

18-BK-E

Suggestions for Amendments to Official Bankruptcy Forms 101 A and 101 B

Debbie Lewis

to:

RulesCommittee

07/31/2018 03:49 PM

Cc:

Joe Falzone

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From: Debbie Lewis/FLSB/11/USCOURTS

To: RulesCommittee/DCA/AO/USCOURTS@USCOURTS

Cc: Joe Falzone/FLSB/11/USCOURTS@USCOURTS

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1 Attachment



in re Kelly 356 BR 899.pdf

To: Rebecca A. Womeldorf,
Secretary
Committee on Rules of Practice and Procedure

Hello,

I am submitting for consideration suggestions for amendments to following Official Bankruptcy Forms:

Official Form 101A "Initial Statement About an Eviction Judgment Against You" :

Suggestion: add an "other" box to allow the debtor to state that either no rent is due in next 30 days, or some other reason why funds will not be paid to the BANKRUPTCY clerk.

Official Form 101B Statement About Payment of an Eviction Judgment Against You :

Suggestion: add an "other" box to allow debtors citing opinions (for example: In Re Cheryl Kelley 356 BR 899, copy attached) to assert that under law they don't have to pay the delinquent amount.

Please contact me if you need further information regarding my suggestions.

Thank you.

Debbie Lewis
Legal Advisor, USBC, SDFL



Positive

As of: July 31, 2018 7:38 PM Z

In re Kelly

United States Bankruptcy Court for the Southern District of Florida, Miami Division

December 1, 2006, Decided

CASE NO. 06-15519-BKC-RAM, CHAPTER 7

Reporter

356 B.R. 899 *; 2006 Bankr. LEXIS 3484 **; Bankr. L. Rep. (CCH) P80,849; 20 Fla. L. Weekly Fed. B 141

In re: CHERYL KELLY, Debtor.

Core Terms

cure, prepetition, default, rent, public housing, requirements, eviction

Case Summary

Procedural Posture

Pending in a Chapter 7 matter was debtor's Motion to Extend Stay Pursuant to *11 U.S.C.S. § 362(b)(22)*.

Overview

The Motion was treated as a request for an Order finding that the stay relief exception in *11 U.S.C.S. § 362(b)(22)* was not applicable. It required interpretation of new stay relief provisions, i.e., *11 U.S.C.S. § 362(b)(22)*, and *§ 362(l)* as applied to a debtor whose tenancy rights were protected under [11 U.S.C.S. § 525\(a\)](#). Debtor prevailed since, as a public housing tenant, she was entitled to remain in her apartment under [11 U.S.C.S. § 525\(a\)](#) even if she discharged her prepetition rent default. The court concluded that [11 U.S.C.S. § 525\(a\)](#) eliminated the need for a public housing debtor to cure a prepetition default as a condition to rendering the stay exception in *11 U.S.C.S. § 362(b)(22)* inapplicable. If a public housing debtor did not have to cure prepetition defaults under *11 U.S.C.S. § 365*, that debtor should not be required to cure the defaults under *11 U.S.C.S. § 362(1)* to stop an eviction. [11 U.S.C.S. § 525\(a\)](#) allowed a Chapter 7 debtor to stay in her public housing unit even though prepetition rent arrearages were being discharged. The addition of *11 U.S.C.S. § 362(b)(22)* in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 did not change that result.

Outcome

Debtor's Motion was granted. The court stated that *11 U.S.C.S. § 362(b)(22)* shall not apply in the case provided that debtor continued to pay her postpetition monthly rent either into the court's registry or, by agreement with the Miami-Dade Housing Agency (MDHA), directly to MDHA.

LexisNexis® Headnotes

Bankruptcy Law > ... > Scope of Stay > Exceptions to Stay > General Overview

Scope of Stay, Exceptions to Stay

New *11 U.S.C.S. § 362(b)(22)* provides an exception to the automatic stay allowing a landlord to complete eviction proceedings on residential property leased to a debtor if the landlord obtained a judgment of eviction prior to the filing of the bankruptcy petition. The *§ 362(b)(22)* exception, however, will not apply if the debtor can comply with the requirements in *§ 362(1)*. Those requirements include the statements summarized as (1) applicable non-bankruptcy law allows for post-judgment cure; and (2) the debtor has deposited one month's rent. *11 U.S.C.S. § 362(l)(1)(A), (B)*. *Section 362(l)(2)* then requires a further certification that the debtor has cured the entire prepetition monetary default within 30 days of the filing date of the petition. If these conditions are met, the stay exception under *§ 362(b)(22)* will not apply, unless the landlord affirmatively objects to the debtor's certification under *§ 362(l)(1)* or *(1)(2)* and the court sustains the objection. *11 U.S.C.S. § 362(l)(3)*.

