

ORDERED.

Dated: February 09, 2026



Grace E. Robson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Cody Scott Moses,)	Case No. 6:25-bk-07332-GER
)	Chapter 13
Debtor.)	
_____)	

ORDER ON MOTION FOR RELIEF FROM STAY

THIS CASE came before the Court on January 21, 2026 at 9:30 a.m. (the “Hearing”) upon the *Motion for Relief from Stay* (the “Stay Relief Motion”) (Doc. No. 26) filed by Stanlee Smith (“Landlord”) and Stoza, Inc. (“Owner”) (collectively, “Movants”). The Court, having reviewed the Stay Relief Motion and the record, and having considered the arguments of the parties at the Hearing, **FINDS, ORDERS, AND ADJUDGES** as follows:

BACKGROUND

Debtor Cody Scott Moses (“Mr. Moses”) resides at 1313 E 24th St., Sanford, FL 32771 (the “Property”). In May 2025, Mr. Moses and Landlord entered into a residential lease (the “Lease”)¹ for the Property. The term of the Lease is May 10, 2025 through May 30, 2026, and monthly rent is

¹ The Lease is attached to the Stay Relief Motion as an exhibit. See Doc. No. 26-1 at 3-5.

\$2,190. On August 28, 2025, Landlord commenced an eviction proceeding (the “Eviction Action”)² against Mr. Moses in the County Court in and for Seminole County, Florida (the “State Court”), asserting Mr. Moses failed to pay rent due August 1, 2025. A summons was served on Mr. Moses on August 29, 2025,³ which gave Mr. Moses “five (5) days (not including Saturday, Sunday, or any legal holiday)”⁴ to respond. Mr. Moses filed an Answer⁵ and a Motion to Dismiss and Determine Rent⁶ on September 8, 2025. The State Court did not enter default against Mr. Moses because the Answer was filed.⁷ A hearing on the Motion to Dismiss and Determine Rent was scheduled for November 13, 2025.⁸ On November 12, 2025 (the “Petition Date”), Mr. Moses filed this bankruptcy case⁹ and filed a suggestion of bankruptcy in the Eviction Action;¹⁰ that same day, Landlord filed a response¹¹ to the Motion to Dismiss and Determine Rent in the Eviction Action. The Stay Relief Motion alleges rent is unpaid in the total amount of \$10,950, which is presumably for the months of August 2025 through December 2025.

At the outset of this case, Mr. Moses was provided a copy of the Court’s *Administrative Order Prescribing Procedures for Chapter 13 Cases Filed on or After October 1, 2025* (the “Admin Order”) (Doc. No. 2), which prescribes procedures with respect to Chapter 13 cases. Applicable here, the

² *Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. filed Aug. 28, 2025). A court may take judicial notice on its own or upon a party’s request at any stage of a proceeding of a fact that is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201. Accordingly, the Court takes judicial notice of the case record and docket of the Eviction Action.

³ *See Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Sep. 3, 2025), Doc. No. 4.

⁴ *Eviction Summons/Residential, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Aug. 28, 2025), Doc. No. 2.

⁵ *Answer to Complaint for Tenant Eviction, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Sep. 8, 2025), Doc. No. 6 (the “Answer”).

⁶ *Motion to Dismiss Complaint and Motion to Determine Rent, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Sep. 8, 2025), Doc. No. 7 (the “Motion to Dismiss and Determine Rent”).

⁷ *Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Sep. 29, 2025), Doc. No. 9.

⁸ *Notice of Hearing, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Oct. 9, 2025), Doc. No. 11.

⁹ *See* Doc. No. 1.

¹⁰ *Notice of Automatic Stay Pursuant to 11 U.S.C. §362, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Nov. 12, 2025), Doc. No. 14.

¹¹ *Response in Opposition to Defendant’s Motion to Dismiss, Smith v. Moses*, No. 59-2025-CC-004957 (Fla. Seminole Cnty. Ct. Nov. 12, 2025), Doc. No. 15.

Admin Order reinforces the requirement in the Bankruptcy Code¹² that debtors are to commence making plan payments no later than 30 days after the petition is filed.¹³ As a condition of a debtor's continued possession or use of real property pending confirmation of a plan, debtors are required to, among other things, make timely "adequate protection" payments to the Chapter 13 Trustee ("Trustee") in an amount equal to the regular monthly contractual payment,¹⁴ as well as provide for the "prompt cure" of any lease arrearages.¹⁵ On January 5, 2026, Trustee filed a motion to dismiss¹⁶ as Mr. Moses failed to make any payments under his plan.¹⁷ Trustee also filed a notice of non-compliance,¹⁸ indicating Trustee had not received any plan payments as of February 2, 2026.

