UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
CHEREE NEWSON-PACE,	)	CASE NO. **14-65511** – MHM
	)	
Debtor.	)	
	)	
	)	
CHEREE NEWSON-PACE,	)	
	)	
Plaintiff,	)	**ADVERSARY PROCEEDING**
v.	)	**NO. 14-5354**
	)	
COLUMBIA-MRA PARK CITY PLACE, LLC, JOE DINGLE, MARIO BREEDLOVE, TIFFANY CARTER-SELLERS, AYTUNDE EZEKEIL, NOEL KHALIL, JAMES S. GRAULEY, NEW COLUMBIA RESIDENTIAL LLC., GARY LESHAW, AFFORDABLE HOUSING PARTNERSHIP, INC., NEW COLUMBIA RESIDENTIAL PROPERTY MANAGEMENT, INC., COLUMBIA RESIDENTIAL MANAGEMENT, LLC, COLUMBIA RESIDENTIAL, LLC, COLUMBIA RESIDENTIAL PROPERTY MANAGEMENT, INC.,	)	
Defendants.	)	

ORDER OF DISMISSAL

Plaintiff initiated this adversary proceeding November 5, 2014, by filing a complaint alleging, *inter alia*, Defendants violated the automatic stay issued in Plaintiff's Chapter 13 Case No. 14-58669 (the "First Case"), by allowing the continuing the eviction process after Plaintiff filed bankruptcy. (Doc. No. 1). Certain Defendants[1] filed an answer and defenses December 8, 2014. (Doc. No. 24). Defendant Gary J. LeShaw ("LeShaw") filed a *Motion to Dismiss* December 29, 2014 (Doc. No. 28). Leshaw and the Columbia Parties (together, the "Subject Defendants") contend Plaintiff's complaint should be dismissed because Plaintiff failed to state a claim for which relief may be granted.

FACTUAL BACKGROUND

The Columbia Parties filed a dispossessory action against Plaintiff in DeKalb County Magistrate Court. As a result, Plaintiff appeared as a tenant in a dispossessory case before LeShaw, a magistrate in the DeKalb County Magistrate Court (Doc. No. 1. at 8). LeShaw issued a pre-petition judgment of possession against Plaintiff and in favor of Columbia Parties (Doc. No. 1 at 2). Plaintiff filed Case No. 14-58669 May 2, 2014 (the "First Case"). She acknowledged the pre-petition judgment of possession on her bankruptcy petition, certifying that Columbia-MRA Park City Place "has a judgment

[1] The joint answer was filed by Columbia Residential, LLC, Columbia-MRA Park City Place, LLC, Columbia Resident Property Managers, Affordable Housing Partnership, Inc., New Affordable Housing Partnership, Inc., Noel Khalil, Jim Grauley, Mario Breedlove, Tiffany Carter-Sellers, and Joe Dingle (the "Columbia Parties").

against the debtor for possession of debtor's residence." The First Case was dismissed July 10, 2014. Plaintiff filed her present Chapter 7 case, Case No. 14-65511, August 8, 2014 and received a discharge February 10, 2015 (the "Second Case").

STANDARD OF REVIEW

Plaintiff filed this complaint *pro se*. "[A] *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *In re Smith*, 489 B.R. 875, 884 (Bankr. M.D. Ga. 2013) (citing *Erickson v. Pardus,* 551 U.S. 89, 94 (2007)). However, a *pro se* filer is still required to comply with the "minimum pleading standards" and the Federal Rules of Civil Procedure. *Id.* Likewise, the leniency afforded to *pro se* filers "does not give the court license to serve as *de facto* counsel for a party ... or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Investments, Inc. v. County of Escambia, Florida,* 132 F.3d 1359, 1369 (11th Cir.1998).

Federal Rule of Civil Procedure 8(a)(2), incorporated in Federal Rule of Bankruptcy Procedure 7008, requires a complaint to contain " a short plain statement of the claim showing that the pleader is entitled to relief." "To survive a motion to dismiss, a complaint must contain sufficient factual matter, 'accepted as true, to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 566 U.S. 662 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A complaint is plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that

the defendant is liable for the misconducted alleged." *Id.* (citing *Bell Atlantic*, 550 U.S. at 556).

