

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

**IN RE:**

**MASTER LENDING GROUP, LLC,  
  
Debtor.**

**CHAPTER 7  
  
CASE NO. 23-40569-EJC**

**TIFFANY E. CARON, Chapter 7 Trustee  
for the Bankruptcy Estate of  
Master Lending Group, LLC**

**Plaintiff,**

**v.**

**JUDITH HIRSCH,  
  
Defendant.**

**Adv. Pro. No. 23-04013-EJC**

**DEFENDANT’S RESPONSE IN OPPOSITION OF PLAINTIFF’S  
MOTION TO STAY PROCEEDINGS**

COMES NOW Judith Hirsch (“Defendant” or “Mrs. Hirsch”) and files this Defendant’s Response in Opposition to Plaintiff’s Motion to Stay Proceedings (hereinafter, the “Motion”) (DN 12), respectfully showing this Court as follows:

**I. INTRODUCTION**

In bringing this Adversary Proceeding, Plaintiff attempts to expropriate the proceeds of a certain Prudential life insurance policy (the “Policy”) from the rightful owner under Georgia law. The Policy insured the life of Gregory Hirsch (“Mr. Hirsch”). Mrs. Hirsch is the wife of the insured and the named beneficiary on the Policy. O.C.G.A. § 33-25-11 states that life insurance proceeds “shall inure exclusively to the benefit of the person for whose use and benefit such insurance is

designated in the policy[.]” There is no dispute as to the fact that Mrs. Hirsch was the beneficiary designated on the Policy. As such, Mrs. Hirsch is the rightful owner of the Policy proceeds.

Plaintiff’s Complaint in this Adversary Proceeding alleges seven counts against Defendant and yet fails to state a single “claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L.Ed.2d 929, 949 (2007). Plaintiff’s Complaint lacks a “viable legal theory” to support her request that this Court determine the Policy proceeds to be the property of the Bankruptcy Estate. Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1283 (11th Cir. 2007). As a result, Mrs. Hirsch has filed her Motion to Dismiss this Adversary Proceeding.<sup>1</sup> A hearing on Defendant’s Motion to Dismiss has been set for November 30, 2023 at 9:00 a.m. (Doc. No. 9).

Subsequently, Plaintiff filed her Motion to Stay Proceedings. Plaintiff begins her Motion by stating that she moves this Court to “temporarily stay this action pending the interpleader of the proceeds of a \$5,000,000.00 life insurance policy into the registry of the court[.]” *Motion* at 1. However, in Plaintiff’s conclusion, she “requests that the Court stay these proceedings until thirty (30) days after submission of a consent order to interplead the Policy proceeds into the registry of the court.” *Motion* at 6.

While the parties did briefly discuss the possibility of a consent order, they were unable to come to an agreement and are no longer in discussions. As a result, staying the current proceeding until thirty (30) days after the submission of a consent order would result in staying the proceedings until the happening of an uncertain event which may never occur.

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<sup>1</sup> Defendant refers this Court to, and incorporates by reference, her Motion to Dismiss and Memorandum of Law in support thereof [Docket Numbers 7 and 8].

The hearing on Plaintiff's Motion to Stay Proceedings was also calendared for November 30, 2023 at 9:00 a.m. (Doc. No. 13). It is likely that Plaintiff's Motion will become moot after this Court's ruling on Defendant's Motion to Dismiss because Plaintiff failed to adequately state a single claim in her Complaint.

As Plaintiff noted in her Motion, Prudential is aware of the Trustee's Claims against the Policy. Based upon such notice, Prudential has not and will not pay the Policy proceeds to Mrs. Hirsch. Prudential is holding the proceeds. It may interplead the funds or continue to hold the proceeds pending the resolution of this Adversary Proceeding.

For the reasons set forth below, this Court should deny Plaintiff's Motion to Stay Proceedings.

