ¶ 11]. The Superior Court dismissed the case due to lack of jurisdiction on

---

<sup>1</sup> Neither party indicated the status or outcome of Movants’ appeal in the dispossessory action. However, Movants have not alleged that the eviction violated any state court order, which suggests the appeal was unsuccessful.

September 22, 2015. [Doc. 25 ¶ 12]. Movants then sought relief in the bankruptcy court. They filed their Motion to Reopen on November 5, 2015 [Doc. 23] and filed their Amended Motion to Reopen to correct a signature on November 6, 2015. [Doc. 25].

## II. Legal Analysis

Movants seek to reopen Debtor's bankruptcy case. "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b). The debtor or any party in interest may bring a motion to reopen. Fed. R. Bankr. P. 5010. The Court has broad discretion based on consideration of all relevant facts to determine whether the movant has shown cause to reopen the case. *In re Tarrer*, 273 B.R. 724, 731-32 (Bankr. N.D. Ga. 2001) (Drake, J.). "When considering a motion to reopen a court must balance the interests of creditors with the 'fresh start' principal of the Bankruptcy Code." *In re Chandler*, No. 02-65783, 2008 WL 7842073, at \*2 (Bankr. N.D. Ga. May 23, 2008) (Mullins, J) (citing *In re Beezley*, 994 F.2d 1433 (9th Cir. 1993)).

Courts consider a number of factors in deciding whether to reopen a case, including: (1) the benefit to the debtor; (2) the prejudice to the opposing party; (3) the benefit to the creditors; (4) the length of time that the case has been closed; (5) whether relief is available if the case is reopened; and (6) whether nonbankruptcy courts are available to consider the claims.

*Id.* (citing *In re Rochester*, 308 B.R. 596, 601 (Bankr. N.D. Ga. 2004); *In re Lewis*, 273 B.R. 739, 744 (Bankr. N.D. Ga. 2001)); *Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir. 2010). "In making the decision to reopen a case, the bankruptcy court should exercise its equitable powers with respect to substance over technical considerations to ensure substantial justice." *Chandler*, 2008 WL 7842073, at \*2 (citing *In re Shondel*, 950 F.2d 1301, 1304 (7th Cir. 1991)). The Court will not reopen a case when doing so would be futile because it cannot

provide relief to the moving party. *In re Phillips*, 288 B.R. 585, 587 (Bankr. M.D. Ga. 2002); *In re Jenkins*, 330 B.R. 625, 628 (Bankr. E.D. Tenn. 2005).

Here, Movants want to reopen the case to seek damages for violation of the automatic stay. Respondent contends Movants lack standing to file a motion to reopen and that Movants have failed to show cause to reopen. Furthermore, Respondent asks the Court to retain limited jurisdiction over this matter to consider whether sanctions against Movants are appropriate.

Federal Rule of Bankruptcy Procedure 5010 provides that any party in interest may bring a motion to reopen. The term “party in interest” is not defined by the Bankruptcy Code. However, 11 U.S.C. § 1109 identifies those entities with a right to be heard in a Chapter 11 case and “contains a non-exclusive list of examples of what persons or entities may be considered to be a party in interest” including “the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee ....” *Tarrer*, 273 B.R. at 731; 11 U.S.C. § 1109(b). Although Chapter 7 of the Bankruptcy Code does not include a similar provision, “the right for a party in interest to be heard in a bankruptcy proceeding, as set out in Chapter 11, also applies in a Chapter 7 case.” *Smith v. Atlantic So. Bank (In re Smith)*, 522 Fed. Appx. 760, 765 (11th Cir. 2013). Movants contend that because Mr. Hakim is the sole equity security holder in Debtor, they have standing to bring the Motion to Reopen.

