

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

IN RE:

KATHERINE LEE WAGNER,  
  
Debtor.

CASE NO.: 24-10050-KKS  
CHAPTER: 7

**ORDER 1) GRANTING DEER CREEK SENIOR HOUSING LLLP'S  
MOTION FOR ORDER CONFIRMING THAT THERE IS NO  
AUTOMATIC STAY RELATING TO LEASE AGREEMENT (RE:  
2166 NW 55<sup>TH</sup> BLVD #405 GAINESVILLE, FLORIDA 32653) (ECF  
NO. 28), AND 2) DENYING DEBTOR'S EMERGENCY MOTION  
TO REIMPOSE STAY (ECF No. 55)**

THIS CASE is before the Court on the *Motion for Order Confirming That There Is No Automatic Stay Relating to Lease Agreement (Re: 2166 NW 55th Blvd #405 Gainesville, Florida 32653)* (“Landlord’s Motion,” ECF No. 28), Debtor’s *Emergency Motion to Reimpose Stay* (“Emergency Motion,” ECF No. 55), and all related responses and objections. For the reasons set forth below, the Landlord’s Motion is due to be granted and Debtor’s Emergency Motion is due to be denied.<sup>1</sup>

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<sup>1</sup> The Court scheduled both motions for an emergency hearing on May 1, 2024, and then granted Debtor’s motions to continue. *See* ECF Nos. 62–68. Because there are no disputed issues of material fact, the Court may rule as a matter of law based on the pleadings; no hearing is necessary.

Debtor filed her petition commencing this case on March 11, 2024, shortly after this Court dismissed Debtor's first bankruptcy case due to her failure to file documents required under Section 521 of the Bankruptcy Code.<sup>2</sup> The same day, Debtor filed Official Form 101A.<sup>3</sup> Because Debtor did not report that she deposited any rent with the Clerk of this Court, the Clerk issued a deficiency notice.<sup>4</sup> Debtor apparently filed both bankruptcy cases to escape issues with her landlord stemming from an eviction action.

Debtor's landlord is Deer Creek Senior Housing LLLP d/b/a Deer Creek ("Landlord"). The Landlord filed an eviction action against Debtor on August 4, 2023.<sup>5</sup> In the eviction action, Debtor deposited six (6) rental payments into the state court's registry.<sup>6</sup> On December 5, 2023, the state court entered an *Agreed Order for Court Registry Deposits and As to Possession and Dismissal*.<sup>7</sup> Apparently as a result of the agreed order, the state court closed the eviction action on December 6, 2023.<sup>8</sup> On

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<sup>2</sup> *In re Katherine Wagner*, Case No. 24-10030-KKS, ECF No. 24 (filed on February 8, 2024; dismissed on March 1, 2024).

<sup>3</sup> *Initial Statement About an Eviction Judgment Against You*, ECF No. 6.

<sup>4</sup> ECF No. 13-1.

<sup>5</sup> ECF No. 28-2, p. 6.

<sup>6</sup> *Id.*, pp. 2-3, 5-6.

<sup>7</sup> *Id.*, p. 3.

<sup>8</sup> *Id.*, p. 2.

January 16, 2024, the state court entered an *Agreed Order to Disburse Remaining Funds from Court Registry Forthwith*.<sup>9</sup> On February 1, 2024, the state court reopened the eviction action on the Landlord's motion.<sup>10</sup> On February 2, 2024, the state court denied Debtor's motion to stay execution of the agreed order as to possession; on February 6, 2024, that court issued a *Final Judgment for Tenant Removal*.<sup>11</sup> On February 7, 2024, the state court issued a *Writ of Possession* in favor of the Landlord.<sup>12</sup> On February 8, 2024, the state court denied Debtor's *Motion for Order Staying the Writ of Possession*.<sup>13</sup>

