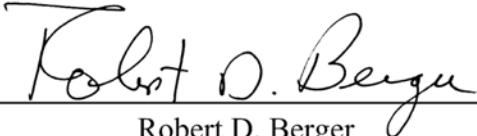




The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 10th day of August, 2020.

  
Robert D. Berger  
United States Bankruptcy Judge

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

In re:

**SCOTT GREGORY HATTRUP,**

Debtor.

Case No. 19-21065

Chapter 13

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**ORDER GRANTING REMAINING PART OF MOTION  
FOR SUMMARY JUDGMENT**

This matter comes before the Court on creditor Julia Deng's motion for summary judgment<sup>1</sup> on her motion for stay relief.<sup>2</sup> On April 22, 2020, the Court

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<sup>1</sup> [ECF 36](#).

<sup>2</sup> [ECF 18](#).

granted Deng’s motion in part and ordered debtor Scott Gregory Hatstrup to show cause why it should not find that a certain “Appeal Bond” (posted by Hatstrup to stay the pre-petition eviction judgment Deng obtained against him in Johnson County) is not property of the estate under [11 U.S.C. § 541](#).<sup>3</sup>

The Kansas district court set the amount of the Appeal Bond (\$18,000) based on its estimate that fair market rent for the “Residence” (i.e., the home from which Deng seeks to evict Hatstrup) was \$1,500 per month.<sup>4</sup> The Appeal Bond was thus designed to compensate Deng for 12 months’ rent (\$1,500 x 12 = \$18,000). However, it took Hatstrup approximately 21 months to exhaust his appeals.<sup>5</sup> Because Hatstrup’s response to Deng’s motion for summary judgment points to no evidence to controvert those facts, there is no “genuine dispute” as to them for purposes of Deng’s summary judgment motion. *See* [Fed. R. Civ. P. 56](#) (applying here through [Fed. R. Bankr. P. 7056](#) and [Fed. R. Bankr. P. 9014\(c\)](#)). And Hatstrup’s response to the Court’s show-cause order—that to allow Deng to proceed against the Appeal Bond in state court would be “fundamentally unfair” to, and “inequitable treatment of,” Hatstrup’s other creditors—begs the question. If the Appeal Bond is not property of the estate, Hatstrup’s other creditors have no claim to it in bankruptcy; they have

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<sup>3</sup> [ECF 77](#). *Cf. In re Montgomery*, [224 F.3d 1193, 1194-95](#) (10th Cir. 2000) (“Contingent interests are to be included in the property of a bankruptcy estate.”).

<sup>4</sup> Uncontroverted Statements of Fact ¶ 30, [ECF 36](#).

<sup>5</sup> *See id.* ¶ 31 (providing that Hatstrup filed his notice of appeal on August 2, 2017), ¶ 34-35 (providing that an Appellate Court Mandate was filed with the Johnson County district court on May 13, 2019, after the Kansas Supreme Court denied Hatstrup’s petition for review on April 29, 2019).

no interest in the Appeal Bond against which Deng could, as Hattrup puts it, “shore up” her own interest.

The undisputed evidence before this Court, then, is that (1) the estimated fair market rent for the Residence is \$1,500 per month; (2) the amount of the Appeal Bond is \$18,000, or an estimated 12 months’ rent; (3) Hattrup took approximately 21 months to exhaust his appeals; and (4) Hattrup’s appeals were exhausted when he filed his Chapter 13 petition on May 24, 2019. In light of these undisputed facts, the Court holds that the Appeal Bond is not property of the estate under 11 U.S.C. § 541; in the alternative, the Court holds that the value of the estate’s interest in the Appeal Bond is zero. *Cf. In re Koksai*, 451 B.R. 144, 153 (Bankr. D. Kan. 2011) (holding that expiration of appeal deadline, and debtor’s consequent forfeiture of Kansas appeal bond, “deprived the estate of any interest in the [bond]”). Accordingly, the remaining part of Deng’s motion for summary judgment (i.e., that relating to the Appeal Bond) on her motion for stay relief is hereby granted. Such stay relief includes any hearings necessary for Deng to obtain turnover of the Appeal Bond from the Kansas courts.

IT IS SO ORDERED.

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