

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: December 14 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-39568
)	
Mable Lee Maroney,)	Chapter 13
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER GRANTING MOTION FOR RELIEF FROM STAY

This case came before the court for hearing on a Motion for Relief from Stay (“Motion”) [Doc. #9] filed by Chapter 7 Trustee Bruce French and Debtor’s Response [Doc. # 15]. Counsel for Debtor appeared in person and the Chapter 7 Trustee appeared by telephone. The Chapter 7 Trustee seeks relief from the automatic stay in order to proceed to litigate a Complaint to Revoke Discharge filed by him in Debtor’s previously filed Chapter 7 case. At the hearing, the court granted both parties fourteen days to file any further legal support for their positions. The Chapter 7 Trustee filed a Memorandum in Support of the Motion for Relief from Stay [Doc. #20]. The court has jurisdiction over this matter pursuant to 28 U.S.C. §1334(b) and the general order of reference entered in this district. This is a core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(G). Having considered the Motion and Memorandum in Support, the Response, and the arguments of counsel, the court will grant the Chapter 7

Trustee's Motion.

BACKGROUND

Debtor filed a Chapter 7 bankruptcy petition on December 18, 2003, and received her discharge on April 22, 2004. [Case No. 03-70174, Doc. ## 1 and 17]. The case is still open. Property of her Chapter 7 bankruptcy estate included income tax refunds for the year 2003 in the amount of \$2,946.36. Due to Debtor's failure to turn over those funds to the Chapter 7 Trustee, on July 10, 2005, he filed a Complaint to Revoke Discharge in the Chapter 7 case. [*Id.*, Doc. # 36; Case No. 05-3201]. Debtor's Chapter 7 case and the Complaint to Revoke Discharge remain pending in this court.

On September 13, 2005, Debtor filed a Chapter 13 petition for relief. She schedules personal property that includes, among other things, \$39 in cash and financial accounts. [Case No. 05-39568, Petition, Schedule B]. She lists debt that appears to have been incurred after the Chapter 7 case was filed and lists the Chapter 7 Trustee as an unsecured creditor to whom she owes an undisputed, liquidated debt in the amount of \$2,946.36. [*Id.*, Schedule F]. On December 12, 2005, the court entered an order confirming Debtor's Chapter 13 plan, in which she proposes 100% payment to unsecured creditors over a thirty-six month period. Although the Trustee has not yet filed a proof of claim in the Chapter 13 case, the deadline for doing so does not expire until January 30, 2006.

On October 3, 2005, the Chapter 7 Trustee filed the instant Motion in order to proceed to litigate the Complaint to Revoke Discharge filed in Debtor's Chapter 7 case. He argues that he should not be considered a creditor in the Chapter 13 case and that the automatic stay does not apply to Debtor's tax refund because she has no legal interest in the refund since it is property of her Chapter 7 bankruptcy estate.

LAW AND ANALYSIS

A statutory automatic stay arises upon the filing of a bankruptcy petition. 11 U.S.C. § 362(a). That section provides, in relevant part, as follows:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. . . .

11 U.S.C. § 362(a)(1). And § 362(d)(1) of the Bankruptcy Code provides that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay under subsection (a) of this section . . . for cause. . . .”

The Chapter 7 Trustee moves for relief from the automatic stay imposed by the filing of Debtor's

Chapter 13 case. Thus, for purposes of the Motion, “the case under this title” referred to in § 362(a)(1) is Debtor’s Chapter 13 case. The Chapter 7 Trustee seeks relief from the stay in order to continue prosecuting his Complaint to Revoke Discharge filed in a judicial proceeding against Debtor before commencement of Debtor’s Chapter 13 case. In addition, to the extent that the purpose of the Trustee’s complaint is to attempt to collect the tax refund from Debtor,¹ it is a proceeding “to recover a claim against the debtor” as contemplated by § 362(a)(1). As none of the exceptions under § 362(b) apply, under the plain language of § 362(a)(1), the automatic stay applies to the continuation of the adversary proceeding in Debtor’s Chapter 7 case to revoke Debtor’s discharge.