DISCUSSION

Pursuant to § 362, the filing of a bankruptcy petition stays a variety of creditor actions against the debtor, the debtor's property, and property of the estate.¹⁹ However, the bankruptcy court shall grant relief from the automatic stay for "cause, including the lack of adequate protection of an interest in property of [a party moving for stay relief],"²⁰ or if the debtor does not have equity in the property and the property is not necessary for an effective reorganization.²¹ The movant has the burden of proof on the issue of the debtor's equity in the property and the debtor has the burden of proof on all other issues concerning relief from the stay.²² While the movant has the initial

¹² Unless otherwise specified, all section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

¹³ Admin Order ¶ 4; *see also* 11 U.S.C. § 1326(a)(1) (requiring debtors to "commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier").

¹⁴ The Court notes that the Lease provides for monthly rent payments of \$2,190; however, Mr. Moses argued in the State Court that rent was reduced to \$1,800 a month. The Court finds that determining the appropriate monthly rent is unnecessary to the Court's decision in this Order.

¹⁵ Admin Order ¶¶ 6(C), 8, 9.

¹⁶ *Motion to Dismiss for Failure to Maintain Timely Plan Payments* ("Trustee's Motion to Dismiss") (Doc. No. 29).

¹⁷ Mr. Moses' *Chapter 13 Plan* (the "Plan") (Doc. No. 21) requires payments of \$2,255 per month.

¹⁸ *Notice of Debtor's Non-Compliance* ("Trustee's Notice of Non-Compliance") (Doc. No. 33).

¹⁹ 11 U.S.C. § 362(a).

²⁰ 11 U.S.C. § 362(d)(1).

²¹ 11 U.S.C. § 362(d)(2).

²² *See* 11 U.S.C. § 362(g).

burden to show “cause” exists, “[t]he party opposing the stay relief has the ultimate burden of disproving the existence of ‘cause.’”²³

A. Mr. Moses Has a Possessory Interest as of Petition Date

Mr. Moses does not own the Property and therefore has no equity in it; however, Mr. Moses would need the Property for an effective reorganization. Movants²⁴ argue that Mr. Moses has no interest in the Property that is protected by § 362(a)(3) because he “no longer has any claim to a possessory right in the Property” pursuant to section 83.60(2) of the Florida Statutes based on his alleged failure to timely respond to the eviction complaint. First, the Court finds that Mr. Moses did timely respond in the Eviction Action by filing the Motion to Dismiss and Determine Rent on September 8, 2025.²⁵ Second, the Court is not persuaded by Movants’ argument that a tenant loses the right to retain possession by failing to timely respond²⁶ as courts have often held that a tenant loses their right to retain possession only after a writ of possession has issued.²⁷

²³ *Builders Ins. Grp., Inc. v. R.J. Groover Constr., LLC (In re R.J. Groover Constr., LLC)*, 411 B.R. 473, 477 (Bankr. S.D. Ga. 2008) (citing 11 U.S.C. § 362(g)(2)).

²⁴ In the Eviction Action, Mr. Moses argued that Landlord does not have standing and that the Eviction Action should be dismissed. As part of this Order, the Court is not making a determination as to whether Landlord and/or Owner is the appropriate party in the Eviction Action; rather, the Court finds Movants are parties in interest with standing for purposes of § 362(d). While standing is a prerequisite to seeking stay relief, “a motion to lift the stay is not a proceeding for determining the merits of the underlying substantive claims, defenses, or counterclaims.” *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994). “Rather, it is analogous to a preliminary injunction hearing, requiring a speedy and necessarily cursory determination of the reasonable likelihood that a creditor has a legitimate claim or lien as to a debtor’s property.” *Id.*

²⁵ Movants argue that the five-day response period ended September 2, 2025. However, under Florida law, “[w]hen the period stated in days is less than 7 days, Saturdays, Sundays, and legal holidays are not counted.” Fla. R. Gen. Prac. & Jud. Admin. 2.514(a)(2); accord Fla. R. Civ. P. 1.090(a) (“Computation of time shall be governed by Florida Rule of General Practice and Judicial Administration 2.514.”).

²⁶ While Movants cite the *Order Striking Official Form 101A* entered in *In re Perez*, No. 6:23-bk-05260-TPG (Bankr. M.D. Fla. filed Dec. 14, 2023), the Court finds that order to be unavailing as in that case the landlord had obtained a judgment for possession. *Order Striking Official Form 101A, In re Perez*, No. 6:23-bk-05260-TPG (Bankr. M.D. Fla. Dec. 18, 2023), Doc. No. 12.

²⁷ While some cases have provided that a tenant loses their right to retain possession at the *entry of a judgment of possession*, the majority of cases hold that, at a minimum, *a writ of possession must have issued*. See, e.g., *In re Tyler*, No. 04-50505-BKC-RBR, 2004 WL 3199340, at *2 (Bankr. S.D. Fla. Oct. 26, 2004) (“Florida case law is clear that the earliest a tenant loses the right to retain possession is at the entry of a judgment of possession.” (first citing *Ross v. Metropolitan Dade County (In re Ross)*, 142 B.R. 1013, 1016 (S.D. Fla. 1992); then citing *In re Atkins*, 237 B.R. 816, 819 (Bankr. M.D. Fla. 1999); then citing *In re Hobbs*, 221 B.R. 892, 894 (Bankr. M.D. Fla. 1997); and then citing *In re Wimberly*, No. 95-14612-BKC-RAM, 1996 Bankr. LEXIS 1923, at *3-4 (Bankr. S.D. Fla. Mar. 11, 1996)); *In*

Because the Court finds that Mr. Moses has a possessory right in the Property under Florida law, Movants are not entitled to relief from the automatic stay based on this argument.

B. Mr. Moses Is Unable to Assume the Lease

In a Chapter 13 case, an unexpired lease of residential property may be assumed or rejected by the debtor in a plan,²⁸ or by the trustee²⁹ prior to confirmation of a plan.³⁰ “Assumption of a residential lease in a chapter 13 bankruptcy requires prompt cure of any default and adequate assurance of future performance.”³¹

i. Plan Does Not Provide for a Prompt Cure

Whether a cure is “prompt” depends on the facts and circumstances of the case.³² Courts consider, among other things, a debtor’s past financial performance and the remaining term of the lease.³³ While “[t]here is no definition of ‘prompt’ in the bankruptcy code,” “[l]ogic dictates . . . that any rent arrearage and the lessor’s collection costs must be paid prior to the renewal date of the lease.”³⁴

re Hobbs, 221 B.R. at 894 (“Until the writ of possession is executed and the tenant is removed from the premises, a tenant whether involved in a bankruptcy case or not has a right to retain possession of her leased housing.” (citing *In re Ross*, 142 B.R. at 1016-17)); *In re Atkins*, 237 B.R. at 819 (“It is unclear whether a judgment of possession is merely a stage in the termination process or whether the process may be considered complete without execution of a writ of possession.” (citing *In re Ross*, 142 B.R. at 1015-16)); *In re Wimberly*, 1996 Bankr. LEXIS 1923, at *3-4 (holding that debtor retains the right to assume and cure a residential lease until the writ of possession is executed); *In re Williams*, 139 B.R. 759, 760 (Bankr. M.D. Fla. 1992) (finding that a lease was terminated under state law before the petition was filed when a judgment for eviction had been entered and a writ of possession had issued).

²⁸ 11 U.S.C. § 1322(b)(7).

²⁹ See *Microf LLC v. Cumbess (In re Cumbess)*, 960 F.3d 1325, 1332-34 (11th Cir. 2020) (recognizing that in the context of § 365, “debtor” and “trustee” are not interchangeable). While some courts have found that a Chapter 13 debtor may assume or reject pursuant to § 365, see *In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. 2019), binding Eleventh Circuit precedent of *In re Cumbess* holds otherwise.

³⁰ 11 U.S.C. § 365(d)(2).

³¹ *In re Cicco*, No. 24-10708-JCO, 2024 WL 4394505, at *2 (Bankr. S.D. Ala. Oct. 3, 2024) (first citing 11 U.S.C. § 365(b)(1); and then citing *In re Morgan*, 181 B.R. 579, 587 (Bankr. N.D. Ala. 1994)).

³² *Id.* (citing *In re Uniq Shoes Corp.*, 316 B.R. 748 (Bankr. S.D. Fla. 2004)).

³³ *Id.* (citing *In re Uniq Shoes Corp.*, 316 B.R. 748).

³⁴ *In re Morgan*, 181 B.R. at 587; accord *In re Cicco*, 2024 WL 4394505, at *2 (“Alabama bankruptcy courts have noted that, ‘prompt,’ as it relates to curing defaults in residential leases, is six months or the time remaining on the unexpired lease, whichever is less.” (citing *In re Trusty*, 189 B.R. 977, 983 (Bankr. N.D. Ala. 1995))). “The courts have consistently held that a proposed cure over a period of two years or more was not ‘prompt’ for purposes of § 365(b)(1).” *In re DiCamillo*, 206 B.R. 64, 72 (Bankr. D.N.J. 1997) (first citing *In re Flugel*, 197 B.R. 92, 97 (Bankr.

