



Order Filed on July 3, 2025
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In Re:

DYLAN J. HAAS,

Debtor.

Case No.: 22-14473

Chapter: 13

Judge: John K. Sherwood

**DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

The relief on the following pages, numbered two (2) through eight (8), is hereby
ORDERED.

DATED: July 3, 2025

A handwritten signature in dark ink, appearing to read "J K Sherwood", written over a horizontal line.

Honorable John K. Sherwood
United States Bankruptcy Court

Page 2

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

INTRODUCTION

Since this Chapter 13 case was filed over three years ago, the plan was for Dylan J. Haas (the “Debtor” or “Mr. Haas”) to sell his home, pay creditors and hopefully preserve some equity for his future living expenses. Mr. Haas suffered a brain injury and has cognitive problems that make selling his home more difficult and time consuming than the normal case. The Court and the parties have been aware of this situation since the outset and have given Mr. Haas time to consummate a sale. Now, with a sheriff’s sale on the horizon, the Debtor’s attorney seeks the appointment of a guardian ad litem to aid the sale process. The Court is not convinced that a guardian ad litem will solve the Debtor’s problems. But it is not adverse to appointing a limited guardian if one can be identified that is willing to serve. Though the Court is not inclined at this time to reimpose the automatic stay, it will keep an open mind to the extent that the Debtor makes material progress towards a sale over the next two months.

FACTS AND PROCERURAL HISTORY

The Debtor owns real property at 31 Hamilton Rd., Morristown, NJ 07960 (the “Property”). M&T Bank filed a proof of claim secured by the Property for \$809,450.01, with post-petition arrears of \$98,806.84. [Claim No. 4-1; ECF No. 50]. The Debtor’s Chapter 13 case was filed on June 4, 2022. To date, six Chapter 13 Plans have been filed. The Debtor’s Second Modified Plan called for sale of the Property by December 31, 2023. [ECF No. 30]. Subsequent confirmed Plans proposed sales of the Property by May 31, 2024 [ECF No. 52], and then January 23, 2025 (or the case would be dismissed) [ECF No. 79]. The Debtor failed to sell the Property by January 23, 2025, and the Court granted M&T Bank’s motion for relief from the automatic stay on February

Page 3

Debtor: DYLAN J. HAAS

Case No.: 22-14473

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GUARDIAN AND RELATED MATTERS**

6, 2025, but stayed the order for forty-five days. [ECF No. 89]. On May 7, 2025, the Debtor filed his Third Amended Plan Post-Confirmation which calls for a sale of the Property “as soon as practicable.” [ECF No. 92].

The matters before the Court on June 26, 2025 were: the Motion of Debtor's Attorney to Appoint a Guardian Ad Litem or (in the alternative) to Withdraw as Counsel [ECF No. 98], confirmation of the Debtor's Third Amended Plan Post-Confirmation [ECF No. 92], and the Chapter 13 Trustee's Certification of Default which sought dismissal of the Debtor's case because the Property had not been sold by the latest Court imposed deadline. [ECF No. 48]. On or about June 20, 2025, Debtor's attorney contacted the Court indicating that Mr. Haas wanted to attend the hearings in person and requested certain accommodations due to the Debtor's health and cognitive problems. The Court substantially complied with these requests.

At the hearing, Mr. Haas addressed the Court. His speech was very deliberate, but he understood that his objective was to sell his house and preserve the equity for his future living expenses and for charitable purposes. Though Mr. Haas knows his objectives, he candidly admitted that his cognitive disability prevents him from accomplishing day to day tasks necessary to carry out the private sale of the Property - such as clean-up, repairs, and meetings with brokers and buyers. When asked whether he would allow the entire decision-making process concerning the sale of the Property to be delegated to a guardian ad litem, he opposed the idea. It appears that Mr. Haas wants a trusted assistant to help keep him on track with the tasks that a home seller must accomplish to move the sale from contract to closing.

Page 4

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

Mr. Haas was critical of the Chapter 13 Trustee and the Bankruptcy Clerk's Office because they had not accommodated his disability and health issues. Thus, he claims that he was denied the opportunity to meet with the Chapter 13 Trustee's counsel in person and appear in Court to explain his health situation. From the Court's perspective, this criticism was unjustified. Mr. Haas was represented by counsel who, early in the case, filed a motion to allow the Chapter 13 Trustee to conduct the Debtor's 341(a) meeting by written questions. [ECF No. 25]. The Chapter 13 Trustee did not oppose the motion and accommodated the request. Thus, it was Mr. Haas (through his attorney) who was seeking to be excused from meeting with the Chapter 13 Trustee because of his disability. As to Court appearances, the June 26, 2025 hearing was the first time to the Court's knowledge that Debtor's counsel insisted that Mr. Haas appear in-person. Prior to that, over the three years of this case, Debtor's counsel relied on his arguments and certifications of Mr. Haas that sought more time to consummate the sale of the Property because of the Debtor's disability. Extraordinary extensions of time were granted based on counsel's uncontroverted statements about Mr. Haas's cognitive issues.

It appears that Debtor's counsel was right to try to shield Mr. Haas from formal legal proceedings that are sometimes stressful. At the end of the June 26, 2025 hearing, the Debtor had elevated blood pressure that required paramedic assistance and was transported to the Veterans Hospital in East Orange, New Jersey. (Mr. Haas appeared to be in better condition when he left the Courtroom – hopefully this is still the case).

According to the Morris County Sheriff's website and M&T Bank's counsel, the sheriff's sale of the Property is scheduled for September 4, 2025. The Debtor still has approximately two months to finalize a private sale of the Property before it is sold at the sheriff's sale.

Page 5

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

ANALYSIS

This case has been before the Court since June 4, 2022 and has always contemplated a sale of the Property. Mr. Haas appears to be an honest person whose current financial difficulties are the result of his tragic brain injury. The Court gave the Debtor numerous extensions after failing to comply with sale deadlines that he proposed because of his cognitive disabilities. The extensions the Court has given to the Debtor in this case were much longer than a typical Chapter 13 case because the Court was sympathetic to the Debtor's unique circumstances. The Court is not inclined to reinstate the automatic stay as to M&T Bank based on the current record. If substantial progress is made towards a private sale over the next two months, the Court may reconsider its position. Substantial arrearages to M&T Bank have accrued on the Debtor's loan since the inception of this case and the mortgage lender has been held at bay for three years now.

The Court sees no harm in confirming the Debtor's Third Amended Plan Post-Confirmation and denying the Chapter 13 Trustee's request to dismiss the case. The Debtor should be allowed to continue to try to finalize a private sale before the sheriff's sale. The Order granting M&T Bank's motion for relief from the automatic stay was entered subject to the Debtor's right to present a sale agreement that might constitute cause to reimpose the automatic stay.

The Debtor requests that the Court appoint a guardian ad litem to ensure due process for the Debtor and assist with the sale of the Property. [ECF No. 98]. Under Federal Bankruptcy Rule 1004.1(b), if a debtor is incompetent and does not have a representative, "the court must appoint a guardian ad litem or issue any other order needed to protect the interests of the . . . debtor." Under Federal Bankruptcy Rule 1016, if a Chapter 13 debtor is incompetent, the case can be dismissed,

Page 6

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

or it may proceed if further administration is possible and in the best interests of the parties. A bankruptcy court has the power to appoint a guardian ad litem to facilitate a pending bankruptcy case. *See In re Brown*, 645 B.R. 524, 530 (Bankr. D.S.C. 2022). Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define the term "incompetent." Therefore, bankruptcy courts look to state law. *In re Rivas*, 656 B.R. 898, 900-901 (Bankr. E.D. Mo. 2023).

New Jersey law no longer uses the term "incompetent" and instead uses "incapacitated individual." N.J.S.A. § 3B:1-2 defines an incapacitated individual as "an individual who is impaired by reason of mental illness or intellectual disability to the extent that the individual lacks sufficient capacity to govern himself and manage the individual's affairs." New Jersey Court Rule 4:26-2(b)(2) allows the court to appoint a guardian ad litem for an "alleged mentally incapacitated person." An application for an adjudication of incompetency must be supported by affidavits from either two physicians or one physician and one licensed practicing psychologist finding incapacity. N.J. Ct. R. 4:86-2(b). When appointing a guardian, "the court should consider the recommendations of the court-appointed attorney and the wishes of the incapacitated person, if expressed. A person who is incapacitated may nonetheless still be able to express an intelligent view as to his choice of guardian, which view is entitled to consideration by the court." *In re Guardianship of Macak*, 377 N.J. Super. 167, 176 (App. Div. 2005).

This Court has not been provided with any physician affidavits. Moreover, the Debtor does not contend that he is incapacitated but has cognitive disabilities that make it difficult for him to carry out day-to-day tasks. The Debtor's counsel has not named a proposed guardian, and one has not been appointed by the State Court. Several parties have been retained in this case to assist the Debtor. Mr. Haas retained a real estate broker in October 2024 (Robert Lapidus), but he no longer

Page 7

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

wants to work with the Debtor. In addition, the Debtor's counsel has stated he does not wish to continue representing the Debtor if a guardian ad litem is not appointed. At the June 26, 2025 hearing, the Debtor stated that he would not allow the guardian to have legal decision-making power over him if he disagreed with the guardian. Given that Mr. Haas has not been able to work with his attorney and his real estate broker, the Court sees no benefit in appointing a stranger to assist him. The Court does not see this as a workable solution. If the Debtor's attorney proposed a person willing to assist Mr. Haas with daily tasks, whose assistance would be welcomed by Mr. Haas, and who would accept the risk of being paid from the sale proceeds, the Court might appoint such a person as a limited guardian. However, the Court does not know whether such a person exists or is available.

In the alternative, Scott C. Pyfer, Esq. requests that the Court allow him to withdraw as counsel because of his inability to effectively communicate with the Debtor. [ECF No. 98]. The Rules of Professional Conduct mandate that an attorney representing a disabled person should maintain, as much as possible, "a normal attorney-client relationship" with that person. RPC 1.14(a). Under Rule of Professional Conduct 1.16(b) "a lawyer may withdraw from representing a client if (1) withdrawal can be accomplished without material adverse effect on the interests of the client." The Court finds that Mr. Pyfer has attempted to maintain the attorney-client relationship with the Debtor to the best of his ability considering the Debtor's disability and will continue to do so. Allowing Mr. Pyfer to withdraw at this time would only make a bad situation worse. Mr. Pyfer is still the Debtor's best chance at presenting the Court with a private sale of the Property before the sheriff's sale and he has performed admirably by obtaining extensions for the Debtor many times in this case.

Page 8

Debtor: DYLAN J. HAAS

Case No.: 22-14473

Caption: **DECISION AND ORDER RE: MOTION OF DEBTOR'S ATTORNEY TO APPOINT A
GUARDIAN AND RELATED MATTERS**

THEREFORE, IT IS ORDERED that the Motion of Debtor's Attorney to Appoint a Guardian Ad Litem and Motion to Withdraw as Counsel are denied. The Court is prepared to confirm the Debtor's Third Amended Plan Post-Confirmation consistent with this opinion. Though the Third Amended Plan Post-Confirmation states that the sale will be completed as soon as practicable, that timeline is limited by the sheriff's sale now scheduled for September 4, 2025.