SO ORDERED.

SIGNED this 17th day of December, 2020.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:	)	
	)	
Northwest Child Development Centers, Inc.	)	Chapter 11
	)	
	)	Case No. 20-50632
Debtor.	)	
	)	

ORDER
DENYING MOTION FOR RELIEF FROM STAY

THIS MATTER came before the Court on the Motion for Relief from Stay (Docket No. 82, the "Motion") filed by creditor City of Winston-Salem (the "Creditor"). The Creditor requested the Court lift the automatic stay of 11 U.S.C. § 362 to allow the Creditor to exercise the reversionary powers contained in a warranty deed held by the Creditor on the Debtor's real property at 2530 Pittsburg Avenue, Winston-Salem, North Carolina (the "Property"). While the Debtor and the Creditor proffered a proposed consent order providing for limited stay relief for the Creditor to pursue a resolution of the matter in state court, after considering and applying the *Robbins* factors, *see In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992), and with the parties' consent to bankruptcy court determination of the dispute through an adversary proceeding, the Court declines to lift the stay and will thus deny the Creditor's Motion.

The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on August 17, 2020 and elected to proceed under subchapter V. The Debtor operates a daycare center offering full and part-time childcare for special needs children and, in its amended schedules, included an ownership interest in the Property, which formerly served as an additional daycare operation for the Debtor until it was vacated and closed several years ago. In its § 1188(c) status report filed on October 6, 2020 (Docket No. 66), the Debtor represented that it was investigating a potential sale, improvement, and leaseback of the building space and had already interviewed several real estate brokers to aid the Debtor in that endeavor. After forecasting its position on the Debtor's intended sale of the Property at earlier hearings in the bankruptcy case, the Creditor filed the Motion on November 23, 2020. On December 1, 2020, the Debtor filed a subchapter V plan reiterating its intention to fund the plan, in part, from the marketing and sale of the Property (Docket No. 88, the "Plan").

The Court held a virtual hearing on the Motion on December 9, 2020, at which Erik Harvey appeared on behalf of the Debtor, John Lawson appeared on behalf of the Creditor, Samantha Brumbaugh appeared as the subchapter V trustee (the "Trustee"), Fred Johnson appeared as the Assistant County Attorney for Forsyth County, and Sarah Bruce appeared on behalf of the United States Bankruptcy Administrator. At the hearing, the Court raised concerns regarding potential delays to administration of the bankruptcy case and questioned counsel on whether it was truly more efficient to pursue the matter in state court. While representing that discovery would be pursued with all haste, the Creditor and the Debtor struggled to provide an estimated timetable for how long the matter would remain pending in state court before resolution. The parties further represented that neither side opposed determination of the matter by this Court through an adversary proceeding.

A decision to lift the automatic stay is within the discretion of the bankruptcy judge. *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992); *Lee v. Anasti (In re Lee)*, 461 Fed. Appx. 227, 231 (4th Cir. 2012). Courts "must determine when discretionary relief is appropriate on a case-by-case basis," *Lee*, 461 Fed. Appx. at 231 (quoting *Robbins*, 964 F. 2d at 345), and "balance potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied." *Robbins*, 964 F.2d at 345. As the Fourth Circuit has described in *Robbins*, and reiterated again in *Lee*, the factors courts should consider in deciding whether to lift the stay include

> (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Robbins, 964 F.2d at 346; *see also Lee*, 461 Fed. Appx. at 231.

In considering the *Robbins* factors, the Court does not find cause to grant relief from the automatic stay to the Creditor. The Court does find the first factor favors stay relief as the litigation involves only questions of state real property law, thereby rendering the expertise of the bankruptcy court unnecessary. *See Lee*, 461 Fed. Appx. at 232 (finding bankruptcy court expertise unnecessary where litigation involved only issues of real property law, "an area in which federal courts are especially deferential to state courts."); *In re Guy*, 587 B.R. 475, 479 (Bankr. E.D.N.C. 2018) (finding expertise of bankruptcy court not needed to oversee partition of real property pursuant to North Carolina statute). It is worth noting, however, that the real property question under consideration here is "akin to the issues this Court deals with in claims litigation on a regular basis." *In re Charleston Affordable Housing, Inc.*, No. 09-01020, 2009 WL 9071877, at *2 (Bankr. D.S.C. June 10, 2009).

While the first *Robbins* factor may favor stay relief, the Court finds the balance of the other factors tilt decidedly against the relief sought in the Motion. Critically, the Creditor has not yet initiated a state-court suit against the Debtor, meaning that any litigation, whether it be in state court or the bankruptcy court, would begin at its earliest stages. This absence stands in stark contrast to those courts granting stay relief to creditors whose state-court litigation was well under way at the time of the bankruptcy filing. *See Lee*, 461 Fed. Appx. at 232–33 (finding second *Robbins* factor favored creditor where the state court litigation had been ongoing for over two years and was near finality); *In re Rizzo*, 603 B.R. 550, 554 (Bankr. D.S.C. 2019) (finding that granting stay relief favored judicial economy where state court case had been pending for nearly a year and where discovery was underway); *Friolo v. Frankel (In re Frankel)*, No. 11-34158, 2013 WL 312872, at *5 (Bankr. D. Md. Jan. 25, 2013) (finding judicial economy would be served by allowing state-court litigation, which had been pending for thirteen years, to conclude rather than starting litigation anew in bankruptcy court). Moreover, there is a far greater likelihood that the litigation will be completed sooner within the context of an adversary proceeding than if relegated to state court. The determination of a reversionary interest based on restricted use language within a deed is a fact-intensive inquiry that often takes more than a year to bring to resolution in North Carolina state courts. *See, e.g.*, *Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.*, 802 S.E. 2d 908 (N.C. Ct. App. 2017) (deciding restrictive covenant dispute 14 months after plaintiffs initiated suit); *County of Moore v. Humane Soc'y of Moore County, Inc.*, 578 S.E. 2d 682 (N.C. Ct. App. 2003) (entering judgment on reverter clause litigation 15 months after plaintiff filed suit). In all likelihood, this delayed timeframe for a state-court resolution will be further extended due to the impact of the COVID-19 pandemic on the operations of North Carolina state courts, which has created a backlog of cases and delayed lower-priority hearings.[1] While the speedy resolution of the parties' dispute is critical to the success of Debtor's subchapter V case, as the Creditor conceded, it is not matter requiring particular urgency outside of the bankruptcy context. Therefore, the second *Robbins* factor weighs decisively against granting stay relief to the Creditor.

The Court also finds the third *Robbins* factor weighs against the Creditor because granting stay relief would harm the estate beyond what limited protection would be afforded by requiring the Creditor to seek enforcement of any judgment

[1] Ames Alexander et. al., *Trials in Gyms, Cases Delayed: With NC Pandemic Logjam, Justice 'Slow as Molasses,'* THE NEWS & OBSERVER (Dec. 3, 2020), https://www.newsobserver.com/news/coronavirus/article247576820.html.

through the bankruptcy court. The Property is an essential feature of the Debtor's proposed plan and a lengthy determination of the litigation by a state court, the speed of which this Court is unable to influence, *Charleston Affordable Housing*, 2009 WL 9071877, at *3, would similarly delay consideration and confirmation of a chapter 11 plan. *In re Taylor*, No. 15-02730, 2017 WL 3701475, at *4 (Bankr. E.D.N.C. Aug. 24, 2017) (finding *Robbins* factor weighed against stay relief as "[p]roceeding to confirmation without additional delay clearly is in the best interests of this estate and, significantly, its creditors."). Moreover, subchapter V is designed to be an expedited process, *In re Wetter*, 620 B.R. 243, 251 (Bankr. W.D. Va. 2020), and the magnitude of the delay accompanying a determination of this matter in state court would not serve that essential interest. Finally, a requirement that the Creditor seek enforcement of any judgment through the bankruptcy court offers scant protection for the estate as there would not be any judgment to enforce; the only outcome of the Creditor's successful suit would be final removal of the Property from the estate. *In re Mitchell*, 546 B.R. 339, 348 (Bankr. D.S.C. 2016) (finding third *Robbins* factor weighs against stay relief because "[e]nforcement of any judgment through the bankruptcy court is not an issue because Movants do not seek to enforce a judgment against [the Debtor] or this estate."). For these reasons, the Court finds the third factor weighs against granting stay relief.

After analyzing the three factors and the central question posed by the *Robbins* court, the Court finds the potential prejudice to the Debtor's estate if the Motion is granted greatly outweighs any minimal hardship, if any, that will be incurred by the Creditor if stay relief is denied. *Robbins*, 964 F.2d at 345. This finding is solidified further by the consent to bankruptcy jurisdiction over this matter that the parties offered at the December 9, 2020 hearing.

Accordingly, IT IS HEREBY ORDERED that the Creditor's Motion for Relief from Stay is DENIED. The Court anticipates the filing of an adversary proceeding to determine the status of the reversionary interest the Creditor retains in the Property.

END OF DOCUMENT

PARTIES TO BE SERVED

Northwest Child Development Centers, Inc. (Ch.11)

20-50632

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via cm/ecf

Joshua Bennett
via cm/ecf

John Lawson
via cm/ecf

Samantha Brumbaugh, Trustee
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