

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

_____|" IN RE: CASE NO. 06-68928
James Michael Parker, CHAPTER 13
Debtor. JUDGE MASSEY
_____|"

ORDER DENYING DEBTOR'S EMERGENCY MOTION
FOR REIMPOSITION OF STAY AS TO PROPERTY OF THE ESTATE

Debtor filed on September 29, 2006 an emergency motion for reimposition of the automatic stay with respect to property known as 5829 Millers Pond Lane, Powder Springs, GA 30127. As the motion points out, Debtor filed a motion to extend the stay that was denied for failure to prosecute because Debtor and his counsel failed to appear at the hearing his counsel had scheduled for August 23, 2006. The Order denying that motion was entered on September 11, 2006.

American General filed a proof of claim in the prior case under case no. 06-63073 showing an arrearage of \$14,022.81 as of April 3, 2006, which was the petition date in that case. In this case, filed on July 28, 2006, American General filed a proof of claim showing an arrearage of \$22,416.15. It is not clear how the claim could have risen by so much in such a short period of time, but if the rising arrearage means that Debtor has not made current mortgage payments after the last case was dismissed and if Debtor has not made current mortgage payments in this case, it would be difficult to argue that this case was filed in good faith. The motion to extend stay that

the Court denied for lack of prosecution alleged no facts that would show that this case was filed in good faith.

Debtor failed to point out in his motion to reimpose the stay as the real property that the Court entered an Order on August 2, 2006, modifying the stay to permit American General Financial Services, Inc. to conduct a foreclosure sale.

The certificate of service attached to the motion states that the motion was served on August 25, 2006, by mail on "American General" and Mr. Robert Broome, who filed motions for relief from stay on behalf of American General Financial Services, Inc. in this case. The motion is dated September 29. The Court presumes that the date on the motion is the date of service because it would have been odd to serve a motion dated September 29 on August 25. Serving an emergency motion by mail is tantamount to admitting that no emergency exists. That service was not calculated to reach the Respondent prior to Tuesday, October 2, 2006, which is foreclosure day. If there is in fact an emergency, a pending foreclosure next Tuesday would be the reason.

The present motion alleges no facts to show that there is an emergency. Bankruptcy Local Rule 9013-4 provides:

Upon written motion and for good cause shown, the Bankruptcy Court may shorten the time for notice and hearing with regard to an emergency matter requiring immediate attention or a matter requiring expedited consideration. The motion shall set forth in detail the necessity for such expedited procedure and shall contain the word "Emergency" or "Expedited" in the title of the motion. A party filing a pleading or motion that requires immediate judicial attention shall advise the chambers staff of the Bankruptcy Judge to which the matter is assigned of the filing of the pleading or motion.

Debtor has made no motion under this Local Rule. Simply putting the word "emergency" in the title of a motion does not constitute compliance with this Rule. The Rule in effect requires two

separate motions, one to shorten the notice period because of an emergency and one for the substantive relief sought.

For these reasons, it is

ORDERED that Debtor's Emergency Motion for Reimposition of Stay as to Property of the Estate (Document no. 30) is DENIED without prejudice. Debtor may refile the motion but should serve it by hand along with a motion for an expedited hearing if there is in fact an emergency.

Dated: September 29, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE