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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-12650
Non-Argument Calendar

ROBERT A. HEGHMANN,
BEATRICE M. HEGHMANN,

Plaintiffs-Appellants,

versus

DJAMEL HAFIANI,
MARY HAFIANI,
MIRIAM HAFIANI,
JAMEL JOSEPH HAFIANI,
JULIA SARAH HAFIANI,
THE TOWN OF RYE, N.H., et al.,

Defendants-Appellees,

THE HAFIANI FAMILY TRUST, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00670-BJD-JBT

(Filed Oct. 26, 2022)

Before ROSENBAUM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

In 2020, Robert and Beatrice Heghmann ("the Heghmanns") filed a civil action against the Hafiani family, the Town of Rye, New Hampshire, and John Does and Mary Roes 1 through 6,000, who were unknown residents of the Town of Rye ("the Residents"). The Heghmanns alleged that in 2003, these defendants violated automatic stays from Robert and Beatrice's individual bankruptcy proceedings. The Heghmanns sought a declaratory judgment that the defendants violated the automatic stays, an award of compensatory and punitive damages, and attorney's fees and costs. The district court granted the Hafiani defendants' motions to dismiss on the grounds that the Heghmanns failed to state a claim against Miriam Hafiani, and that the Heghmanns' claim against the other Hafianis was barred by *res judicata*. The district court also granted the Town of Rye's motion to dismiss for lack of personal jurisdiction. On appeal, the Heghmanns argue that the district court erred in dismissing their action for various reasons. After review, we affirm.

I. Background

According to the Heghmanns' complaint, in late 2002, they rented a house in the Town of Rye, New Hampshire, from Djamel Hafiani. In January 2003, the Heghmanns fell behind on their rental payments. Djamel initiated an action in landlord tenant court, and a New Hampshire court ordered the Heghmanns

to pay the past due rent, no later than March 3, 2003, and, if they did not do so, then a writ of possession would issue on March 17, 2003.

The Heghmanns did not pay the past due rent. Instead, on March 13, 2003, Robert Heghmann filed a Chapter 13 bankruptcy petition, which triggered an automatic stay.[1] Robert Heghmann then informed Djamel's counsel of the bankruptcy filing. However, no one notified the New Hampshire state court of the bankruptcy filing, and it issued a writ of possession. Nevertheless, the Town of Rye Sheriff's Office delayed enforcement of the writ after being informed of the bankruptcy proceedings.

Robert Heghmann's bankruptcy proceeding was dismissed on May 21, 2003. Djamel Hafiani advised the New Hampshire court that the bankruptcy proceeding had been dismissed, and the court reissued a writ of possession based on its prior March 3, 2003 order. Based on the writ of possession, the Sheriff's Office issued a notice of eviction, which gave the Heghmanns 24 hours to vacate the residence. Robert Heghmann informed the Rye police executing the writ that the eviction was in violation of the automatic stay and was illegal, but he was ignored. The Heghmanns vacated

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[1] Upon the filing of a bankruptcy petition, "all legal or equitable interests of the debtor in property" as of the filing of the petition become part of the bankruptcy estate, with certain exceptions not applicable here. *See* 11 U.S.C. § 541. And actions against a debtor or property of the bankruptcy estate become subject to an automatic stay when the bankruptcy petition is filed. *Id.* § 362.

the residence and took what belongings they could, but they had to leave a number of their possessions behind.

Robert Heghmann then filed a motion to set aside the bankruptcy dismissal and a motion for contempt against Djamel and his counsel for alleged violations of the automatic stay in the bankruptcy court. *Heghmann v. Town of Rye*, No. 04-100-SM, 2005 WL 637928, *2 (D.N.H. March 18, 2005). The bankruptcy court denied both motions, and Heghmann did not appeal. *Id.*

Meanwhile, Beatrice Heghmann filed a petition for Chapter 13 bankruptcy, which triggered another automatic stay. However, despite her pending bankruptcy petition, after retaking possession of the residence, Djamel and his then minor children, Miriam, Jamal, and Julia sold a great deal of the Heghmanns belongings at yard sales to unknown residents of the Town of Rye. As a result, Beatrice Heghmann filed motions for implementation of the automatic stay—allowing her to return the residence and requiring Djamel to return their possessions—and a motion for contempt seeking compensatory and punitive damages for Djamel's violations of the automatic stay in Robert's case and in her case. *See In re Heghmann*, 316 B.R. 395, 399 (B.A.P. 1st Cir. 2004).

The bankruptcy court refused to consider Beatrice's arguments related to the alleged violations of the automatic stay in her husband's prior bankruptcy proceeding, explaining that such violations "may not be prosecuted in a subsequent bankruptcy case." *Id.* at 399 n.4. However, it determined that Djamel violated

the automatic stay in Beatrice's bankruptcy proceedings when he sold the Heghmanns' belongings at the yard sales. *Id.* at 399–400. It ordered Djamel to pay $1,200 in actual damages for the sale of the Heghmanns' property. *Id.* at 400, 405. It declined to award punitive damages. *Id.* at 406. A Bankruptcy Appellate Panel of the First Circuit affirmed on appeal.[2] *Id.* at 401–406. Notably, the Bankruptcy Appellate Panel rejected on the merits Beatrice's claims concerning the violation of the automatic stay in Robert's case, explaining that "the writ of possession and subsequent eviction did not violate the automatic stay as no stay was in place at that time—Robert Heghmann's case had been dismissed and Beatrice Heghmann's case had not yet been filed." *Id.* at 401.

Thereafter, in March 2004, Robert Heghmann filed a complaint in the United States District Court for New Hampshire against Djamel Hafiani, the Town of Rye, and various others, alleging that the defendants violated the automatic stay in his bankruptcy proceedings when they (i) sought to enforce the writ of possession issued in March 2003, (ii) obtained a new writ of possession after his bankruptcy case was dismissed, and then (iii) enforced said writ. *Heghmann v. Town of Rye*, 326 F. Supp. 2d 227, 232 (D.N.H. 2004). He also sought "an order requiring the defendants 'to take

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[2] The judicial council of each circuit is authorized to establish a bankruptcy appellate panel composed of "bankruptcy judges of the districts in the circuit who are appointed by the judicial council" to hear appeals from the bankruptcy court. 28 U.S.C. § 158(b)(1). The First Circuit has established such a panel.

immediate steps to undue [sic] the damage they have done by their past violations of the automatic stay.'" *Id.* The district court concluded that it lacked subject matter jurisdiction to hear claims involving alleged violations of the automatic stay. *Heghmann v. Town of Rye*, No. 04-100-SM, 2004 WL 2526417, at *4, 6 (D.N.H. Nov. 8, 2004). Rather, "the proper forum in which to advance claims involving alleged violations of the automatic stay [was in] the bankruptcy court."[3] *Id.* at *6.

Almost two decades later, in June 2020, the Heghmanns filed the underlying *pro se* complaint in the Middle District of Florida against Djamel Hafiani, his ex-wife Mary, and their now-adult children Miriam,

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[3] The district court also noted that:

> Mr. Heghmann is an attorney, admitted to practice before the federal district courts in New York and Connecticut, the Court of Appeals for the Second Circuit, and the United States Supreme Court. *Heghmann v. Fermanian*, 2000 WL 1742122 at * 1, n. 1 (D.Me. Nov.27, 2000). He is no stranger to pro se litigation, at least some of which has been meritless. *See id.* at *4 (awarding sanctions against Heghmann and concluding that his "claims in this action were without merit from the beginning and would have been perceived as such by any objectively reasonable attorney."). Nor is this the first time that litigation has flowed from Heghmann's failure to honor rent and/or mortgage obligations. *See Connecticut Sav. Bank v. Heghmann*, 193 Conn. 157, 474 A.2d 790 (1984).

Heghmann v. Town of Rye, No. 04-100-SM, 2004 WL 2526417, at *1 n.1 (D.N.H. 2004). Because Robert Heghmann is a licensed attorney, his pleadings are not entitled to the liberal construction normally afforded *pro se* litigants. *See Olivares v. Martin*, 555 F.2d 1192, 1194 n.1 (5th Cir. 1977).

Jamal, and Julia,[4] as well as the Town of Rye, New Hampshire, and its residents for alleged violations of the 2003 automatic stay in both of the Heghmanns' bankruptcy proceedings.[5] Specifically, the Heghmanns alleged that Djamel Hafiani violated the automatic stay in Robert Heghmann's bankruptcy proceeding when he (1) failed to advise the New Hampshire court in March 2003 of the filing of Robert's bankruptcy petition; (2) obtained a writ of possession; (3) attempted, albeit unsuccessfully, to have the Sheriff's Office execute the writ; and (4) improperly obtained a new writ of possession following the dismissal of Robert's bankruptcy proceedings (Counts 1–4). They alleged that Djamel, the Town of Rye, and its residents violated the automatic stay in Robert Heghmann's bankruptcy case when the sheriff's office executed the void writ of possession and evicted the Heghmanns (Count 5). Further, they alleged the Town of Rye and its residents violated the automatic stay in Robert's bankruptcy proceeding when the town failed to have a procedure in place for all municipal officers to follow when a claim is made

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[4] The Hafianis now live in Florida.

[5] The Heghmanns explain in their brief before this Court that for eighteen years, they

> have been searching for a District Court where not only does the Circuit Court permit the exercise of subject matter jurisdiction in cases involving violations of the Automatic Stay but more importantly where state law procedures permit the exercise of *quasi in rem* garnishment of the New Hampshire defendants' property without an onerous cash bond.

that the officers' actions violate an automatic stay (Count 6).

Next, the Heghmanns alleged that Djamel, his ex-wife Mary, and their children violated the automatic stay in Beatrice Heghmann's bankruptcy proceeding when they improperly seized the Heghmanns' property left at the residence (Count 7). They also alleged that the Hafiani family violated the automatic stay in Beatrice's bankruptcy proceeding when they sold the Heghmanns' property at yard sales, and the residents of the Town of Rye violated the stay when they bought the property at the yard sales (Count 8). Finally, the Heghmanns alleged that because the bankruptcy court found that the yard sales violated the stay, it triggered a duty on the defendants to undo the damage and restore the Heghmanns to "the *status quo*" prior to the violation. Thus, they claimed that the Hafianis and the Town of Rye and its residents violated the automatic stay—and continue to do so—because they have taken no action to fulfill this duty (Count 9).

Miriam Hafiani moved to dismiss the complaint for failure to state a claim. She asserted that the Heghmanns failed to allege how she can be subject to a claim when she was a minor of 14 years old at the time of the actions at issue. Additionally, she alleged that the Heghmanns had failed to include any allegations linking her to the lease, the bankruptcy orders, or the automatic stays. In response, the Heghmanns argued that they were not suing for a violation of the automatic stay that happened when she was a minor in 2003, but rather, they were suing her for a continuing

violation because she had a duty to undo the damages caused by the violation and continued to take no action to do so.

Djamel, Julia, Mary, and Jamal also moved to dismiss.[6] They argued, in relevant part, that the claims should be dismissed for lack of subject matter jurisdiction and for failure to state a claim because the Heghmanns' claims were barred by *res judicata*. In response, the Heghmanns argued that, under Eleventh Circuit precedent, the district court had subject matter jurisdiction over the claims. They also argued that *res judicata* did not apply because they were seeking damages for the ongoing violation of the automatic stay based on the bankruptcy court's findings that Djamel—and by extension his family members—violated the automatic stay when he sold the Heghmanns' belongings, but the Hafianis continued to take no action to undo the damage.[7]

Finally, the Town of Rye moved to dismiss, arguing that the district court lacked personal jurisdiction over it. It argued that all of the complained of actions took

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[6] The Hafianis attached numerous records from the bankruptcy proceedings and prior district court proceedings to the motion to dismiss.

[7] The Heghmanns asserted that the bankruptcy court's award of $1,200 in actual damages and denial of punitive damages for the violation of the automatic stay did not have preclusive effect because when Djamel and his family violated the stay they effectively committed the common law torts of conversion and intentional infliction of mental and emotional distress, entitling the Heghmanns to damages—issues which a bankruptcy Article I judge is without authority to decide.

place in New Hampshire and the Heghmanns failed to allege any facts connecting it with Florida. It also argued that exercising jurisdiction would not comport with "traditional notions of fair play and substantial justice" because of the cost to Rye of litigating in Florida, the apparent forum-shopping of the Heghmanns, the lack of any nexus between the actual events and the State of Florida, and the fact that the Heghmanns had access to effective relief in New Hampshire. In response, the Heghmanns argued that they were not seeking to exercise *in personam* jurisdiction over the Town of Rye and its residents. Rather, they were seeking *quasi in rem* jurisdiction over the Town of Rye and its residents.

After concluding that it had subject matter jurisdiction,[8] the district court granted all three motions to dismiss. First, the district court concluded that the Heghmanns failed to state a plausible claim against Miriam Hafiani because they did not allege that she knew of the stay and intentionally violated it—and without such allegations, the district court could not "even consider the additional layer of allegations that

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[8] The district court concluded that it had subject matter jurisdiction over claims for violation of an automatic stay. *See Just. Cometh, Ltd. v. Lambert*, 426 F.3d 1342, 1343 (11th Cir. 2005) (holding that "the explicit . . . grant of original jurisdiction" in 28 U.S.C. § 1334 over cases arising under Title 11 "clearly forecloses a conclusion that the district court lacked subject matter jurisdiction" over claims for damages caused by a violation of the automatic stay in a bankruptcy proceeding). Accordingly, we have subject matter jurisdiction to hear this appeal as well. *Id.*

[she] continued to violate the automatic stay for failing to 'undo' damage allegedly caused by the violation of the automatic stay." Second, the district court concluded that the claims against Djamel were barred by *res judicata*.