Bankruptcy Law > ... > Bankruptcy > Debtor Benefits & Duties > Protection Against

Discriminatory Treatment

 **Debtor Benefits & Duties, Protection Against Discriminatory Treatment**

A public housing tenant is entitled to remain in her apartment under [11 U.S.C.S. § 525\(a\)](#) even if she discharges, rather than cures her prepetition rent default.

Bankruptcy Law > ... > Scope of Stay > Exceptions to Stay > General Overview

Bankruptcy Law > ... > Bankruptcy > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

 **Scope of Stay, Exceptions to Stay**

[11 U.S.C.S. § 525\(a\)](#) eliminates the need for a public housing debtor to cure a prepetition default as a condition to rendering the stay exception in [11 U.S.C.S. § 362\(b\)\(22\)](#) inapplicable. This result is consistent with the pre-Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 cases analyzing the cure obligations in [11 U.S.C.S. § 365\(b\)\(1\)](#) in light of [11 U.S.C.S. § 525\(a\)](#). Those cases hold that [11 U.S.C.S. § 525\(a\)](#) trumps [11 U.S.C.S. § 365\(b\)\(1\)](#). That is, a public housing debtor's right to retain possession under [11 U.S.C.S. § 525\(a\)](#) after discharging the prepetition debt controls over the cure obligations in [11 U.S.C.S. § 365\(b\)\(1\)](#).

Bankruptcy Law > ... > Scope of Stay > Exceptions to Stay > General Overview

Bankruptcy Law > ... > Bankruptcy > Debtor Benefits & Duties > Protection Against Discriminatory Treatment

 **Scope of Stay, Exceptions to Stay**

If a public housing debtor does not have to cure prepetition defaults under [11 U.S.C.S. § 365](#), that same debtor should not be required to cure the defaults under [11 U.S.C.S. § 362\(l\)\(1\)](#) in order to stop an eviction. [11 U.S.C.S. § 525\(a\)](#) allows a Chapter 7 debtor to stay in his or her public housing unit even though prepetition rent arrearages are being discharged. The addition of [11 U.S.C.S. § 362\(b\)\(22\)](#) in the Bankruptcy Abuse

Prevention and Consumer Protection Act of 2005 does not change that result.

Counsel: **[**1]** For Debtor: Maura McCarthy Bulman, Esq., Miami, Florida.

For MDHA: Noel F. Johnson, Esq., CLYNE AND ASSOCIATES, P.A., Coral Gables, Florida.

Drew M. Dillworth, Chapter 7 Trustee, Miami, Florida.

Judges: Robert A. Mark, Judge.

Opinion by: Robert A. Mark

Opinion

[*900] ORDER FINDING THAT THE EXCEPTION TO STAY IN § 362(b)(22) DOES NOT APPLY TO DEBTOR

The Court conducted a hearing on November 28, 2006, on Debtor's Motion to Extend Stay Pursuant to [11 U.S.C. § 362\(b\)\(22\)](#) (the "Motion")¹ (CP# 17). The Court finds as follows:

A. The Debtor resides in public housing owned and operated by the Miami-Dade Housing Agency ("MDHA").

B. MDHA obtained a Final Judgment of Eviction in state court on October 12, 2006.

C. The Debtor filed a Chapter 7 petition on October 30, 2006. The Debtor **[**2]** properly checked the box on the Petition indicating that MDHA obtained a prepetition eviction judgment against the Debtor.

D. The Debtor also checked the two boxes on the Petition which relate to the requirements in [11 U.S.C. § 362\(l\)\(1\)](#), namely the boxes next to the following statements:

"Debtor claims that under non-bankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

¹Although titled a Motion to Extend Stay Pursuant to [§ 362\(b\)\(22\)](#), the Court is treating the Motion as a request for an Order finding that the stay relief exception in [§ 362\(b\)\(22\)](#) is not applicable in this case.

"Debtor has included in this petition the deposit with the Court of any rent that would become due during the 30-day period after the filing of the petition."

E. The Debtor also stated in the Petition that "Debtor is discharging debt of rent owed to a public housing authority and will retain possession of her unit pursuant to [11 U.S.C. § 525\(a\)](#)."

[*901] F. Consistent with her statement in the Petition, the Debtor deposited one month's rent with the Clerk of this Court.

G. MDHA did not file a response to the Motion to Extend Stay nor did it appear at the November 28th hearing.

Discussion

[3]** Since [11 U.S.C. § 362\(b\)\(22\)](#) and [§ 362\(l\)\(1\)](#) are new provisions in the Bankruptcy Code added as part of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Since the Motion before the Court requires interpretation of these new stay relief provisions as applied to a debtor whose tenancy rights are protected under [§ 525\(a\) of the Bankruptcy Code](#), a brief discussion is appropriate even though the Debtor's Motion was unopposed.

[↑] New [§ 362\(b\)\(22\)](#) provides an exception to the automatic stay allowing a landlord to complete eviction proceedings on residential property leased to a debtor if the landlord obtained a judgment of eviction prior to the filing of the bankruptcy petition.

The [362\(b\)\(22\)](#) exception, however, will not apply if the debtor can comply with the requirements in [§ 362\(l\)\(1\)](#). Those requirements include the statements referred to earlier in the Debtor's petition in this case, summarized as (1) applicable non-bankruptcy law allows for post-judgment cure; and (2) the debtor has deposited one month's rent. See [§ 362\(l\)\(1\)\(A\)](#) and [\(B\)](#). [Section 362\(l\)\(2\)](#) then requires a further certification **[**4]** that the debtor has cured the entire prepetition monetary default within 30 days of the filing date of the petition. If these conditions are met, the stay exception under [§ 362\(b\)\(22\)](#) will *not* apply, unless the landlord affirmatively objects to the debtor's certification under [§ 362\(l\)\(1\)](#) or [\(l\)\(2\)](#) and the court sustains the objection. See [§ 362\(l\)\(3\)](#).

The Debtor in this case is not arguing that she has the right to cure her prepetition monetary default under Florida law *after* the eviction judgment was entered. Whether such a right may exist is not addressed in this

Order since the Debtor did not fulfill the requirement in [§ 362\(l\)\(2\)](#) of curing the prepetition default within 30 days of the petition date. Thus, it appears at first blush that the Debtor has *not* met the requirements in [§ 362\(l\)\(1\)](#) and the [§ 362\(b\)\(22\)](#) exception should apply.

On further analysis, however, the Debtor prevails since, as **[↑]** a public housing tenant, she is entitled to remain in her apartment under [§ 525\(a\)](#) even if she discharges, rather than cures her prepetition rent default. See [Stoltz v. Brattleboro Housing Auth. \(In re Stoltz\), 315 F.3d 80 \(2d Cir. 2002\)](#); [In re Curry, 148 B.R. 966 \(S.D.Fla. 1992\)](#); **[**5]** [In re Batista, 2005 Bankr. Lexis 1732 \(Bankr. S.D.Fla. 2005\)](#).

This Court has not found any published decisions discussing the interplay of [§§ 362\(b\)\(22\)](#), [362\(l\)\(1\)](#) and [525\(a\)](#). Nevertheless, the Court concludes that **[↑]** [§ 525\(a\)](#) eliminates the need for a public housing debtor to cure a prepetition default as a condition to rendering the stay exception in [§ 362\(b\)\(22\)](#) inapplicable. This result is consistent with the pre-BAPCPA cases analyzing the cure obligations in [§ 365\(b\)\(1\)](#) in light of [§ 525\(a\)](#). Those cases hold that [§ 525\(a\)](#) trumps [§ 365\(b\)\(1\)](#). That is, a public housing debtor's right to retain possession under [§ 525\(a\)](#) after discharging the prepetition debt controls over the cure obligations in [§ 365\(b\)\(1\)](#). [Stoltz, 315 F.3d at 93](#); [Curry, 148 B.R. at 972](#).

[↑] If a public housing debtor does not have to cure prepetition defaults under [§ 365](#), that same debtor should not be required to cure the defaults under [§ 362\(l\)\(1\)](#) in order to stop an eviction. [Section 525\(a\)](#) allows a Chapter 7 debtor to stay in his or her public housing unit even though prepetition **[*902]** rent arrearages are being discharged. This Court holds that the addition of **[**6]** [§ 362\(b\)\(22\)](#) *in BAPCPA* does not change that result.

Therefore, it is -

ORDERED as follows:

1. The Motion is granted.
2. [Section 362\(b\)\(22\)](#) shall not apply in this case provided that the Debtor continues to pay her postpetition monthly rent either into the Court's registry or, by agreement with MDHA, directly to MDHA.

ORDERED in the Southern District of Florida on December 01, 2006.

Robert A. Mark, Judge

United States Bankruptcy Court

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