## II. LEGAL STANDARDS

A courts power to stay a proceeding is "incident to its power to control its own docket." Clinton v. Jones, 520 U.S. 681, 684, 117 S. Ct. 1636, 1639, 137 L.Ed.2d 945, 954 (1997); see also Landis v. N. Am. Co., 299 U.S. 248, 249, 57 S. Ct. 163, 163, 81 L.Ed. 153, 155 (1936). It is well established that "the party seeking a stay bears the burden of showing the stay is necessary." Mahendra Amin v. Nbcuniversal Media, LLC, No. 5:21-cv-56, 2022 U.S. Dist. LEXIS 238446, at \*2 (S.D. Ga. Apr. 19, 2022); see also Clinton, 520 U.S. at 708 ("The proponent of a stay bears the burden of establishing its need."); see also Landis, 299 U.S. at 249 ("The burden of making out the wisdom and justice of a stay in such cases lies heavily on him who seeks the stay."). "The suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward." FTC v. On Point Glob. LLC, Civil Action No. 19-25046-Civ, 2020 U.S. Dist. LEXIS 180255, at \*10 (S.D. Fla. Sep. 30, 2020) (citing Landis, 299 U.S. at 255).

In determining whether or not to grant a stay, courts consider: (1) whether discovery is complete and a trial date has been set; (2) whether a stay will simplify the issues in the case; and

(3) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant. Wonderland Nurserygoods Co. v. Kids II, Inc., No. 1:13-CV-01114-ELR, 2016 U.S. Dist. LEXIS 100585, at \*7 (N.D. Ga. Feb. 10, 2016). “The test is not mechanical, but rather must adapt to these varying conditions and the circumstances before the reviewing court.” On Point Glob. LLC, 2020 U.S. Dist. LEXIS 180255, at \*9.

### III. ARGUMENT

#### A. Plaintiff has failed to satisfy her initial burden of showing a stay of proceedings is necessary.

As stated above, the burden of showing that a stay is necessary lies heavily on the party seeking the stay. See Clinton, 520 U.S. at 708; see also Landis, 299 U.S. at 249. Plaintiff’s Motion fails to “make out a clear case of hardship or inequity in being required to go forward” with this Adversary Proceeding. On Point Glob. LLC, 2020 U.S. Dist. LEXIS 180255, at \*9 (citing Landis, 299 U.S. at 255).

In support of her request to stay the proceedings, Plaintiff vaguely alleges that “[t]he interpleader of the Policy proceeds is a core element and likely dispositive of some of the Plaintiff’s claims against Defendant.” *Motion* at 3. However, Plaintiff does not identify the claims on which “interpleader of the Policy proceeds” is a core element. *Motion* at 3. Defendant has reviewed the elements of the claims brought by Plaintiff has been unable to identify a single claim in which “the interpleader of the Policy proceeds is a core element.” *Motion* at 3.

Likewise, Plaintiff’s Motion fails to explain in what way the interpleader of the Policy proceeds by a third party would be “dispositive of some of Plaintiff’s claims against Defendant.” *Motion* at 3. Plaintiff did not identify a single claim or issue that would be resolved upon the interpleader of the Policy proceeds. None of the Plaintiff’s claims against Defendant are in any way dependent on the interpleader of the Policy proceeds by Prudential, a third party. If Plaintiff were to identify

such a claim against Defendant, that claim would be altogether improper. “A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” Texas v. United States, 523 U.S. 296, 300, 118 S. Ct. 1257, 1259, 140 L.Ed.2d 406, 410-11 (1998). Therefore, if any of the claims brought by Plaintiff are contingent upon the interpleader of the Policy proceeds by a third party (which may or may not occur), that claim is unripe and should not have been brought against Defendant in the first place.

Plaintiff also requests that the proceedings be stayed on the theory that “once the Policy proceeds are interpleaded into the Court’s registry, the issues and discovery needed to complete this case will be narrowed.” *Motion* at 3. Plaintiff does not expound upon how the “issues and discovery” will be narrowed. *Motion* at 3. Plaintiff merely makes conclusory statements without any factual allegations to support her claim.

The interpleader of the funds into this court will in no way narrow the issues in dispute, as none of the claims rely on or even relate to the interpleader of the funds. An interpleader is altogether irrelevant to the resolution of the claims brought by Plaintiff against Defendant. Whether the Policy proceeds are in the possession of Prudential or this Court will have no substantive impact on the Court’s ruling on the issues in this matter. Similarly, transferring the funds from Prudential to this Court will not narrow the scope of discovery. The property interests at issue in this case are the same regardless of who is in possession of the funds at the time of this Court’s ruling.

Next, Plaintiff supports her request for a stay of proceedings with the statement that “[t]he parties have been engaged in discussions in an attempt to determine whether they can reach an early resolution of this case.” *Motion* at 3. The parties in this case were unable to come to an agreement regarding the early resolution of some of Plaintiff’s claims in this case. The most

expeditious resolution of this case will result from promptly proceeding with Mrs. Hirsch's Motion to Dismiss. Defendant maintains that Plaintiff failed to state a claim against Defendant, and as a result, all of Plaintiff's claims must be dismissed. A ruling on the issue of whether Plaintiff properly stated a claim against defendant will be the most efficient resolution of this case. If Mrs. Hirsch's Motion to Dismiss is granted, then the case is resolved. If Mrs. Hirsch's Motion to Dismiss is granted only in part or not granted, then an interpleader may occur.

Finally, Plaintiff states that "there is no question that the bankruptcy estate will incur actual harm in the form of time and expense incurred to litigate this case if a stay is not granted." *Motion* at 5. This is another conclusory statement with no logical or factual support. Plaintiff and Defendant will be forced to incur time and expense to litigate this case regardless of whether the stay is granted. In fact, granting Plaintiff's Motion will only delay the resolution of this dispute and result in greater expense for all. A stay until the Policy proceeds have been interplead would in no way help resolve any of the claims at issue in this case or decrease expenses for either party. Additionally, discovery does not begin until Defendant files a responsive pleading. Defendant has not filed an answer in this case and is not required to do so until 14 days after a ruling on her Motion to Dismiss. F.R.C.P. 12(a)(4). As a result, Plaintiff cannot claim excess expenses from conducting broad discovery as a reason to stay the case and delay a ruling on Defendant's Motion to Dismiss. Discovery is already in effect stayed until this Court rules on Defendant's Motion to Dismiss.

Further, Plaintiff states that "[c]ourts have found litigation expense sufficient to demonstrate actual prejudice to justify a stay." *Motion* at 5. However, none of the cases cited by Plaintiff in support of this proposition state that litigation expense alone is sufficient to justify a stay. Rather, each of the three cases cited by Plaintiff list litigation expense as one factor considered in

determining whether to grant the stay. In fact, an 11<sup>th</sup> Circuit court has held that “[w]hile litigation expenses are a factor to be considered, litigation expenses alone do not justify a stay of the proceeding.” Whitaker v. ICC (In re Olympia Holding Corp.), 161 B.R. 524, 526, 7 Fla. L. Weekly Fed. D 577 (M.D. Fla. 1993).

All three of the cases cited for Plaintiff’s proposition that litigation expense alone is sufficient to justify a stay pertain to whether a court should grant a stay pending the decision of another court on a matter that would ““have a substantial or controlling effect on the claims and issues in the stayed case.” Rose v. Wells Fargo Advisors, LLC, No. 1:16-CV-562-CAP, 2016 U.S. Dist. LEXIS 85287, at \*2 (N.D. Ga. June 14, 2016) (citing Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist., 559 F.3d 1191, 1198 (11th Cir. 2009)). These cases are distinguishable from the case at hand. An interpleader will have no “controlling effect” on this adversary proceeding. Plaintiff cites no law for the proposition that this Court should stay the proceedings pending an interpleader that may or may not later occur. Likewise, Plaintiff has cited no law supporting the imposition of a stay on facts even remotely similar to those of the case at hand.

Plaintiff has failed to show any need whatsoever to stay the proceedings, much less “a clear case of hardship or inequity in being required to go forward.” On Point Glob. LLC, 2020 U.S. Dist. LEXIS 180255, at \*9. Plaintiff will suffer no detriment by continuing with the proceedings at this time. Plaintiff chose to file this Adversary Proceeding at the time she did. It would be inequitable to allow Plaintiff to drag out these proceedings, causing excess costs and emotional distress to Defendant without identifying a single comprehensible reason for such a delay.

B. Allowing a stay of this Adversary proceeding would prejudice Defendant.

Defendant has an “interest in effecting the prompt resolution of the present suit[.]” Gradco Corp. v. Blankenship (In re Blankenship), 408 B.R. 854, 860 (Bankr. N.D. Ala. 2009). Delaying

the resolution of this action will cause prolonged distress to the Defendant who is still grieving the loss of her husband. Here, Plaintiff's Motion "did not provide sufficient justification for delaying the prompt resolution of this case." Id.

Further, the stay requested by Plaintiff is for an indefinite amount of time. Other courts have refused to grant stays for an indefinite amount of time, stating "this court will not stay this case while it awaits rulings that may never come." Meyer v. Receivables Performance Mgmt., LLC, No. C12-2013RAJ, 2014 U.S. Dist. LEXIS 60246, at \*4 (W.D. Wash. Apr. 30, 2014). This Court should not stay the current proceedings while awaiting an interpleader that in and of itself is unnecessary and will not be determinative of this Adversary Proceeding.

C. Staying the current proceedings will not simplify the issues in this case.

As discussed above, the interpleader of the Policy proceeds into this Court's registry is wholly inconsequential to the issues of this case. Delaying the adjudication of the issues presented in Plaintiff's Complaint will in no way simplify or even affect the resolution of those issues. Plaintiff fails to explain how "[t]he entry of the Policy proceeds into the registry of the Court will likely extinguish or significantly curtail some of Plaintiff's claims in this matter." *Motion* at 6. Likewise, Plaintiff does not explain how the interpleader "will dictate the scope of the issues and discovery needed in this case and would streamline any trial." *Motion* at 6. Because Plaintiff alleges no facts or theory to support these statements, Plaintiff has failed to show that staying the proceedings would simplify the issues in this case.

IV. CONCLUSION

Plaintiff's Motion to Stay Proceedings is void of any factual support. Plaintiff has failed to meet her burden of showing that the stay is necessary and that she would be prejudiced if the stay were not to be granted.

WHEREFORE, Defendant prays for the following relief:

- (a) That this Court deny Plaintiff's Motion to Stay Proceedings; and
- (b) For such other and further relief as this Court deems just and proper.

Respectfully submitted this 13th day of November, 2023.

**JONES & WALDEN LLC**

/s/ Leon S. Jones

Leon S. Jones

Georgia Bar No. 003980

*Attorneys for Judith Hirsch*

699 Piedmont Avenue, NE

Atlanta, GA 30308

(404) 564-9300

ljones@joneswalden.com

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**CERTIFICATE OF SERVICE**

I certify that the foregoing, *Defendant's Response in Opposition to Plaintiff's Motion to Stay Proceedings*, was electronically filed using the Bankruptcy Court's Electronic Case Filing program which sends a notice of and an accompanying link to the filing to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

- **Natalie Rowland** nrowland@taylorenghish.com

This 13th day of November, 2023.

**JONES & WALDEN LLC**

*/s/ Leon S. Jones*

Leon S. Jones

Georgia Bar No. 003980

*Attorneys for Judith Hirsch*

699 Piedmont Avenue, NE

Atlanta, GA 30308

(404) 564-9300

[ljones@joneswalden.com](mailto:ljones@joneswalden.com)