As to the remaining claims against Mary, Jamal, and Julia Hafiani (Counts 7–9), the district court found that these claims were due to be dismissed because (1) the Heghmanns made no specific allegations that Mary, Jamel, or Julia knew of the automatic stay and intentionally violated it, (2) *res judicata* barred these claims because they could have been brought in prior litigation, and (3) the pleading was deficient because it failed to afford those defendants notice of the specific allegations against them.[9]

Finally, the district court dismissed the claims against the Town of Rye and its residents because it lacked in personam jurisdiction under Florida's long-arm statute and exercising jurisdiction would offend the traditional notions of fair play and justice. The Heghmanns timely appealed.

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[9] The district court also noted that although there was no statute of limitations for bringing a claim for violation of an automatic stay, the 17-year delay in bringing these claims was "concern[ing]."

II. Discussion

A. *Whether the district court erred in dismissing the claims against the Hafianis*

The Heghmanns argue that the district court erred in dismissing the claims against the Hafianis for various reasons, including that the claims were not precluded by *res judicata* and that the defendants waived any claim that the complaint failed to state a claim because it did not allege that the defendants had knowledge of the stay. The Heghmanns maintain that the bankruptcy court's finding of a violation of the automatic stay has preclusive *res judicata* effect and triggered an ongoing duty upon Djamel and those in privity with him[10] to take actions "to restore the *status quo ante* the violation," and the defendants have taken no remedial action for the past 17 years.

We review *de novo* a dismissal for failure to state a claim upon which relief may be granted, "accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." *Leib*

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[10] The Heghmanns argue that Djamel's children were in privity with him because they were present during the yard sales and "had their pick" of the Heghmanns' property. And they argue that Djamel's ex-wife, Mary, was in privity because she was the legal guardian of the children and "responsible for their conversion of the property." Finally, the Heghmanns maintain that the Town of Rye and its residents were in privity because but for the Town of Rye's actions (via the execution of the writ of possession), the Hafianis would not have obtained possession of the Heghmanns' property, and under New Hampshire law, the residents of a municipality "are liable for the transgressions of the town government."

v. Hillsborough Cnty. Pub. Transp. Comm'n, 558 F.3d 1301, 1305 (11th Cir. 2009).

i. Claims against Djamel

The Heghmanns argue that the district court erred in its *res judicata* analysis as to the claims against Djamel. Additionally, they argue that the bankruptcy court did not have before it the claim for a continuing violation, as that claim did not arise until the bankruptcy court issued its judgment, and, therefore, it was not barred by *res judicata*.

We review *de novo* the district court's determination that a claim is barred by *res judicata*. *See Jang v. United Tech. Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000). *Res judicata* "bar[s] a subsequent action if: (1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; and (4) the prior and present causes of action are the same." *Id.* (quotation omitted). " [I]f a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action, . . . the two cases are really the same 'claim' or 'cause of action' for purposes of *res judicata*." *Griswold v. Cnty. of Hillsborough*, 598 F.3d 1289, 1293 (11th Cir. 2010) (quotation omitted) (alteration in original).

The district court did not err in determining that *res judicata* barred the claims against Djamel. Counts One through Five for Djamel's alleged violations of the automatic stay in Robert's case are precluded by the

Bankruptcy Appellate Panel of the First Circuit's 2004 decision, which determined that "the writ of possession and subsequent eviction did not violate the automatic stay as no stay was in place at that time—Robert Heghmann's case had been dismissed and Beatrice Heghmann's case had not yet been filed." *In re Heghmann*, 316 B.R. at 401–02.

Similarly, Counts Seven and Eight for violations of the automatic stay in Beatrice's case when Djamel sold the Heghmanns' property at yard sales are also precluded by the same decision because the Bankruptcy Appellate Panel affirmed the bankruptcy court's order for Djamel to pay $1,200 in actual damages for violating the automatic stay in Beatrice's case.[11] *See id.* at 404–06.

Finally, Count Nine is precluded because they could have alleged a continuing violation in Beatrice's bankruptcy proceeding through the filing of a contempt action in the past 17 years, but they did not.[12]

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[11] The Heghmanns' argument that their claims in the underlying complaint were for the common law tort of conversion, and, thus, were different from the claims in the prior bankruptcy proceeding is meritless. Each of the nine counts in the complaint were for "violation of the automatic stay," citing 11 U.S.C. § 362(a)—the same exact claims resolved in the prior bankruptcy decision in the First Circuit.

[12] Although Congress did not enact a statute of limitations for claims involving willful violations of an automatic stay, we agree with the district court that the Heghmanns' 17-year delay in filing the underlying complaint while they admittedly forum shopped for a court that would hear their case is gravely concerning. Under these circumstances, we conclude that, even if the Heghmanns' claims were not barred by *res judicata*, they would

See Maldonado v. U.S. Att'y Gen., 664 F.3d 1369, 1377 (11th Cir. 2011) (explaining that "*[r]es judicata* acts as a bar not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact." (quotation omitted)); *see also In re Harrison*, 599 B.R. 173, 183 (Bankr. N.D. Fla. 2019) (explaining that contempt is the "appropriate remedy" for willful violations of an automatic stay). Accordingly, the district court correctly determined that the Heghmanns' claims against Djamel were barred by *res judicata*.

ii. Claims against the remaining Hafianis

With regard to the claims against Miriam, Mary, Julia, and Jamal Hafiani, the Heghmanns argue that the Hafianis did not assert in their motions to dismiss that the complaint failed to allege that they knew of the automatic stay; therefore, they waived this defense and the district court erred in relying on it as a basis for the dismissal. However, the Heghmanns fail to challenge another ground on which the district court

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be barred by the doctrine of laches. *See Thornton v. First State Bank of Joplin*, 4 F.3d 650, 653 (8th Cir. 1993) (explaining that "[w]hile delay alone does not automatically constitute laches, if a plaintiff's delay (1) is unreasonable and unexplained and (2) has disadvantaged the defendant, laches may apply," and upholding application of the doctrine where the debtor waited four years after discovering the violation and two years after bankruptcy proceedings concluded to file his complaint, without explanation for the delay). In the Heghmanns' case, the only reason for the delay in filing the underlying complaint was their admitted forum shopping, which further demonstrates why application of the doctrine of laches is appropriate.

based its dismissal—that the complaint was "deficient in that the[] counts make assertions against these Defendants collectively and do not afford each Defendant notice as to the specific allegations made as to each Defendant." "When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). Accordingly, we affirm the district court's dismissal of the claims against the remaining Hafianis.

B. Whether the district court erred in dismissing the complaint against the Town of Rye for lack of personal jurisdiction

The Heghmanns argue that the district court erred in dismissing the claims against the Town of Rye because the district court failed to recognize that "jurisdiction over the Town of Rye was never *in personam*, it was always *quasi in rem*." The problem for the Heghmanns is that, even if they were proceeding under quasi in rem jurisdiction, the district court would lack jurisdiction because the Heghmanns did not allege that the Town of Rye has any property in Florida for purposes of quasi in rem jurisdiction. *See Shaffer v. Heitner*, 433 U.S. 186, 199 & n.17 (1977) (explaining that in rem and quasi in rem jurisdiction are "based on the court's power over property within its territory"); *World Wide Supply OU v. Quail Cruises Ship Mgmt.*, 802 F.3d 1255, 1259–60 (11th Cir. 2015) (explaining

that quasi in rem jurisdiction involves an action "against a party who is not personally present in the district but whose property is present").

Furthermore, the Heghmanns do not challenge the district court's determination that it lacked in personam personal jurisdiction. Accordingly, they abandoned any challenge of that ground, and we affirm the dismissal of claims against the Town of Rye for lack of personal jurisdiction. *Sapuppo*, 739 F.3d at 680.

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ROBERT A. HEGHMANN and
BEATRICE M. HEGHMANN,

Plaintiffs,

v.

Case No.:
3:20-cv-670-BJD-JBT

DJAMEL HAFIANI, MARY HAFIANI, MIRIAM HAFIANI, JAMEL JOSEPH HAFIANI, JULIA SARAH HAFIANI, THE TOWN OF RYE, N.H., JOHN DOES 1 THRU 6000, and MARY ROES 1 THRU 6000,

Defendants. /

ORDER

(Filed Jul. 14, 2021)

THIS CAUSE is before the Court on Defendant Miriam Hafiani's Motion to Dismiss Plaintiffs' Complaint (Doc. 11) and pro se Plaintiffs' memorandum in opposition (Doc. 19); Defendants Djamel Hafiani, Mary Hafiani, Jamel Hafiani, and Julia Sarah Hafiani's Motion to Dismiss Second Amended Complaint (Doc. 13) and Plaintiffs' Memorandum in Opposition (Doc. 29); and Defendant The Town of Rye's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 14) and Plaintiffs' Memorandum in Opposition (Doc. 18).

On June 29, 2020, Plaintiffs Robert and Beatrice Heghmann filed their initial complaint in this court (Doc. 1). In the operative Second Amended Complaint, Plaintiffs bring claims for violations of two automatic stays from their respective bankruptcy cases under 11 U.S.C. § 362(a), (k), and 11 U.S.C. § 1301 against the following Defendants for the sale of a portion of their estate at yard sales at their former residence, 237 Grove Road, in Rye, New Hampshire: Djamel Hafiani (Counts One through Five, Seven through Nine); the Town of Rye, Residents of Rye 1 through 6000 (Counts Five, Six, Eight and Nine); Mary Hafiani, Miriam Hafiani, Julia Sarah Hafiani, and Jamel Hafiani (Counts Seven, Eight, and Nine) (Doc. 8 at 1-16).

Plaintiffs also allege that "Bankruptcy Chief Judge Mark Vaughn decided the sales of the estates of Robert and Beatrice Heghmann violated the Automatic Stay on August 19, 2003" and that as of this date, "[a]ll of the Defendants who violated the Automatic Stay have an affirmative duty to undo the offending acts even if they had no actual notice of the bankruptcy at the time the acts were performed." (Doc. 8 at 15-16). Plaintiffs seek a judgment that all Defendants have violated the automatic stay under the Bankruptcy Code and an award of compensatory and punitive damages (Doc. 8 at 16-17).[1]

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[1] In their Second Amended Complaint, Plaintiffs allege residency in New Hampshire and that Defendants Djamel Hafiani, Miriam Hafiani and Julia Hafiani have residency in Florida (Doc. 8 at 3-4). The Court notes that Plaintiffs have failed to allege the citizenship of the parties. Because this action is before the Court

I. Background

Plaintiffs leased the land and buildings in Rye, New Hampshire from Defendant Djamel Hafiani from 2002 to 2003. On February 6, 2003, Djamel Hafiani filed a Landlord and Tenant Writ against Plaintiffs in Portsmouth District Court for possession. See Heghmann v. Town of Rye, 326 F. Supp. 2d 227, 232-33 (D.N.H. 2004). On March 3, 2003, the Portsmouth District Court determined Plaintiffs were in arrears for three-months of rent and Plaintiffs were ordered to pay $5,700 no later than March 15, 2003, and if they did not, then a writ of possession would be issued March 17, 2003. Id. at 228.

> The Heghmanns neither paid the $5,700 nor appealed the judgment. Instead, on March 13, 2003, Robert Heghmann filed a voluntary Chapter 13 petition. Notwithstanding the filing of the bankruptcy petition, on March 17, 2003, the State Court issued a Notice of Default Judgment and a Writ of Possession in accordance with its March 3rd order.
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> On May 19, 2003, Robert Heghmann filed a motion in the State Court to quash the writ of possession, alleging that the writ was void because it issued in violation of the automatic stay. However, on May 21, 2003, the

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based on federal question jurisdiction, however, the Court deems it unnecessary to discuss in detail Plaintiffs' failure to allege the citizenship of the parties. See Taylor v. Appleton, 30 F.3d 1365, 1367 (11th Cir. 1994) ("Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person.").

> bankruptcy court dismissed Robert Heghmann's Chapter 13 case for failure to file the required bankruptcy schedules and Chapter 13 plan. Accordingly, on May 23, 2003, the State Court denied the Motion to Quash and issued a new Writ of Possession in accordance with its March 3rd order. The next day, the Heghmanns were evicted from the premises. *The Heghmanns did not appeal.*
>
> On May 22, 2003, the Heghmanns filed a complaint in the United States District Court for the District of New Hampshire alleging violations of the automatic stay by Mr. Hafiani and seeking a temporary restraining order. On May 28, 2003, the district court issued an order sua sponte dismissing the complaint, finding that it lacked subject matter jurisdiction. *The Heghmanns did not appeal.*

Heghmann v. Town of Rye, N.H., No. CIV. 04-100-SM, 2005 WL 637928, at *1 (D.N.H. Mar. 18, 2005) (emphasis in original). The court further concluded that the claim that Defendant Djamel Hafiani violated the automatic stay from Mr. Heghmann's Chapter 13 bankruptcy proceeding should have been raised in the bankruptcy proceeding. Heghmann, 326 F. Supp. 2d at 230. On June 2, 2003, Robert Heghmann, a licensed attorney at the time of the prior actions,[2] filed a motion

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[2] Indeed, prior courts have noted that

> Mr. Heghmann is an attorney, admitted to practice before the federal district courts in New York and Connecticut, the Court of Appeals for the Second Circuit, and the United States Supreme Court. Heghmann v. Fermanian, 2000 WL 1742122 at *1, n.1 (D. Me. Nov.

in the United States Bankruptcy Court, in part, for contempt against Defendant Djamel Hafiani and his attorney at that time, Ronald Indorf, for intentionally violating the automatic stay, for seeking to enforce the writ of possession, and for continuing to violate the automatic stay. Id. The bankruptcy court denied this motion finding that it was moot because it had been filed after the bankruptcy case had been dismissed. Id. No appeal was taken. Id.

On June 19, 2003, Beatrice Heghmann filed a voluntary petition for Chapter 13 bankruptcy, and on August 19, 2003 the bankruptcy court entered orders on three motions: a motion for contempt, motion to implement stay, and motion for partial relief. Id.; see In re Heghmann, 316 B.R. 395, 400 (B.A.P. 1st Cir. 2004). The bankruptcy court denied the motion for partial relief and entered a single order on the other two motions in which it refused to hear pre-petition stay violations having concluded that

> Mr. Hafiani had "pleaded" with the Heghmanns to pick up their personal property,

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> 27, 2000). He is no stranger to pro se litigation, at least some of which has been meritless. See id. at *4 (awarding sanctions against Heghmann and concluding that his "claims in this action were without merit from the beginning and would have been perceived as such by any objectively reasonable attorney."). Nor is this the first time that litigation has flowed from Heghmann's failure to honor rent and/or mortgage obligations. See Connecticut Sav. Bank v. Heghmann, 193 Conn. 157, 474 A.2d 790 (1984).

Heghmann, 2005 WL 637928, at *3.

> making numerous telephone calls to the Heghmanns and even leaving the premises open several times. Finding Mr. Hafiani's testimony to be credible, the bankruptcy court concluded that there were no stay violations until Mr. Hafiani sold some of the Debtor's property at yard sales on July 12 and 19, 2003. Accordingly, the bankruptcy court ordered him to pay damages of $1,200. The bankruptcy court also concluded that although Mr. Hafiani's actions were taken on the advice of his counsel, Attorney Indorf did not violate the automatic stay as he did not take any actions against the estate. This appeal ensued. Subsequently, the Debtor's bankruptcy case was dismissed for failure to file the required schedules and Chapter 13 plan.

Heghmann, 2005 WL 637928, at *2. The bankruptcy court denied the punitive damages claim based on a lack of good cause. Id.; see In re Heghmann, 316 B.R. at 404. On appeal, the United States Bankruptcy Appellate Panel affirmed the decision of the bankruptcy court, in part determining that res judicata barred Beatrice Heghmann from relitigating claims relating to alleged pre-petition violations of the automatic stay in her subsequent bankruptcy case or those that could have been raised in previous actions. See In re Heghmann, 316 B.R. at 402. Thereafter, Beatrice Heghmann filed leave to proceed in forma pauperis with the appellate court, which the Bankruptcy Appellate Panel denied as "not only plainly frivolous but patently without good faith" based on the attempt to relitigate frivolous

claim. See In re Heghmann, 324 B.R. 415, 420-21 (B.A.P. 1st Cir. 2005).

In March of 2004, Robert Heghmann filed a complaint in the United States District Court for New Hampshire against the Town of Rye, Djamel Hafiani, and others based on alleged violations of the automatic stay from his Chapter 13 bankruptcy petition, in addition to other claims. See Heghmann, 326 F. Supp. 2d at 232. On November 8, 2004, the New Hampshire District Court dismissed all of Robert Heghmann's federal claims, in part holding that the federal district court "lacked subject matter jurisdiction over [Plaintiff's] claims involving alleged violations of the automatic stay." See Heghmann, 2005 WL 637928, at *5. That court also granted defendants' motion for costs and fees after concluding that Robert Heghmann's claims were "objectively frivolous, unreasonable, and without legal foundation." See id. at *3-6.

II. Standard

Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, a district court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A complaint's allegations "must be accepted as true and construed in the light most favorable to the plaintiff." Michel v. NYP Holdings, Inc., 816 F.3d 686, 694 (11th Cir. 2016). However, the court is not required to accept a plaintiffs legal conclusions. See Chandler v. Sec'y, Fla. Dep't of Transp., 695 F.3d 1194, 1199 (11th Cir. 2012). Instead,

a plaintiff's complaint must allege "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, a plaintiff is required to plead "enough facts to state a claim to relief that is plausible on its face." Id. at 570 ("Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed."). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

"Generally, the existence of an affirmative defense will not support a motion to dismiss." Quiller v. Barclays Am./Credit, Inc., 727 F.2d 1067, 1069 (11th Cir. 1984). However, "a complaint may be dismissed under Rule 12(b)(6) when its own allegations indicate the existence of an affirmative defense, so long as the defense clearly appears on the face of the complaint." Id. In determining a motion to dismiss, the court is limited to the four corners of the complaint. See St. George v. Pinellas County, 285 F.3d 1334, 1337 (11th Cir. 2002).

The Court recognizes Plaintiffs' pro se status and that the Court generally construes pro se pleadings liberally. See Estelle v. Gamble, 429 U.S. 97, 106 (1976). Yet, such "leniency does not give a court license to serve as de facto counsel for a party . . . or to rewrite an otherwise deficient pleading in order to sustain an action." GJR Invs., Inc. v. Cty. of Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted),

overruled on other grounds by Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009).

In other words, the Court must refrain from becoming an unintentional advocate for the pro se litigant, who if bringing an action in this Court, is required to follow the federal rules of procedure. See Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990); Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989).

1. Jurisdiction

A district court has original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." See Justice Cometh, LTD. v. Lambert, 426 F.3d 1342, 1343 (11th Cir. 2005) (quoting 28 U.S.C. § 1331). This original jurisdiction encompasses "all cases under Title 11, as explicitly stated by 28 U.S.C. § 1334." Id. While a district court may refer a case or proceeding that arises under Title 11 to the bankruptcy court, the Eleventh Circuit has held that § 1334 is explicit in granting original jurisdiction, which "clearly forecloses a conclusion that the district court lack[s] subject matter jurisdiction over" a proceeding to recover damages for an alleged willful violation of an automatic stay from a bankruptcy proceeding. See id. (citing § 362(h)).[3]

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[3] Prior to 2005, § 362(k)(1) was § 362(h). See Section 441, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (enacted Apr. 20, 2005).

2. Res Judicata

"Res judicata, or more properly claim preclusion, is a judicially made doctrine with the purpose of both giving finality to parties who have already litigated a claim and promoting judicial economy; it bars claims that could have been litigated as well." In re Atlanta Retail, Inc., 456 F.3d 1277, 1284 (11th Cir. 2006). If there is a prior, final court order on the merits that involves the same parties and cause of action, then a subsequent case concerning the same issue is barred. Id. at 1284-85.

In the Eleventh Circuit, this doctrine is shown if the following are satisfied: "(1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action." In re Piper Aircraft Corp., 244 F.3d 1289, 1296 (11th Cir. 2001) (citations omitted). "The court next determines whether the claim in the new suit was or could have been raised in the prior action; if the answer is yes, res judicata applies." Id. (citation omitted).

3. Laches

An action based on a violation of the automatic stay from a bankruptcy proceeding does not have a prescribed time in which an action must be brought. See 11 U.S.C. § 362. In other words, the Bankruptcy Code does not have a statute of limitations for an action

based on violations of the automatic stay or a claim for damages. See In re Stanwyck, 450 B.R. 181 (Bankr. C.D. Cal. 2011).

Courts, however, have considered the equitable doctrine of laches to determine whether such claims are time barred. See, e.g., Meadows v. Comm'r, 405 F.3d 949, 954 (11th Cir. 2005) ("Finally, there is the question of laches and how that should play into an action to enforce a violation of the bankruptcy stay. . . . The alleged violation here took place in 1995 but Meadows did not raise that issue until 2001; a bankruptcy court might determine that this was untimely.")[4]; see In re Bostanian, 41 F. App'x 66, 66-67 (9th Cir. 2002) (upholding bankruptcy court's decision that claim for damages under § 362(h) (now § 362(k)) was barred by doctrine of laches); Thornton v. First State Bank of Joplin, 4 F.3d 650 (8th Cir. 1993) (holding that it was within court's discretion to apply doctrine of laches to claim for violation of the automatic stay where plaintiff waited four years after discovering misconduct and two years after bankruptcy proceedings had concluded to bring claim); cf. In re Reed, 2007 WL 274322, at *3 (Bankr. S.D. Ala. Jan. 26, 2007) (holding that, on motion to dismiss, defendant could not produce evidence of prejudice for delay in filing motion to reopen case for violation of automatic stay, and laches was therefore inapplicable).

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[4] Meadows was decided prior to the Eleventh Circuit's Justice Cometh decision, which held that district courts have subject matter jurisdiction to adjudicate § 362(h) (now § 362(k)) claims. See Justice Cometh, 426 F.3d at 1343.

A laches defense consists of the following elements: "(1) conduct on the part of the defendant; (2) plaintiff's knowledge of the defendant's conduct and failure to file suit based on that conduct; (3) the defendant's lack of knowledge that the plaintiff would assert his rights by filing suit; and (4) injury or prejudice to the defendant if the plaintiff is allowed to file suit." In re King, 463 B.R. 555, 570 (Bankr. S.D. Fla. 2011) (quoting Encore Enters., Inc. v. Roberts Hotels Fort Myers, LLC, 2011 WL 5357533, at *5 (M.D. Fla. Oct. 31, 2011)). Laches is "an omission to assert a right for an unreasonable and unexplained length of time under circumstances prejudicial to the adverse party." Id. (quoting Ticktin v. Kearin, 807 So. 2d 659, 663 (Fla. Dist. Ct. App. 2001)).

III. Analysis

A. Defendant Miriam Hafiani's Motion to Dismiss Plaintiffs' Complaint (Doc. 11)

Defendant Miriam Hafiani moves to dismiss Plaintiffs' Complaint with prejudice pursuant to Fed. R. Civ. P. 8(a) and 12(b)(6) for failing to state a cause of action (Doc. 11). Counts Seven through Nine of Plaintiffs' Second Amended Complaint allege violations of the automatic stay against Defendant Miriam Hafiani (Doc. 8 at 13-16). Plaintiffs state that Miriam Hafiana is the daughter of Defendants Mary and Djamel Hafiani and that she resides in Florida. Id. at 4 ¶ 8. In Count Seven, Plaintiffs allege that

> Immediately upon obtaining possession of the building at 237 Grove Road containing the estates of Robert Heghman[n] and, Beatrice Heghmann, Djamel Hafiani and his former wife and children began to confiscate, convert or sell anything left at the residence. Among the items converted were clothing, sporting goods, books, furniture and utensils.
>
> The conversion of items constituting the estate of Robert and Beatrice Heghmnann violated the Automatic Stay.

Id. at 13 ¶¶ 31-32. Similarly, Count Eight alleges that despite an automatic stay upon Beatrice Heghmann's voluntary bankruptcy petition, "Djamel Hafiani[,] his former wife and children continued to either convert or sell the estates of Robert and Beatrice Heghmann." Id. at 14 ¶ 33. In addition, Plaintiffs allege that a "[s]ignificant portion of the Estate was sold at a series of yard sales which took place at 237 Grove Road"; that "Djamel Hafiani was assisted at these yard sales by his children Mirriam [sic], Julia and Jamal"; and that "[t]hese yard sale[s] by the Hafiani Family . . . violated the Automatic Stay." Id. at 14-15 ¶¶ 34-35.

The filing of the bankruptcy triggered an automatic stay of any litigation against the Heghmanns pursuant to 11 U.S.C. § 362(a)(1). See In re Horne, 876 F.3d 1076, 1079 (11th Cir. 2017). "Section 362(k)(1) provides that: (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section *shall recover actual damages, including costs and attorneys' fees*, and, in appropriate

circumstances, may recover punitive damages." Id. at 1080 (citing § 362(k)(1)) (emphasis added). As applied in the Eleventh Circuit, "a violation of the automatic stay is willful if the offending party "(1) knew the automatic stay was invoked and (2) intended the actions which violated the stay." In re Harrison, 599 B.R. 173, 183 (Bankr. N.D. Fla. 2019) (citing Jove Eng'g, Inc. v. I.R.S., 92 F.3d 1539, 1555 (11th Cir. 1996)).

Count Nine makes a general allegation that "[a]ll of the Defendants knew their obligation to undo the damage done to the Plaintiffs and their obligation to restore their estate" and that the "failure of the Defendants to undo the violation of the Automatic Stay is itself a violation of the Automatic Stay." Id. at 15-16 ¶¶ 37-38. In this Circuit, the plain language of 11 U.S.C. § 362(a)(1) has been applied to enjoin "the continuation of the commencement or continuation of an action to collect a pre-petition debt." See In re Taylor, 190 B.R. 459, 461 (Bankr. S.D. Fla. 1995). "If one is enjoined from continuing an action then a person is required to take steps to discontinue such action." Id.

Plaintiffs fail to make any allegations that Defendant Miriam Hafiani knew of the automatic stay and intentionally committed a violation of the stay for the Court to even consider the additional layer of allegations that Defendant Miriam Hafiani continued to violate the automatic stay for failing to "undo" damage allegedly caused by the violation of the automatic stay. See Jove Eng'g, Inc., 92 F.3d at 1555. Because Plaintiffs have not sufficiently alleged facts to state a claim to relief that is plausible on its face against Defendant

Miriam Hafiani, the allegations against Miriam Hafiani in Counts Seven through Nine are due to be dismissed.