Assuming Movants are correct despite the fact that Ms. Hakim has no equity interest in Debtor, they must also demonstrate they meet the constitutional standing requirements for pursuing relief under § 362(k) as follows: (1) they have suffered an actual injury or such injury is imminent; (2) the injury is fairly traceable to the conduct at issue; and (3) the relief

requested is likely to redress the injury. *Tarrer*, 273 B.R. at 731; *E.F. Hutton & Co., Inc. v. Hadley*, 901 F.2d 979, 984 (11th Cir. 1990). In addition, the Eleventh Circuit has recognized three prudential considerations that discourage judicial action: “(1) assertion of a third party’s rights, (2) allegation of a generalized grievance rather than an injury particular to the litigant, and (3) assertion of an injury outside the zone of interests of the statute or constitutional provision.” *E.F. Hutton*, 901 F.2d at 985. In this case, Movants seek to assert their own rights with respect to a specific grievance. The question is whether they fall within the zone of interests protected by the automatic stay. The Supreme Court has said the zone of interests test has been improperly labeled as a matter of prudential standing. Instead, it is “an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff’s claim.” *Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014). The zone-of-interests test “asks whether ‘this particular class of persons ha[s] a right to sue under this substantive statute.’” *Id.* (quoting *Association of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 675-676 (D.C. Cir. 2013) (concurring opinion)).

Upon the filing of Debtor’s bankruptcy case on November 1, 2013, an automatic stay arose that prevented, among other things, “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]” 11 U.S.C. § 362(a)(3). Property of the estate consists of “all legal or equitable interests of the debtor in property as of the commencement of the case.” *Id.* § 541(a)(1). Pursuant to 11 U.S.C. § 362(k)(1), “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” A stay violation is willful if the creditor “(1)

knew the automatic stay was invoked and (2) intended the actions which violated the stay.” *Jove Engineering, Inc. v. IRS*, 92 F.3d 1539, 1555 (11th Cir. 1996). The alleged injury must have been proximately caused by the stay violation. *Bankers Healthcare Group, Inc. v. Bilfield (In re Bilfield)*, 494 B.R. 292, 302 (Bankr. N.D. Ohio 2013); *Henkel v. Lickman (In re Lickman)*, 297 B.R. 162, 190 (Bankr. M.D. Fla. 2003); *see also Roche v. Pep Boys, Inc. (In re Roche)*, No. 05-63544, AP No. 05-9040, 2006 WL 6592059, at \*4 (Bankr. N.D. Ga. May 17, 2006) (Diehl, J.) (finding that “Defendants[’] failure to release the garnishment was the proximate cause of Plaintiff’s” injury).

Movants contend that Respondent knew Debtor had personal property at the Residence. Movants contend Respondent willfully violated the automatic stay by removing Debtor’s property from the Residence during the course of an eviction. Movants contend that they were injured in the course of the stay violation due to the loss of their personal property. Accordingly, Movants contend they are entitled to damages as individuals injured by a willful violation of the stay.

Assuming without deciding that all of Movants’ allegations are true, Respondent knew of the automatic stay, Respondent knew Debtor kept equipment and other property at the Residence, and Respondent knew the Residence was Debtor’s principal place of business and knowing all the foregoing, Respondent removed Debtor’s property from the residence in the course of evicting Movants. Also during the course of the eviction, Movants’ personal property was stolen or damaged. These facts are sufficient to show a willful violation of the stay in the sense that Movant knew of the stay and intended the actions that violated the stay. The facts are also sufficient to show Movants suffered an injury during the course of the eviction. Furthermore, these facts are sufficient to show the elements of constitutional standing: an actual

injury traceable to Respondent's conduct that can be remedied. However, Movants have failed to show they are within the zone of interests protected by the automatic stay, and Movants have failed to allege any facts showing that the stay violation proximately caused their injuries, which goes to the merits of their claim.

While it is true that § 362(k) provides for damages to "an individual injured" by a willful stay violation, "the definition of 'individual' under 11 U.S.C. § 362([k]) does not necessarily include all parties who may have some tangential interest in Debtor's bankruptcy." *Siskin v. Complete Aircraft Servs., Inc. (In re Siskin)*, 231 B.R. 514, 518 (Bankr. E.D.N.Y. 1999). Courts have limited applicability of § 362(k) to those interests Congress intended to protect with the automatic stay. To determine the scope of those interests, courts look to the legislative history of § 362, which provides:

The automatic stay is one of the *fundamental debtor protections* provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

The automatic stay *also provides creditor protection*. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

...

Paragraph (3) [of § 362(a)] stays any act to obtain possession of property of the estate ... or property from the estate .... *The purpose of this provision is to prevent dismemberment of the estate*. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.



H. Rept. No. 95-595 to accompany H.R. 8200, 9th Cong. 1st Sess (1977) p. 340, 341 (emphasis added). Thus both debtors and creditors are within the zone of interests protected by the automatic stay. *In re Ampal-American Israel Corp.*, 502 B.R. 361, 370 (Bankr. S.D.N.Y. 2013). The stay gives debtors breathing room to reorganize and allows creditors to receive equal treatment. However, other non-debtor third parties generally are not protected by the stay absent unusual circumstances. *Jarman v. Gulfinance, LLC (In re Jarman)*, No. 12-31365, AP No. 14-3068, 2014 WL 4722760, at \*2 (Bankr. M.D. Ala. Sept. 22, 2014). For example, the stay may apply “when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.” *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986).

By contrast, courts have declined to apply the stay to a non-filing spouse or to award damages to a non-filing spouse or other family members for violations of the stay. *Jarman*, 2014 WL 4722760, at \*3 (when debtor’s spouse was erroneously listed as the borrower on an insurance finance sheet for debtor’s business, the stay did not protect the spouse from being sued on the contract and such a lawsuit could not form the basis of a claim for violation of the stay); *Thomason v. Chestatee Community Ass’n, Inc. (In re Thomason)*, 493 B.R. 890, 902 (Bankr. N.D. Ga. 2013) (Brizendine, J) (declining to award damages to debtor’s daughter, who suffered an anxiety attack and required emergency care after witnessing a violation of the automatic stay); *Rushing v. Green Tree Servicing, LLC (In re Rushing)*, 443 B.R. 85, 100 (Bankr. E.D. Tex. 2010) (non-filing spouse who sustained physical injuries in the course of an unauthorized post-petition repossession of debtor’s mobile home could not seek damages for stay violation); *Siskin*, 231 B.R. at 518-19 (debtor was arrested postpetition for failure to cooperate

with judgment creditor in post-judgment discovery; debtor's wife could not seek damages under § 362(k) after she paid off the creditor with her own money to secure the debtor's release). In such cases, the individual's "claim for injuries is independent of the Debtor's rights and has no effect on the administration of the estate." *Rushing*, 443 B.R. at 100 (footnote omitted).

Here, Movants are the owner of Debtor and the wife of the owner of Debtor. In two cases in which the owner of the debtor attempted to invoke § 362(k), the court denied relief. In *Marable v. Sam Pack's Ford Country of Lewisville, Ltd. (In re Emergency Room Mobile Services, L.L.C.)*, 529 B.R. 676, 680-81 (N.D. Tex. 2015), the sole owner of the debtor was subjected to criminal prosecution during the pendency of the bankruptcy case for a debt owed by the debtor. *Id.* at 680-81. The owner filed an adversary proceeding in his individual capacity alleging, among other things, violation of the automatic stay. *Id.* at 681. The bankruptcy court dismissed the proceeding based on lack of jurisdiction and failure to state a claim upon which relief may be granted. *Id.* The district court affirmed, stating that where the owner holds claims separate from any claims of the debtor and those claims are based on his status as an individual or an owner as opposed to his status as a creditor, his injuries cannot be remedied under § 362(k). *Id.* at 687. Because the owner's injuries were "suffered in his *non-creditor/personal* capacity," they were not among the interests protected by the automatic stay. *Id.* (emphasis in original); see also *Ampal-American Israel Corp.*, 502 B.R. at 371 ("the fact that someone is a pre-petition creditor is not a foot in the door that allows the creditor to recover damages for injuries suffered to its non-creditor interests").

The court in *Marable* relied heavily on *St. Paul Fire & Marine Insurance Co. v. Labuzan*, 579 F.3d 533 (5th Cir. 2009), which involved a stay violation by the insurance company that provided the debtor with construction performance bonds. The debtor was a

construction company owned by the Labuzans. *Id.* at 536. During the pendency of the debtor’s bankruptcy case, the insurance company contacted the debtor’s customers and advised the customers of the bankruptcy and of the effect of making payments to the debtor. *Id.* The insurance company sued the Labuzans in district court under an indemnity agreement; the Labuzans raised violation of the automatic stay as a defense and sought damages on the ground that the stay violation prevented the debtor from reorganizing. *Id.* The district court ruled that the stay violation claim actually belonged to the debtor rather than the Labuzans; as creditors, the Labuzans could seek equitable remedies on behalf of the debtor for violation of the stay but not damages. *Id.* at 537.