The Chapter 7 Trustee’s argument that he is not a creditor such that the automatic stay does not apply is not well taken. Section 362 applies to all “*entities*,” rather than all “creditors.” An “entity” is defined to include a “person, estate, trust, governmental unit, and the United States trustee.” 11 U.S.C. § 101(15). Thus, Debtor’s Chapter 7 bankruptcy estate, to which she owes the income tax refund, is an entity within the meaning of § 362. In any event, the court finds that the Chapter 7 Trustee, acting on behalf of the Chapter 7 estate, is, in fact, a creditor in Debtor’s Chapter 13 case. “Creditor” is defined as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.” And “claim” is defined as a “right to payment. . . .” The Chapter 7 Trustee’s entitlement, on behalf of the Chapter 7 estate, to income tax refunds received by Debtor is a claim against Debtor. Thus, he, or more accurately the Chapter 7 bankruptcy estate, is a creditor in Debtor’s Chapter 13 case.

In addition, while it is true, as the Trustee argues, that the tax refund is property of Debtor’s Chapter 7 estate rather than her Chapter 13 estate and that she has no legal interest in the refund, she also no longer has possession of the tax refund, as evidenced by her bankruptcy schedules listing cash and financial accounts totaling only \$39. Thus, the issue is not whether the automatic stay applies to an act of the Chapter 7 Trustee to obtain possession of property of the Chapter 13 estate. The issue is whether the automatic stay applies to the Chapter 7 Trustee’s continuation of the adversary proceeding to revoke Debtor’s Chapter 7 discharge, which, as discussed above, the court concludes that it does.

Having found that the automatic stay imposed by the filing of Debtor’s Chapter 13 case applies to the continuation of the adversary proceeding commenced by the Trustee in Debtor’s Chapter 7 case, the court further finds that cause exists to grant the Trustee relief from that stay. The automatic stay may not be used to assist a debtor in avoiding his or her duties under the Bankruptcy Code. In Debtor’s Chapter 7

¹ The court notes, however, that the Trustee has requested in his Complaint to Revoke Discharge only that Debtor’s Chapter 7 discharge be revoked. He has not requested a money judgment.

case, she was obligated to surrender to the Chapter 7 Trustee “all property of the estate.” 11 U.S.C. § 521(3). For whatever reason, Debtor did not surrender her income tax return after receiving those funds. Under § 727, on request of the trustee, the court “shall revoke a discharge” previously granted if “the debtor acquired property that is property of the estate . . . and knowingly and fraudulently failed to . . . deliver or surrender such property to the trustee. . . .” 11 U.S.C. § 727(d)(2). Debtor’s Chapter 13 case was not filed until after the Trustee’s Complaint to Revoke Discharge was filed in her Chapter 7 case. To the extent that she “knowingly and fraudulently” withheld the tax refund from the Chapter 7 Trustee, she cannot use the automatic stay in her Chapter 13 case to negate the consequence of her wrongdoing. The question of whether Debtor’s proposed repayment of the tax refunds to the Chapter 7 Trustee through her confirmed Chapter 13 plan affects the Chapter 7 Trustee’s cause of action for revocation of her discharge is one that must be addressed in the adversary proceeding in determining whether Debtor “knowingly and fraudulently” failed to deliver property of her estate to the Chapter 7 Trustee. The court, therefore, finds that these policy considerations constitute cause for relief under § 362(d)(1) and require the court to terminate the automatic stay with respect to the Chapter 7 Trustee in order to allow him to prosecute the Complaint to Revoke Discharge in Debtor’s Chapter 7 case.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Chapter 7 Trustee’s Motion for Relief from Stay [Doc. #9] be, and hereby is, **GRANTED**; and

IT IS FURTHER ORDERED that the automatic stay in this case is terminated with respect to the Chapter 7 Trustee so as to allow him to prosecute the Complaint to Revoke Discharge filed in Adv. Pro. No. 05-3201, Case No. 03-70174, pending in this court.