

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 13
)
MARY GREGORAKOS,) CASE NO. 09-72614 - MHM
)
Debtor.)

)
GRP LOAN, LLC,)
)
Movant,)
v.) **CONTESTED MATTER**
)
MARY GREGORAKOS,)
)
Respondent.)

DISMISSAL ORDER

Hearing was held May 22, 2009, on Movant's emergency motion for relief from stay, which was filed May 15, 2009 [Doc. No. 4]. Present at the hearing were attorney for the Chapter 13 Trustee, attorney for Movant, and attorney for Debtor. At the conclusion of the hearing, attorney for Movant was allowed additional time to file an amended motion to address several legal issues that arose during the course of the hearing. Attorney for Debtor was accorded an opportunity to respond to that amended motion. Movant filed an amended motion June 1, 2009,¹ and Debtor filed her response June 11, 2009.

¹ In the amended motion, Movant's seeks dismissal of this case as a bad faith filing. Dismissal was not sought in the initial motion. Debtor has filed none of the information required by §521(a). The original motion, the hearing and the posthearing pleadings have focused primarily on the Property and the validity of the foreclosure sale. The issues surrounding dismissal have not been fully developed and, therefore, Movant's request for dismissal will be *deferred* until the confirmation hearing.

This case commenced May 15, 2009. Debtor claims an interest in real property located at 3184 Robinson Road, Marietta, Cobb County, Georgia (the “Property”). Debtor filed this case to prevent her dispossession from the Property. Movant had foreclosed on the Property February 5, 2008. The foreclosure sale had been validated by order entered June 17, 2008, in a Chapter 11 case filed by Debtor’s son, Michael Gregorakos, Case No. 08-62286.² Shortly thereafter, the Magistrate Court of Cobb County issued a writ of possession, which Debtor appealed to the Cobb County Superior Court. By order entered **June 1, 2009**, the Cobb County Superior Court found Movant “has lawful ownership of the property located at 3184 Robinson Road, Marietta, Georgia” and was entitled to the Writ of Possession. The Cobb Superior Court order relied, in part, on *Gregorakos v. Wells Fargo National Association*, 285 Ga. App. 744 (2007), in which the court held that Debtor had no cognizable interest in the Property, was not entitled to reformation of the deed and, therefore, her claims regarding wrongful foreclosure were moot.

In opposition to Movant’s motion for relief from stay, Debtor asserts that the foreclosure sale was invalid because the assignment of the loan from Wells Fargo to Movant occurred after the advertising of the foreclosure sale commenced. Debtor argues that the advertisement of the foreclosure sale constitutes an invocation of the power of sale conferred by the deed to secure debt, but the assignment of deed to secure debt was not accomplished until after the advertising commenced. The assignment of the deed to secure debt occurred January 31, 2007, five days before the foreclosure sale took place.

² Debtor had appeared at the hearing on Movant’s motion for relief from stay in her son’s case.

The statutory and case law cited by Debtor does not define whether the commencement of advertising is tantamount to the exercise of the power of sale or is merely a condition precedent to the actual sale. More importantly, however, the Cobb County Superior Court has denied Debtor's claims that the foreclosure sale was invalid. The bankruptcy court is not an avenue to appeal a state court ruling nor an avenue to present arguments that should have been presented to the state court. The issue of the validity of the foreclosure sale has been litigated and concluded in Movant's favor. The bankruptcy court does not represent a forum to vindicate Debtor's dissatisfaction with the state court's ruling. Both comity and equitable principles of collateral estoppel prevent this court from entertaining Debtor's collateral attack on the state court's rulings. Accordingly, it is hereby

ORDERED that Movant's motion for relief from stay is *granted*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, Movant, Movant's attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the ____ day of July, 2009.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE