

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE:	*	
	*	
GEORGE CROUSER,	*	Chapter 13 Case No. 10-10739
	*	
Debtor.	*	
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GEORGE CROUSER,	*	
	*	
Appellant,	*	
	*	
v.	*	Adversary Case No. 11-01047
	*	Appeal Case No. CV 112-156
	*	
BAC HOME LOANS SERVICING, LP,	*	
f/k/a Countrywide Home Loans,	*	
L.P.; OFFICE OF THE U.S.	*	
TRUSTEE; and HUON LE,	*	
Chapter 13 Trustee,	*	
	*	
Appellees.	*	

ORDER

This bankruptcy appeal arises from the Bankruptcy Court's August 20, 2012 Order determining that settlement proceeds - from Debtor's postconfirmation action asserting a violation of the automatic stay - are property of the bankruptcy estate. For the reasons set forth below, this Court **AFFIRMS** the Bankruptcy Court's Order.

I. BACKGROUND

On March 27, 2010, George Crouser ("Debtor") filed a voluntary petition under Chapter 13 of the Bankruptcy Code. On August 24, 2010, the Bankruptcy Court confirmed Debtor's plan,

which provided for plan payments of \$430 per month for at least thirty-six months and a zero percent (0%) dividend to unsecured creditors. Subsequently, Debtor received two collection letters from his mortgage company's attorney, and a foreclosure notice appeared in a local newspaper. On August 30, 2011, Debtor commenced an adversary proceeding against the mortgage company alleging postconfirmation violations of the automatic stay pursuant to 11 U.S.C. 362(k). Debtor and the mortgage company settled the adversary proceeding for \$25,000. One-third of that amount was to be paid to Debtor's counsel for attorney's fees, and the remaining balance was to be paid to the Debtor himself. On February 15, 2012, Debtor filed a motion to approve the settlement and dismiss the adversary proceeding with prejudice. The Chapter 13 Trustee ("Trustee") filed an objection contending that the \$16,666.67 of settlement funds allocated to Debtor are property of the bankruptcy estate and subject to distribution to Debtor's unsecured creditors.¹

The Bankruptcy Court held a hearing and required the parties to brief the issue. On August 20, 2012, the Bankruptcy Court entered its Order sustaining the Trustee's objections and concluding that the postconfirmation settlement proceeds are property of the bankruptcy estate subject to distribution. On

¹ The parties agree that Debtor does not have any exemptions available to cover the settlement proceeds.

September 4, 2012, Debtor filed a notice of appeal. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 158(a)(1).

II. STANDARD OF REVIEW

This Court reviews legal conclusions of the bankruptcy court *de novo*. In re Club Assocs., 951 F.2d 1223, 1228 (11th Cir. 1992).

III. DISCUSSION

The issue raised is whether settlement proceeds from a violation of the automatic stay are property of Debtor's Chapter 13 bankruptcy estate. Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case."² 11 U.S.C. § 541(a)(1). Clearly, Debtor's cause of action for violation of the automatic stay did not exist at the commencement of his case. However, in the Chapter 13 context, the temporal reach of the bankruptcy estate is expanded:

- (a) Property of the estate includes, in addition to the property specified in section 541 of this title—

² It is undisputed that "legal and equitable interests" includes legal causes of action and settlement proceeds. See also 5 COLLIER ON BANKRUPTCY ¶ 541.08 (15th rev. ed. 2008) ("The estate created pursuant to section 541(a) includes causes of action belonging to the debtor at the time the case is commenced."); 11 U.S.C. § 541(a)(6) (property of the estate includes proceeds from other property of the estate); e.g., Tignor v. Parkinson, 729 F.2d 977, 981 (4th Cir. 1984) (proceeds of settlement of debtor's personal injury claim constituted property of the estate).

- (1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted . . .

11 U.S.C. § 1306(a)(1). The plain language of this text³ indicates that section 1306(a)(1) expands the scope of section 541(a)(1) in Chapter 13 cases to include "all legal and equitable interests of the debtor" both at the commencement of the case and those "that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted." 11 U.S.C. §§ 541(a)(1), 1306(a)(1); see also 4 NORTON BANKR. L. & PRAC. 3d § 61:1 (For debtors seeking relief under Chapter 13, section 1306 "expand[s] the reach of Code § 541, primarily by including postpetition property . . . acquired by the debtor before the case is closed, dismissed, or converted."); see, e.g., In re Waldron, 536 F.3d 1239, 1242 (11th Cir. 2008) (holding that claims for underinsured-motorist benefits acquired after confirmation but while the Chapter 13 case was still pending were property of the estate "based on the plain language of section 1306(a)").

Here, Debtor's cause of action for the violation of the automatic stay and the related settlement proceeds are legal

³ "The task of resolving the dispute over the meaning of [the Bankruptcy Code] begins where all such inquiries must begin: with the language of the statute itself. In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms. The language before us expresses Congress' intent . . . with sufficient precision so that reference to legislative history and to pre-Code practice is hardly necessary." U.S. v. Ron Pair Enters., 489 U.S. 235, 240-41 (1989) (citations and quotations omitted).

interests acquired by Debtor after commencement of the case but before it was closed, dismissed, or converted. Therefore, Debtor's settlement proceeds are property of the estate and subject to distribution.