In the instant action, the Landlord's Motion was filed just hours before the Court dismissed this case for Debtor's failure to cure filing deficiencies.<sup>14</sup> For that reason, the Court did not schedule the Landlord's Motion for hearing. A few days later, Debtor cured the deficiencies and

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<sup>9</sup> *Id.*

<sup>10</sup> *Motion for Tenant Removal and Affidavit of of [sic] Failure of Defendant to Vacate as Agreed; Affidavit of Failure of Defendant to Vacate as Agreed*. ECF 28-2, p. 2. Debtor filed a motion to stay execution of the eviction order on the same day. *Motion for Order Staying the Execution of Court's Order Dated December 5, 2023*. *Id.*

<sup>11</sup> ECF No. 28-2, p. 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Order Dismissing Case for Failure to Comply with Notice of Deadline to Cure Deficiencies*, ECF No. 29. Among other things, Debtor failed to file Schedules, a Summary of Assets & Liabilities, and Statement of Financial Affairs with her Chapter 7 petition. *See Notice of Deadline to Cure Deficiencies*, ECF No. 7.

the Court granted Debtor's motion to reinstate this case.<sup>15</sup> The Court then scheduled a hearing on the Landlord's Motion for May 21, 2024.<sup>16</sup>

In the Emergency Motion filed April 29, 2024, Debtor reported that the Landlord was moving forward with the eviction.<sup>17</sup> To avoid Debtor being evicted without a hearing between that date and the hearing date of May 21, the Court rescheduled Debtor's Emergency Motion and the Landlord's Motion to be heard the afternoon of May 1, 2024.<sup>18</sup> On April 30, 2024, Debtor moved to reschedule the May 1 hearings.<sup>19</sup> The Landlord objected.<sup>20</sup>

After this case was dismissed and before it was "reinstated," Debtor belatedly filed official bankruptcy forms designed to facilitate a debtor's certification of certain facts pertaining to a residential eviction ("Certifications").<sup>21</sup> Debtor signed the Certifications under penalty of

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<sup>15</sup> *Order Granting Debtor's Motion for Reinstatement (ECF No. 39)*, ECF No. 50.

<sup>16</sup> ECF No. 52.

<sup>17</sup> The Emergency Motion is actually a letter from Debtor claiming that the landlord violated the automatic stay, first docketed as a *Pro Se Document*. ECF No. 54. The Court re-docketed the letter as *Emergency Motion to Reimpose Stay*. ECF No. 55.

<sup>18</sup> ECF Nos. 57 & 58.

<sup>19</sup> ECF Nos. 62, 63 & 64.

<sup>20</sup> The Landlord's objection was docketed before Debtor's motions to reschedule because Debtor apparently emailed a motion to reschedule the May 1 hearing to the Landlord before filing those motions with the Court. *See* ECF No. 60, p. 1, fn. 1.

<sup>21</sup> *Official Form 101A, Initial Statement About an Eviction Judgment Against You*, ECF No. 37; *Official Form 101B, Statement About Payment of an Eviction Judgment Against You*, ECF No. 38, both filed April 11, 2024. This time, Debtor's representations on Official Form 101A were different from those on the same form she filed on March 11, 2024. *See* ECF No. 6.

perjury but did not fill the Certifications out correctly. She did not certify that: non-bankruptcy law gives her the right to stay in her residence by paying delinquent rent to the Landlord; she had deposited rent due during the first thirty (30) days of this case with the Clerk of this Court; or she had paid the Landlord the entire amount she owed. Instead, on one Certification Debtor offered to begin paying rent of \$483 on May 1, 2024.<sup>22</sup> On the other Certification, Debtor swore that she did not owe the Landlord any past due rent.<sup>23</sup>

In opposition to Landlord's Motion, Debtor does not address bankruptcy law or the automatic stay. Instead, she alleges that the Landlord acted in bad faith during the eviction action, the Landlord's agents were unresponsive to Debtor's needs and testified improperly, and the Landlord "deliberately sabotaged" Debtor's attempt to find a new place to rent.<sup>24</sup> As a remedy, Debtor demands damages from the Landlord as a setoff against any rent due, more time to relocate, and more time to find pro bono legal counsel.<sup>25</sup>

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<sup>22</sup> ECF No. 37.