B. Defendants' Djamel Hafiani, Mary Hafiani, Jamel Hafiani, Julia Sarah Hafiani's Motion to Dismiss Second Amended Complaint (Doc. 13)

Plaintiffs' Complaint states that on "March 13, 2003 at 1:35 p.m. Robert Heghmann filed a Voluntary Petition in Bankruptcy seeking protection under Chapter 13" and that "[p]rotection was immediately granted." (Doc. 8 at 6). Plaintiffs assert that at approximately 2 p.m., "Robert Heghmann called the law office of Ronald Indorf, counsel for Djamel Hafiani, and advised the firm that Bankruptcy had been filed and that Protection had been issued." Id. In Count One, Plaintiffs allege that the phone call from Robert Heghmann to Djamel Hafiani's counsel was sufficient notice to put Djamel Hafiani on notice of the filing of the Bankruptcy and that the failure to notify the New Hampshire state court judge of this violated the automatic stay. Id. at 7. Plaintiffs have repeatedly raised this claim against Defendant Djamel Hafiani who has been ordered to pay the $1200 he made from the yard sales July 12 and 19, 2003, "as actual damages to the Chapter 13 trustee" by the New Hampshire bankruptcy court, which also denied Plaintiffs' punitive damages claim based on a lack of good cause. See In re Heghmann, 316 B.R. at 404. Because Plaintiffs' claims against Defendant Djamel Hafiani have already been

raised and relief ordered by another court, they are due to be dismissed. See In re Atlanta Retail, Inc., 456 F.3d at 128485. In addition, Plaintiffs did not appeal the bankruptcy court's dismissal of Robert Heghmann's case in which claims for violation of the automatic stay were raised against Defendant Djamel Hafiani prior to Beatrice Heghmann's bankruptcy petition, so that res judicata precludes such claims as that judgment is final. See In re Piper Aircraft Corp., 244 F.3d at 1296.

Regarding Plaintiffs' claims against Defendants Mary Hafiani, Jamel Hafiani, and Julia Sarah Hafiani, Count Seven alleges in part that

> Immediately upon obtaining possession of the building at 237 Grove Road containing the estates of Robert Heghman[n] and[] Beatrice Heghmann, Djamel Hafiani and his former wife and children began to confiscate, convert or sell anything left at the residence. Among the items converted were clothing, sporting goods, books, furniture and utensils.

(Doc. 8 at 13). In Count Eight, Plaintiffs' allegations include the following:

> Despite the Automatic Stay which attached with the Bankruptcy of Beatrice Heghmann, Djamel Hafiani his former wife and children continued to either convert or sell the estates of Robert and Beatrice Heghmann. In the days, weeks, months and years subsequent to May 24, 2003, Djamel Hafiani, his former wife and their children converted or sold almost

> the entire estates of Robert and Beatrice Heghmann.

Id. at 14. Similarly, Count Nine alleges that "[a]ll of the Defendants who violated the Automatic Stay have an affirmative duty to undo the offending acts even if they had no actual notice of the bankruptcy at the time the acts were performed." Id. at 15. In addition, Plaintiffs claim that "[a]ll of the Defendants knew their obligation to undo the damage done to the Plaintiffs and their obligation to restore their estate. . . . In the seventeen (17) years since the violations, not one item of the Heghmann estate has been restored." Id. at 16.

Plaintiffs make no assertions as to why they waited seventeen years since the alleged violations to bring these claims against Defendants. While there is no statute of limitations for making a claim regarding a violation of an automatic stay, the Plaintiffs' delay in bringing this action is of concern. See 11 U.S.C. § 362. While Plaintiffs make oblique references to the Defendants' knowledge of their obligations, Plaintiffs fail to make any specific allegations that Defendants Mary Hafiani, Jamel Hafiani, and Julia Sarah Hafiani knew of the automatic stay and intentionally committed a violation of the stay. See In re Harrison, 599 B.R. at 183. Further, res judicata bars these claims as they could have been raised in the prior litigation. See In re Piper Aircraft Corp., 244 F.3d at 1296. In addition, the pleading is deficient in that these counts make assertions against these Defendants collectively and do not afford each Defendant notice as to the specific allegations made as to each Defendant. See Weiland v. Palm

Beach Cty. Sheriff's Office, 792 F.3d 1313, 1323 (11th Cir. 2015) ("The unifying characteristic of all types of shotgun pleadings is that they fail to . . . give the defendants adequate notice of the claims against them and the grounds upon which each claim rests."). For all of the above reasons and because Plaintiffs have not alleged enough facts to state a claim to relief that is plausible on its face against Defendants Mary Hafiani, Jamel Hafiani, and Julia Sarah Hafiani, the allegations against them in Counts Seven through Nine are due to be dismissed.

C. Defendant The Town of Rye's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 14)

"A plaintiff seeking the exercise of personal jurisdiction over a nonresident defendant bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction." United Techs. Corp. v. Mazer, 556 F.3d 1260, 1274 (11th Cir. 2009). For personal jurisdiction over a nonresident defendant, the exercise of jurisdiction must "(1) be appropriate under the state long-arm statute, and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution." Id. (citations omitted). A defendant can be subject to personal jurisdiction under Florida's long-arm statute by specific and general personal jurisdiction. Louis Vuitton Malletier, S.A. v. Mosseri, 736 F.3d 1339, 1352 (11th Cir. 2013) (citing Fla. Stat. § 48.193(1)-(2)).

A defendant is subject to general personal jurisdiction when that defendant has "engaged in substantial and not isolated activity within this state . . . whether or not the claim arises from that activity." Id. at 1352 (quoting Fla. Stat. § 48.193(2)). In contrast, "specific personal jurisdiction authorizes jurisdiction over causes of action arising from or related to the defendant's actions within Florida and concerns a nonresident defendant's contacts with Florida only as those contacts related to the plaintiff's cause of action." Id. "The reach of [section 48.193(2)] extends to the limits on personal jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment." Carmouche v. Tamborlee Mgmt., Inc., 789 F.3d 1201, 1204 (11th Cir. 2015) (citation omitted).

The Eleventh Circuit examines the following to determine due process in specific jurisdiction actions:

> (1) whether the plaintiff's claims "arise out of or relate to" at least one of the defendant's contacts with the forum; (2) whether the nonresident defendant "purposefully availed" himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and (3) whether the exercise of personal jurisdiction comports with "traditional notions of fair play and substantial justice.

Mosseri, 736 F.3d at 1355 (internal quotation marks and citations omitted).

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations,

without offending due process when their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State." Id. (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). "[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." Daimler AG v. Bauman, 571 U.S. 117, 137 (2014). "The touchstone of this analysis is whether the defendant has 'certain minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Waite v. All Acquisition Corp., 901 F.3d 1307, 1312 (11th Cir. 2018) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The focus of the minimum contacts inquiry is "the relationship among the defendant, the forum, and the litigation." See id. (quoting Walden v. Fiore, 571 U.S. 277, 284 (2014)). This ensures that a defendant is brought into court in a forum based on defendant's affiliation with that state instead of the "random, fortuitous, or attenuated" contacts made with others affiliated with the state. See id. (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

Plaintiffs' Complaint focuses on conduct occurring in New Hampshire, stating that "[a]t all times relevant" Plaintiffs "resided at 237 Grove Road, Rye, N.H."[5] (Doc. 8 at 3). Regarding the Town of Rye, Plaintiffs allege that "The Town of Rye is a municipality in the

[5] The listed address on the docket for Plaintiffs is in Virginia.

