

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
Urbana Division

**CHARLES F. BARRETT,**

**Plaintiff,**

v.

**DEE BURGIN, et al.,**

**Defendants.**

**Case No. 16-2386**

**ORDER**

This case is before the Court following the filing of Defendant Dee Burgin's Suggestion of Bankruptcy (#22). For the reasons set out below, the Court finds that Defendant Burgin's Chapter 13 Bankruptcy does not trigger an automatic stay of this action.

**I. Background**

On December 22, 2016, Plaintiff filed a Complaint (#1) against Dee Burgin (and other Defendants), alleging violations of 42 U.S.C. § 1983 as well as various state law claims. The allegations that form the basis of Plaintiff's Complaint allegedly took place on December 26, 2015.

On August 4, 2017, almost 8 months after the Complaint was filed, Defendant filed a Suggestion of Bankruptcy (#22), stating that Burgin filed a bankruptcy petition in the United States Bankruptcy Court for the Central District of Illinois on July 14, 2015. Defendant's Suggestion of Bankruptcy alleged that Burgin's Chapter 13 bankruptcy proceedings triggered an automatic stay of the instant action.

Following a review of Defendant's Suggestion of Bankruptcy, the Court noted that Burgin's bankruptcy petition was filed more than 5 months before the alleged actions in the Complaint. The Court held a Status Conference on August 15, 2017, during which the Court expressed its concerns to counsel regarding the bankruptcy

stay. Counsel agreed to brief the issue, advising the Court as to whether Burgin's bankruptcy pre-dating the allegations in the Complaint had any effect on the automatic stay. On August 29, 2017, Defendant filed his Memorandum (#23). Plaintiff filed a Response on September 11, 2017 (#24).

## II. Analysis

Whether a bankruptcy petition operates as an automatic stay of a civil action is governed by 11 U.S.C. § 362. Defendant argues that this case should be stayed pursuant to Section 362(a)(3) which states that a bankruptcy petition operates as a stay of "any action to obtain possession of property of the estate or of property from the estate..." 11 U.S.C. § 362(a)(3). Plaintiff argues that the operative section is Section 362(a)(1), which only stays civil actions against the debtor that were or could have been commenced **before** the commencement of the debtor's bankruptcy case. *See* 11 U.S.C. § 362(a)(1).

The automatic stay provision of Section 362(a)(1) has been held to be inapplicable to proceedings commenced after the filing of the Chapter 13 bankruptcy proceedings. *See In re Anderson*, 23 B.R. 174, 175 (Bankr. N.D. Ill 1982) (*citing In re York*, 13 B.R. 757, 758 (D.ME. 1981)). "It is well established that [civil] claims arising post- [bankruptcy] petition are not subject to the automatic stay." *Martino v. First Nat'l Bank*, 186 B.R. 414 n.17 (Bankr. N.D. Ill. 1995) (*citing Holland Am. Inc., Co. v. Succession of Roy*, 777 F.2d 992, 996 (5th Cir. 1985) ("[T]he stay simply does not apply to post-bankruptcy events."); *FAA v. Gull Air., Inc.*, 890 F.2d 1255, 1263 (1st Cir. 1989)).

Defendant filed for Chapter 13 bankruptcy on July 14, 2015. *See* d/e #23. The allegations in Plaintiff's Complaint occurred December 26, 2015. *See* d/e #1. It is undisputed that the facts giving rise to the instant civil action arose well after Defendant's bankruptcy petition was filed. 11 U.S.C. § 362(a)(1) clearly states that the only actions that are automatically stayed by a bankruptcy petition are actions that arose or could have arisen prior to the bankruptcy petition. As the allegations in Plaintiff's Complaint did not arise until 5 months after Defendant filed bankruptcy, Section 362(a)(1)'s automatic stay is inapplicable to this case. *See In re Anderson*, 23 B.R. at 175.

Defendant's reliance on Section 362(a)(3) is also misplaced. "[A]ctions to obtain a judgment on a cause of action which accrued post-petition are different from actions seeking to enforce a judgment." *Conner v. Howe*, 344 F. Supp. 2d 1164, 1172 (S.D. Ind. 2004). Title 11 U.S.C. § 362(a)(3) acts to stay any attempt to enforce a judgment, regardless of when it was obtained, but does not prevent an action seeking to obtain a judgment based upon a breach of a post-petition agreement." *Id.* It follows that a lawsuit that is brought to obtain a judgment, but not necessarily to enforce it, does not violate the automatic stay. *Id.*

Here Plaintiff's Complaint expressly seeks to obtain a judgment for compensatory and punitive damages against Defendant for alleged violations of Plaintiff's civil rights. *See* d/e #1, pg. 6. It is clear that Plaintiff is seeking to obtain a judgment on a cause of action, not seeking to enforce a judgment already obtained against Defendant Burgin. *See Howe*, 344 F. Supp. 2d at 1172.

Section 362(a)(3) would only act as a stay to enforce a judgment against Defendant had Plaintiff previously obtained one. While Section 362(a)(3) may ultimately prevent Plaintiff from enforcing any judgment obtained against Defendant, that question is not before the Court at this time and has no bearing on whether this case should be stayed. This action, which is brought only to obtain a judgement against Defendant Burgin (and not to enforce one), does not violate the automatic bankruptcy stay. *Howe*, 344 F. Supp. 2d. at 1172.

## II. Conclusion

Accordingly, for the reasons stated in this Order, the Court finds that Defendant Burgin's Suggestion of Bankruptcy (#22) does not operate as a stay to this civil action. This case will proceed under the discovery schedule set during the May 9, 2017 Rule 16 Scheduling Conference. This case remains set for a Status Conference on October 20, 2017 at 10:00 A.M.

ENTERED this 4th day of October, 2017.

s/ERIC I. LONG  
UNITED STATES MAGISTRATE JUDGE