

STATE OF MAINE  
CUMBERLAND, SS

SUPERIOR COURT  
CIVIL ACTION  
Docket No. PORSC-CV-17-0113

JOHN CAVANAUGH )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 VALERIE DAVIS and )  
 WICCAGOOD WELLNESS, LLC )  
 )  
 Defendants )

STATE OF MAINE  
Cumberland, ss. Clerk's Office  
JUL 03 2017  
8:25 a.m.  
RECEIVED

**ORDER ON PLAINTIFF'S MOTION TO TERMINATE STAY**

Plaintiff John Cavanaugh has filed a Supplement to Suggestion of Bankruptcy and Motion to Terminate Stay Order As It Applies to Plaintiff's Complaint. The Motion seeks to modify the May 1, 2017 Stay Order to allow Plaintiff to pursue the claim in his Complaint, while maintaining the stay as to Defendant's Counterclaim. Defendant opposes the Motion. The court elects to decide the Motion without hearing.

The question raised by the Motion to Terminate is whether Plaintiff has standing to pursue the claims against Defendant set forth in his Complaint. The weight of authority appears to be that, although a chapter 7 bankruptcy debtor lacks standing to pursue pre-petition claims against third parties, a chapter 13 bankruptcy debtor has concurrent standing with the bankruptcy trustee to pursue claims against third parties. *See, e.g., Bennett v. Flagstar Bank*, 2011 U.S. Dist. LEXIS 141066 \*4-7, 2011 WL 6152940; *Chaput v. Scafidi*, 2017 V.I. LEXIS 87 (V.I. Super. Ct., St. Croix Div.); *West v. Young*, 38 Misc. 3d 1030, 1033-36 (N.Y. Supr., Westch. Cty. 2013).

Because a chapter 13 debtor's standing to pursue claims against third parties is concurrent with that of the trustee, as long as the chapter 13 trustee is not pursuing Plaintiff's claim against Defendant, then the Plaintiff may pursue the claims here. The present record is

silent on the trustee's intention regarding the Plaintiff's claims against Defendant, so this court will defer acting on the Motion to Terminate until the trustee's position on pursuing Plaintiff's claims against Defendant is made a matter of record in this case. Either party may make a supplemental filing within 30 days of this order. If no such filing is received, the Motion to Terminate will be dismissed after 30 days.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Order by reference in the docket.

Dated July 3, 2017

A handwritten signature in cursive script, appearing to read "A. M. Horton", is written above a horizontal line.

A. M. Horton, Justice

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