On appeal, the Fifth Circuit considered whether by using the term “individual” in § 362(k), Congress intended to abrogate the zone of interest test (i.e., prudential standing requirements) for purposes of violations of the automatic stay. *Id.* at 539. Because congressional intent was not clearly expressed in the statute, the court looked to the legislative history of § 362(k). *Id.* at 539-40. As noted above, the legislative history states that the automatic stay offers protection to both debtors and creditors. Therefore, both debtors and creditors “fall ‘within the zone of interests’ protected by § 362(k).” *Id.* at 543. Thus, the court concluded that to the extent the Labuzans’ claims were based on their status as creditors of the debtor, they could pursue a claim under § 362(k). *Id.* at 545. While creditors cannot bring claims that belong to the debtor, “[i]t is ‘possible for a bankruptcy estate and a creditor to own separate claims against a third party arising out of the same general series of events and broad course of conduct.’” *Id.* (quoting *In re Seven Seas Petroleum, Inc.*, 522 F.3d 575, 585 (5th Cir. 2008)). However, “to the extent the Labuzans’ claims are based on their status as *owners/equity holders* of [the debtor] § 362(k) cannot be invoked.” *Id.* (emphasis in original).

Here, Mr. Hakim is an equity security holder, and the record does not reflect that either he or his wife is a creditor. But even if they were creditors, the injury for which they seek redress is as to their personal interests, that is loss of their personal property, not to their interests as creditors.<sup>2</sup> Further, their claim under § 362(k) does not seek to vindicate any right of equal distribution for creditors. As in *Siskin*, Movants' "claim is clearly independent of Debtor's bankruptcy. The claim does not involve Debtor's property or an interest of the estate. [Its] determination does not affect Debtor's rights or the estate's administration." 231 B.R. at 518-19. Accordingly, Movants do not meet the zone of interests test.

Even if Movants' claim fell within the zone of interests protected by § 362, they could not obtain relief because their alleged facts, taken as true, fail to show proximate cause between the stay violation and their injury. Respondent obtained a writ of possession against Movants and executed on it. The fact that Debtor may have had some property located at the Residence did not bar Respondent from removing Movants' possessions from the Residence. Movants do not argue that their damages would have been avoided had Respondent dispossessed only Movants' property while leaving Debtor's property untouched. To the extent Movants were damaged, they were damaged due to an apparently lawful dispossessory, not as the result of a stay violation that occurred incident to their eviction. If Movants challenge the validity of the dispossessory action or seek to recover damages for injuries they suffered as a result of the dispossession, they are free to seek relief in the appropriate non-bankruptcy forum.

### **III. Conclusion**

The Court concludes Movants have failed to show cause to reopen Debtor's bankruptcy case. Any effort by Movants to seek relief for violation of the automatic stay would

---

<sup>2</sup> Movants' pleadings do not appear to assert any claims based on damage to Debtor's property or loss of Debtor's principal place of business. However, to the extent Movants seek redress for injuries to Debtor, such claims belong to Debtor and cannot be brought by Movants.

be futile because Movants are not within the zone of interests protected by the automatic stay and their injuries were not caused by a violation of the automatic stay. Because Movants are seeking to vindicate their individual rights, reopening the case would provide no benefit to the bankruptcy estate, the creditors, or Debtor. Further, nonbankruptcy forums are available for Movants to prosecute their grievances against Respondent under alternative legal theories. Accordingly, it is

ORDERED that the Motion to Reopen is DENIED; it is further

ORDERED that the Court will retain jurisdiction over this matter to consider any related motion for sanctions filed by Respondent.

**END OF ORDER**

**Distribution List**

John W. Mills, III  
Barnes & Thornburg LLP  
Suite 1700  
3475 Piedmont Road, NE  
Atlanta, GA 30305

Martha A. Miller  
Schulten Ward & Turner, LLP  
Suite 2700  
260 Peachtree Street, NW  
Atlanta, GA 30303-1240

Saleem Nazir Hakim and Africa Hakim  
602 Adams Lake Boulevard  
Atlanta, GA 30339

Howard D. Rothbloom  
Adam D. Herring  
The Rothbloom Law Firm  
31 Atlanta Street  
Marietta, GA 30060

G.A.M.E.S., LLC  
29 Wrenfield Ln, SE  
Smyrna, GA 30082

G.A.M.E.S., LLC  
In care of:  
3316A S. Cobb Dr., SE  
Suite 293  
Smyrna, GA 30080