Therefore, if Mr. Moses provides a “prompt” cure of the pre-petition default and adequate assurance of future performance under § 365, the Lease can be assumed. Mr. Moses’ Plan provides for the assumption of the Lease³⁵ with cure of the pre-petition default to be paid over a thirty-six month period of time.³⁶ While the Court sympathizes with the financial position Mr. Moses is in, because the proposed cure payments would extend thirty months beyond the remaining term of the Lease,³⁷ the Court finds the repayment proposed in the Plan is not a “prompt cure” for purposes of § 365.

ii. Movants’ Interests Are Not Adequately Protected

In addition, Mr. Moses has not demonstrated the ability to provide adequate assurance of future performance. Mr. Moses’ Schedule I³⁸ reflects monthly income of \$3,700 and his Schedule J³⁹ reflects expenses exceeding the income, resulting in a net monthly income of *negative* \$360.⁴⁰ Based on Schedules I and J, after paying his monthly expenses, Mr. Moses has no disposable income available to make plan payments.

Assuming all facts as presented by Mr. Moses are true, after considering Mr. Moses’ schedules, as well as his failure to timely make plan payments in this case,⁴¹ the Court finds Mr. Moses’ Plan does not provide for a prompt cure of the Lease and Mr. Moses is unable to provide

S.D. Cal. 1996); then citing *In re Embers 86th St., Inc.*, 184 B.R. 892, 901-02 (Bankr. S.D.N.Y. 1995); then citing *In re Liggins*, 145 B.R. 227 (Bankr. E.D. Va. 1992); then citing *In re Lloyd*, No. 92-12508S, 1992 WL 167047 (Bankr. E.D. Pa. July 6, 1992); and then citing *In re Yokley*, 99 B.R. 394 (Bankr. M.D. Tenn. 1989)).

³⁵ Plan at 4.

³⁶ While the Plan provides that the arrearage is only \$2,055, Mr. Moses’ schedules, filed on the same date as the Plan, provide that Mr. Moses owes \$7,200. *See* Plan at 4; Doc. No. 20 at 13. Movants’ Stay Relief Motion asserts Mr. Moses owes “at least \$10,950.00 in unpaid amounts due under the Lease.” Stay Relief Motion ¶ 13.

³⁷ As noted above, the Lease term expires on May 30, 2026.

³⁸ Doc. No. 20 at 17-18.

³⁹ Doc. No. 20 at 19-21.

⁴⁰ Doc. No. 20 at 21. Mr. Moses lists rent expense at \$1,800 per month and not the \$2,190 stated in the Lease. As noted above, the Court will not make a determination on what the rent amount should be and for purposes of this Order uses the amounts listed in Schedule J. *See supra* note 14.

⁴¹ *See* Trustee’s Motion to Dismiss; Trustee’s Notice of Non-Compliance.

adequate assurance of future performance. As a result, Mr. Moses does not meet the requirements to assume the Lease under § 365.⁴²

Mr. Moses has not met his burden to demonstrate Movants are adequately protected. Specifically, Mr. Moses did not deny his failure to make payments on the debt, and that failure constitutes a lack of adequate protection.⁴³ The lack of adequate protection alone is sufficient “cause” to lift the automatic stay under § 362(d)(1). Because Mr. Moses is unable to assume the Lease for the reasons discussed above, the Court finds that cause exists to grant relief from the automatic stay to allow Movants to pursue their rights in State Court regarding the Property.⁴⁴

Accordingly, it is **ORDERED**:

1. The Stay Relief Motion (Doc. No. 26) is **GRANTED IN PART** as set forth herein.
2. The automatic stay is modified for the sole purpose of allowing Movants to complete *in rem* relief, to take any and all steps necessary to exercise any and all rights it may have in the Property, to gain possession of the Property, including setting off against any deposit, but Movants shall not obtain *in personam* relief against Mr. Moses.
3. The request to waive the fourteen-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(4) is denied.

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Attorney Andrew S. Ballentine is directed to serve a copy of this Order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of the Order.

⁴² See *Crawford Square Cmty. v. Turner (In re Turner)*, 326 B.R. 563, 577-78 (Bankr. W.D. Pa. 2005) (recognizing debtor had no ability to promptly cure and therefore could not comply with the requirements of § 365).

⁴³ See *In re Harris*, No. 25-01987-TOM-11, 2025 WL 2682214, at *5-6 (Bankr. N.D. Ala. Sep. 18, 2025) (“To be sure, the failure to make mortgage payments constitutes ‘cause’ for relief from the automatic stay and is one of the best examples of a ‘lack of adequate protection’ under Section 362(d)(1) of the Bankruptcy Code.” (quoting *In re Schuessler*, 386 B.R. 458, 480 (Bankr. S.D.N.Y. 2008))).

⁴⁴ See *In re Turner*, 326 B.R. 563.