<sup>23</sup> ECF No. 38.

<sup>24</sup> ECF No. 51, pp. 1-4.

<sup>25</sup> *Id.*, pp. 4-5.

In its objection to Debtor's motion(s) to continue the May 1 hearing, the Landlord does not address Debtor's factual allegations. Rather, the Landlord focuses on the legal issue in this case: whether there remains any automatic stay as to the eviction or otherwise. The Landlord maintains, *inter alia*, that 1) the eviction was not stayed pursuant to 11 U.S.C. § 362(b)(22) because Debtor did not file certifications required by 11 U.S.C. § 362(l), and (2) the automatic stay as to all creditors terminated by operation of law on the 30<sup>th</sup> day post-petition because Debtor's prior case was dismissed within one year for failure to file required documents.<sup>26</sup> The Landlord is correct on both points.

Bankruptcy Code section 362(b)(22) provides that the filing of a petition does not stay the continuation of any eviction or similar proceeding if all required factors are present.<sup>27</sup> Those factors include a prepetition eviction, regarding residential property where debtor resides as tenant, under a lease or rental agreement, and a pre-petition judgment of possession.<sup>28</sup> A debtor may override the absence of a stay of eviction by complying with another Code section: 11 U.S.C. § 362(l).

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<sup>26</sup> ECF No. 60 (citing 11 U.S.C. § 362(c)(3)).

<sup>27</sup> 11 U.S.C. § 362(b)(22).

<sup>28</sup> *Id.* In this case, the parties' state court stipulation acted as an extension of Debtor's lease with the Landlord, which had expired on July 31, 2023. ECF No 28, ¶ 3; ECF No. 28-1, p. 1.

Under § 362(l), a debtor must file certifications, under penalty of perjury, that under non-bankruptcy law the debtor would be able to cure rent defaults, the debtor has deposited with the registry of the court the rent due to the landlord within the first thirty (30) days of filing the bankruptcy petition, and the debtor has cured the entire monetary default.<sup>29</sup> In the instant action, Debtor filed the forms but none contained the necessary certifications under the Code.

The facts in a recent case, *In re Focht*, are similar to those here. In *Focht*, the landlord had a pre-petition judgment of eviction and “warrant” issued by a New York state court against the debtor.<sup>30</sup> The debtor filed a certification and swore under penalty of perjury that he paid rent into the court registry. The bankruptcy court found that the debtor’s certification was false and could not override § 362(b)(22) because the debtor never deposited money into the registry of the bankruptcy court.<sup>31</sup> The court held that the stay of the landlord’s eviction was terminated or lifted.<sup>32</sup> In so holding, the court in *Focht* stated:

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<sup>29</sup> 11 U.S.C. § 362(l)(1)(A) and (B); § 362(l)(2).

<sup>30</sup> *In re Focht*, Case No. 24-10197 (DSJ), 2024 WL 1185032 (Bankr. S.D.N.Y. Mar. 19, 2024) (the “warrant” was the New York equivalent of a writ of possession).

<sup>31</sup> *Id.* at \*3.

<sup>32</sup> *Id.* The bankruptcy court construed the landlord’s motion for stay relief as an objection to the debtor’s certifications pursuant to 11 U.S.C. § 362(l)(3)(A).

[A]lthough subsection (b)(22) provides that the automatic stay does not bar continuation of any eviction or similar proceeding if the landlord has obtained a prepetition judgment for possession, that exception to the automatic stay becomes effective only thirty days after the petition date so long as the debtor files the required certification.<sup>33</sup>

For the automatic stay to continue beyond the thirty day period, the debtor must file a further certification and pay the entire monetary default that gave rise to the eviction judgment. 11 U.S.C. § 362(l)(2).<sup>34</sup>

By contrast, about a month later the same bankruptcy court granted a debtor's motion to enforce the automatic stay because the landlord in that case had only a pre-petition "decision" from the state court but no judgment of possession.<sup>35</sup>

Here, the Landlord has a *Final Judgment for Tenant Removal* and a *Writ of Possession*, both of which pre-date Debtor's first bankruptcy case.<sup>36</sup> Debtor's Certifications may not be false, as they were in *Focht*, but they do not contain the information required by the Code. Further, to date Debtor has not deposited any funds into the registry of this Court, as required by § 362(l)(1)(B). Although Debtor denies owing any rent

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<sup>33</sup> *Id.* at \*2.

<sup>34</sup> *Id.* at n.2.

<sup>35</sup> *In re Resnicow*, Case No. 24-10354 (DSJ), 2024 WL 1773433, at \*4 (Bankr. S.D.N.Y. Apr. 24, 2024).

<sup>36</sup> The *Final Judgment for Tenant Removal* was entered on February 5, 2024; the first *Writ of Possession* was issued on February 7, 2024. ECF No. 28-2, pp. 2, 7.



arrears to the Landlord, nothing before this Court shows that Debtor has paid the Landlord rent, or deposited rent into the state court registry, since January 2024.

In her motions to continue the May 1 hearings, Debtor recites that she is in poor health. The Court is not unsympathetic to Debtor's health challenges. Debtor also urges that she needs more time to try to obtain pro bono bankruptcy counsel. But Debtor has waited too long to seek bankruptcy counsel to prevent the stay from expiring. Debtor filed her first bankruptcy case on February 8, 2024, and this case ten days after dismissal of the first one. Between these two cases, Debtor has effectively had the benefit of the automatic stay for almost ninety (90) days; far longer than she would have had under the applicable statutes.

For the reasons stated, it is

ORDERED:

1. The *Motion for Order Confirming That There Is No Automatic Stay Relating to Lease Agreement (Re: 2166 NW 55th Blvd #405 Gainesville, Florida 32653)* ("Landlord's Motion," ECF No. 28), which the Court also construes as an objection to Debtor's Certifications pursuant to 11 U.S.C. § 362(1)(3)(A), is GRANTED.

2. Debtor's *Objection to Motion for Order Confirming That There is no Automatic Stay Relating to Lease Agreement (RE: 2166 NW 55<sup>th</sup> BLVD, #405 Gainesville, Florida 32653) and Request for Hearing* (ECF No. 51) is OVERRULED.

3. Debtor's *Emergency Motion to Reimpose Stay* ("Emergency Motion," ECF No. 55) is DENIED.

4. The automatic stay has been vacated by operation of law. Debtor did not override § 362(b)(22) with proper certifications under § 362(l), nor did Debtor file a timely motion to reimpose the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

5. The Landlord's objection to the Emergency Motion (*Deer Creek Senior Housing LLLP d/b/a Deer Creek's Objection to Debtor's Motion to Reschedule Motion to Impose Automatic Stay, and, to the Extent Necessary to Have Creditor's Motion for Order Confirming That the Automatic Stay Is Terminated Heard on May 1, 2024, at 1:30 PM; or, In the Alternative, Determine That There Is No Stay as a Matter of Law*) (ECF No. 60) is SUSTAINED.

6. The parties are reminded that this Order will not become final until fourteen (14) days from the date it is entered on the docket. Fed. R. Bankr. P. 8002(a)(1) & (5).

DONE and ORDERED on May 3, 2024.



KAREN K. SPECIE  
Chief U.S. Bankruptcy Judge

cc: Counsel for Landlord, Deer Creek Senior Housing LLLP d/b/a Deer Creek, shall serve a copy of this Order on the Debtor and all other creditors and parties in interest, and shall file a certificate of service within three (3) business days of entry of this Order.