DISCUSSION

Plaintiff's Complaint is disjointed and difficult to understand. However, it appears that Plaintiff asserts each of or some portion of the Subject Parties have violated the automatic stay of Plaintiff's cases by their involvement in Plaintiff's eviction from her residence. Plaintiff has not cogently alleged any conduct beyond the eviction proceedings to have violated the automatic stay. For the reasons set forth below, the record of the First Case, the Second Case, and this proceeding demonstrate that Defendants' alleged conduct could not violate the automatic stay in either the First Case or the Second Case; accordingly Plaintiff's claims for violation of the automatic stay will be dismissed.

To the extent Plaintiff asserts Leshaw violated § 362 by issuing the writ of possession regarding her residence, it is clear that issuing the writ of possession did not violate the automatic stay because the writ of possession was issued prior to Plaintiff filing the First Case. The automatic stay did not take effect in the First Case until May 2, 2014. Plaintiff acknowledged the pre-petition judgment of possession on her bankruptcy petition by certifying that Columbia-MRA Park City Place "has a judgment against the debtor for possession of debtor's residence."

In addition, Plaintiff disputes the factual basis LeShaw relied upon in issuing a writ for possession. "Any such challenges should be asserted in the court issuing the judgment and handling eviction, not the bankruptcy court." *See e.g., In re Griggsby,* 404 B.R. at 83, 92 (Bankr. S.D. N.Y. 2009).

Plaintiff asserts the Subject Defendants violated the automatic stay by continuing the eviction process even after Plaintiff filed bankruptcy. Subject Defendants did not violate the automatic stay by proceeding with eviction, because eviction proceedings are excluded from the automatic stay when the judgment for possession was obtained pre-petition. Subject to 11 U.S.C. §362(l), the automatic stay does not apply

> to 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 had 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); *see In re Paul*, 473 B.R. 474 (Bank. S.D. Ga. 2012).

Notwithstanding §362(b)(22), under §362(l) the automatic stay may take effect for a period of 30 days after filing, ***if*** the debtor certifies and and serves upon the lessor the certification under penalty of perjury that: 1) "applicable nonbankruptcy law … would allow the debtor to cure the monetary default giving rise to the judgment for possession after it was entered;" and (2) "the debtor has deposited with the clerk of court any rent

that would become due during the 30 day period after filing." 11 U.S.C. §362(l); *In re Kelly*, No. 14-32333, 2014 WL 5800984 (Bankr. N.D. Oh. 2014).

> To determine whether a debtor has attempted to comply with these provisions, and is thereby claiming the protection of the automatic stay under §362(l), despite the pre-petition entry of a judgment for possession, a court should look at the second page of the debtor's Petition. At the bottom of the second page is a section captioned: "Certification by a Debtor Who Resides as a Tenant of Residential Property" [hereinafter "Certification"]. There are several check boxes to be filled out, based upon the exact situation that a tenant-debtor faces at the time of the bankruptcy is filed. If a judgment for possession has been entered, and the Certification is not completed by the debtor, then the requirements of §362(l) have not been complied with, and §362(b)(22) provides an exception to the automatic stay

In re Kelly, No. 14-32333, 2014 WL 5800984 (Bankr. N.D. Oh. 2014). Plaintiff acknowledged the pre-petition judgment of possession on her bankruptcy petition by certifying that Columbia-MRA Park City Place "has a judgment against the debtor for possession of debtor's residence." However, when Plaintiff filed for bankruptcy, she did not make the additional certifications required by §362(l), or deposit with the Court the rent that would become due during the 30–day period after the filing of the bankruptcy petition. Thus, §362(l) is inapplicable and §362(b)(22) applies. The Subject Defendants did not violate the automatic stay because §362(b)(22) excludes the eviction proceeding from the automatic stay.

The Subject Defendants cannot be held liable for violations of the automatic stay because, as set forth above, the Subject Defendants' alleged conduct does not violate the automatic stay. Even if the Subject Defendants had violated the automatic stay, LeShaw cannot be held liable for damages under the doctrine of judicial immunity. A judge "is entitled to judicial immunity even if he or she acted in error, including whether or not the automatic stay provisions of 11 U.S.C. 362(a) are applicable to the controversy before said court." *Kearns v. Orr,* 161 B.R. 701, 704 (D. Kansas 1993). Thus, whether or not he may have erred on his decision regarding the applicability of the automatic stay is irrelevant. LeShaw is entitled to judicial immunity for his decision. *See In re Perry,* 312 B.R. 720 (Bankr.M.D. Ga. 2004); *In re Coates,* 108 B.R. 823 (Bankr.M.D. Ga.1989). Accordingly, it is hereby

ORDERED that Plaintiff's claims for violation of the automatic stay are ***dismissed.***

IT IS SO ORDERED, this the 4th day of March, 2015.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE