

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:)
) CHAPTER 7
) CASE NO. 08-50021-JDW
JAMES CLIFFORD MCDANIEL, SR.)
and DANIELLE MARIE MCDANIEL,)
)
)
DEBTORS.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: Danny L. Aiken
Post Office Box 1773
Macon, Georgia 31202

For Movant: Michael Holbein
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MEMORANDUM OPINION

This matter comes before the Court on Branch Banking & Trust Company's motion for stay relief. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(G). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Branch Banking & Trust Company ("the Bank") holds a note secured by real property. Hollywood Homes, Inc., which is a debtor in a separate bankruptcy case, owns the property and is the primary obligor on the note. Debtor James McDaniel, the principal of Hollywood Homes, guaranteed the note. The Bank obtained relief from the automatic stay in Hollywood Homes's bankruptcy, at time when this case was also pending. On April 1, 2008, the Bank foreclosed on the real property. The sale amount did not satisfy the debt in full.

The Bank now seeks stay relief in this case for the first time for the purpose of confirming the foreclosure sale, which will allow it to pursue a deficiency claim against Mr. McDaniel. Furthermore, the Bank has filed an adversary proceeding objecting to dischargeability of the alleged deficiency claim.

The Court held a hearing on the motion for stay relief on April 28, 2008. On April 30, 2008, in open court, the Court announced its decision to grant the motion. On April 29, when the Court notified the parties of the April 30 hearing, it also notified them of its decision to modify the stay and informed them further that the modification was effective immediately. The Court now supplements its oral announcement with this memorandum opinion.

Conclusions of Law

The automatic stay provides debtors with broad protection from acts to collect or enforce a debt. 11 U.S.C. § 362(a). Some subsections protect property of the debtor or the bankruptcy estate, while others protect the debtor personally. The Court may modify the stay (1) for cause or (2) in an action against property, if the debtor has no equity in the property and it is unnecessary for an effective reorganization. Id. § 362(d)(1), (2). In this case, the Bank is not pursuing Mr. McDaniel's property. Therefore, the Court must determine whether the bank has shown cause to lift the stay.

Pursuant to O.C.G.A. § 44-14-161, a creditor cannot pursue a deficiency claim after a nonjudicial foreclosure unless it has the sale confirmed by the superior court within 30 days of the foreclosure. At the confirmation hearing, the creditor must demonstrate the "true market value" of the property. Id. § 44-14-161(b). In addition, the court must "pass upon the legality of the notice, advertisement, and regularity of the sale." Id. § 44-14-161(c). Thus, stay relief is necessary to protect the Bank's rights against Mr. McDaniel.

Mr. McDaniel has argued that lifting the stay could lead to unnecessary litigation. If the Bank loses its dischargeability action, a confirmation hearing would be superfluous because the deficiency claim would be discharged. However, the Bank would be prejudiced by any delay in lifting the stay. Although the 30-day deadline for confirmation of the foreclosure sale is tolled as to Mr. McDaniel, it is not tolled as to Hollywood Homes because the stay in its case has already been lifted. 11 U.S.C. § 108(c). Even assuming the Bank can proceed with confirmation solely against Hollywood Homes, such a hearing might create collateral estoppel issues for the Bank and Mr. McDaniel. For the foregoing reasons, the Court finds cause to modify the stay.

Ancillary to the question of whether the stay may be lifted is when it should be lifted. The Bank did not pursue stay relief against Mr. McDaniel prior to the foreclosure. Case law indicates that because foreclosure is an *in rem* proceeding, stay relief is only necessary against debtors with an ownership interest in the property. Saratoga Group, Ltd. v. Peoples Nat'l Bank (In re Geris), 973 F.2d 318, 321 (4th Cir. 1992); Everchanged, Inc. v. First Nationwide Mortg. Corp. (In re Everchanged, Inc.), 230 B.R. 891, 894 (Bankr. S.D. Ga. 1999). A confirmation proceeding, on the other hand, is a separate *in personam* proceeding against the debtor, requiring stay relief. 230 B.R. at 894-95.

Nevertheless, as a general proposition, the automatic stay prevents any legal proceedings that impact a debtor's personal liability. A foreclosure sale is a necessary first step to establishing a deficiency claim. A debtor who is a guarantor without any ownership interest in the collateral may argue that anything resulting from the foreclosure sale—such as a deficiency claim established at a confirmation hearing—is a nullity in his bankruptcy case because the stay was in full force at the time of the foreclosure.

While the question of the timing of stay relief is important, the Court need not answer it at this time. The Court can modify the stay now without prejudicing Mr. McDaniel's right to raise the timing issue in a later proceeding, such as in a claim objection or in the dischargeability action. Therefore, the Court will lift the stay to allow the Bank to proceed with confirmation of the foreclosure sale.

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