State of New Hampshire. Among its municipal services the Town of Rye maintains a full time Police Department." Id. at 4. As for the taxpayers, Plaintiffs allege that "John Does and Mary Roes 1 through 6000 are the resident taxpayers of the Town of Rye. . . . Most of the property in the estates of Robert and Beatrice Heghmann was sold in a series of yard sales on the front lawn of 237 Grove Road mainly to resident taxpayers of Rye." Id. at 8. Moreover, Counts Five, Six, Eight, and Nine—in which Plaintiffs make claims against either the Town of Rye or the Residents of the Town of Rye 1 through 6000 or both—fail to include allegations that they have engaged in any activity within this state. See id. at 10-16. Rather, all of the allegations against these Defendants center around events that occurred in New Hampshire with "resident taxpayers" of New Hampshire.

For example, Count Five includes allegations against their eviction of the 237 Grove Road residence by the Town of Rye's Police Department Id. at 10-11. Count Six, similarly, alleges that the Town of Rye failed to have a procedure in place to advise its officers as to how to respond to automatic stays and has not to date implemented policies to prevent future violations of automatic stays. Id. at 12. In Count Eight, Plaintiffs allege that Defendant Djamel Hafiani

> was assisted at these yard sales by his children Mirriam[sic], Julia and Jamal[sic]. These sales were made to Residents of the Town of Rye who responded to signs announcing the yard sales. These Residents were not good

> faith purchasers for value under either state law or the Uniform Commercial Code. They all are guilty of receiving stolen goods in violation of the Automatic Stay.

Id. at 14-15. For the Court to exercise jurisdiction over these Defendants, there must be more than "random, fortuitous, or attenuated" contacts with this forum. Waite, 901 F.3d at 1312. Instead, the only alleged relationship among these Defendants, this forum, and the Plaintiffs' action in this Court is that the Defendants Hafiani reside within this forum (Doc. 8). Further, Plaintiffs have failed to assert that the Town of Rye or its residents have purposefully availed themselves in Florida in any way or that this Court has an interest in resolving this action. Mosseri, 736 F.3d at 1355. Nor have Plaintiffs alleged what their interest is in bringing the action in this Court beyond that the New Hampshire courts have not provided the requested relief and that the laws of that state have prevented them from receiving their requested relief. For instance, Plaintiffs assert in their Complaint that "[a]lthough New Hampshire statutes limit liability of municipalities in state court for violations of state law, those limitations do not apply to alleged violations of federal law." (Doc. 8 at 4-5). In another count, Plaintiffs include that they filed a complaint in the District Court for New Hampshire and sought "compensatory and punitive damages for Djamel Hafiani's violations of the Automatic Stay on March 15th and 19th. On May 28, 2003[,] Judge Joseph A. DiClerico, Jr.[,] acting sua sponte[,] dismissed the Heghmann's Complaint based upon lack of subject matter jurisdiction." Id. at 9. That

Plaintiffs did not receive the relief they sought in the New Hampshire courts or that they were limited by the claims they were able to bring because of the laws of New Hampshire does not equate to an interest in convenient and effective relief in this Court. In addition, it has been approximately seventeen years since Plaintiffs' automatic stay and the filing of their initial complaint in this action. No explanation in Plaintiffs' Complaint has been provided to assert an interest in the judicial system resolving this decrepit dispute, especially considering that Plaintiffs have sought relief and were awarded payment for damages by the bankruptcy court in New Hampshire against Defendant Djamel Hafiani for the $1200 made from the yard sales July 12 and 19, 2003, "as actual damages to the Chapter 13 trustee" and were denied the punitive damages claim based on a lack of good cause. See In re Heghmann, 316 at 404.

The absence of any allegation connecting Defendants the Town of Rye and John Does and Mary Roes 1 through 6000 with this cause with action that comports with "traditional notions of fair play and substantial justice" necessitates their dismissal. See Waite, 901 F.3d at 1312; see also Walden v. Fiore, 571 U.S. 277, 285 (2014) (explaining that its "minimum contacts analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there" (internal quotation marks omitted)). Nor do Plaintiffs' claims against the Town of Rye and its residents allege "substantial and not isolated activity in Florida" nor any

"affiliations with the State [that] are so continuous and systematic as to render them essentially at home in the forum State" for the Court to assert general jurisdiction over them. See Waite, 901 F.3d at 1312, 1317 (internal quotation marks omitted). Plaintiffs' claims against the Town of Rye and John Does and Mary Roes 1 through 6000 are due to be dismissed for lack of personal jurisdiction. After due consideration, it is

ORDERED:

1. Defendant Miriam Hafiani's Motion to Dismiss Plaintiffs' Complaint (Doc. 11) is **GRANTED**. Plaintiffs' allegations against Defendant Miriam Hafiani in Count Seven, Count Eight, and Count Nine of Plaintiffs' Second Amended Complaint (Doc. 8) are **DISMISSED with prejudice**.

2. Defendants' Djamel Hafiani, Mary Hafiani, Jamel Hafiani, Julia Sarah Hafiani's Motion to Dismiss Second Amended Complaint (Doc. 13) is **GRANTED** to the extent that Plaintiffs' allegations against Defendants Djamel Hafiani, Mary Hafiani, Jamel Hafiani, Julia Sarah Hafiani in Counts One through Five and Seven through Nine are **DISMISSED with prejudice**.

3. Defendant The Town of Rye's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 14) is **GRANTED**. Plaintiffs' allegations against Defendants The Town of Rye, N.H. and John Does 1 thru 6000 and Mary Roes 1 thru 6000 in Counts Five, Six, Eight, and Nine are **DISMISSED with prejudice**.

4. The Clerk of the Court shall terminate all remaining motions, and **close** this case.

DONE AND ORDERED in Jacksonville, Florida, this 13th day of July, 2021.

/s/ Brian J. Davis
BRIAN J. DAVIS
United States District Judge

Copies to:
Counsel of Record
Unrepresented Parties

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-12650-DD

ROBERT A. HEGHMANN,
BEATRICE M. HEGHMANN,

Plaintiffs - Appellants,

versus

DJAMEL HAFIANI,
MARY HAFIANI,
MIRIAM HAFIANI,
JAMEL JOSEPH HAFIANI,
JULIA SARAH HAFIANI,
THE TOWN OF RYE, N.H., et al.,

Defendants - Appellees,

THE HAFIANI FAMILY TRUST, et al.,

Defendants.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Jan. 12, 2023)

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

BEFORE: ROSENBAUM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)