Debtor, however, contends that claims for violation of the automatic stay, by their very nature, cannot exist at the commencement of the bankruptcy case (under section 541) and therefore can never become part of the bankruptcy estate (even under section 1306). Debtor argues that that the Bankruptcy Court ignored section 1306's reference to property "of the kind specified in such section [i.e. section 541]," which Debtor contends limits section 1306 to causes of action which are capable of existing prior to filing bankruptcy.

Contrary to Debtor's argument, the Bankruptcy Court did not ignore the above-referenced language. Rather than adopting Debtor's crabbed interpretation, the Bankruptcy Court interpreted the statute in accordance with its ordinary meaning. Section 1306's reference to property "of the kind specified" in section 541 plainly includes "all legal or equitable interests of the debtor." The only relevant limitation in section 541 ("as of the commencement of the case") is eliminated in Chapter 13 cases by section 1306, which includes legal interests acquired "after the commencement of the case but before the case is closed, dismissed, or converted."

Moreover, Debtor's construction of the statute would lead to inconsistent results: bankruptcy-specific causes of action, such as claims for violation of the automatic stay, would be excluded from the Chapter 13 bankruptcy estate but all other causes of action would be included. See Chisom v. Roemer, 501 U.S. 380, 417 (1991) (Scalia, J., dissenting) ("Our highest responsibility in the field of statutory construction is to read the laws in a consistent way, giving Congress a sure means by which it may work the people's will."); In re Waldron, 536 F.3d 1239, 1243 (11th Cir. 2008) ("This interpretation is consistent with the language of sections 1306(a) and 1327(b), and avoids creating a distinction among types of post-confirmation estate property where there exists no textual basis to do so." (quotations omitted)). Had Congress intended to exclude claims for violations of the automatic stay from the Chapter 13 bankruptcy estate, it could have expressly done so.

The distinction envisioned by Debtor cannot be reconciled with the plain text of the statute or Congressional intent. Congress intended that a Chapter 13 debtor "repay his creditors to the extent of his capability during the Chapter 13 period." In re Arnold, 869 F.2d 240, 242 (4th Cir. 1989). "Congress did not intend for debtors who experience substantially improved financial conditions after confirmation to avoid paying more to their creditors," especially when unsecured creditors are to

receive mere cents on the dollar for their claims under the original Chapter 13 plan. Id.

Additionally, there are several persuasive authorities which are directly on point and confirm the Bankruptcy Court's conclusions in this case. See In re Veal, No. 08-B-35319, 2011 WL 5240291, at *2-3 (Bankr. N.D. Ill. Nov. 1, 2011) (determining that Chapter 13 debtor's award of punitive damages for creditor's violation of the automatic stay constituted property of the estate); In re Cox, 214 B.R. 635, 649 & n.16 (Bankr. N.D. Ala. 1997) (determining that Chapter 13 debtor's compensatory damages for creditor's violation of the automatic stay constituted property of the estate); In re Chung-Chan, No. 09-cv-10926, 2009 WL 3837846, at *1-3 (D. Mass. Nov. 17, 2009) (determining that Chapter 13 debtor's settlement proceeds from creditor's violation of the automatic stay constituted property of the estate); In re Furgeson, 263 B.R. 28, 33 (Bankr. N.D.N.Y. 2001) (same). Also, several courts have determined that a Chapter 13 debtor's claim against the IRS for violating the automatic stay constitutes property of the estate as part of a sovereign immunity inquiry. See In re Brown, 159 B.R. 1014, 1017 (Bankr. S.D. Ga. 1993) (Dalis, J.); In re Flynn, 169 B.R. 1007, 1016 (Bankr. S.D. Ga. 1994) (Davis, J.), aff'd in part, rev'd in part on other grounds, 185 B.R. 89 (S.D. Ga. 1995); U.S. v. McPeck, 910 F.2d 509, 512 n.7 (8th Cir. 1990); In re Solis, 137 B.R. 121, 126 (Bankr. S.D.N.Y. 1992).

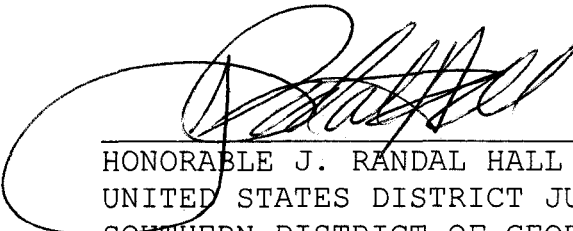
Debtor relies on St. Paul Fire & Marine Ins. Co. v. Labuzan, 579 F.3d 533 (5th Cir. 2009). There, the Fifth Circuit held that "automatic-stay-violation claims are not property of the estate as defined in § 541." Id. at 545. Labuzan, however, is inapposite here because it involved a Chapter 11 case converted into a Chapter 7 case. Id. at 543. Labuzan did not involve section 1306, which expands section 541 to include postpetition property in Chapter 13 cases.

In summary, the plain text of section 1306 and applicable precedent confirm that Debtor's settlement proceeds from his claim asserting a violation of the automatic stay are property of the Chapter 13 bankruptcy estate and subject to distribution among his creditors.

IV. CONCLUSION

For the reasons set forth above, the Court **AFFIRMS** the Bankruptcy Court's August 20, 2012 Order. The Clerk shall terminate all deadlines and motions, and **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 21st day of August, 2013.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA