



**IT IS ORDERED as set forth below:**

**Date: August 17, 2012**

**Paul W. Bonapfel  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 11-78588-PWB
	:	
BAMIDELE ADISA OLALEYE,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
_____	:	
BAMIDELE ADISA OLALEYE,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 11-5697
BAC HOME LOANS SERVICING LP,	:	
f/k/a COUNTRYWIDE HOME LOANS	:	
SERVICING, LP,	:	
	:	
Defendant.	:	

**ORDER**

Before the Court is the Debtor's motion for entry of default judgment against BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP. [Doc. 6]. For the reasons

set forth herein, the Court abstains from hearing the claims asserted by the Debtor and dismisses the complaint without prejudice.

The Debtor filed this complaint challenging the validity of the assignment to the Defendant of a deed to secure debt on the Debtor's residence located at 3308 Kessock Ridge Trail, Snellville, Gwinnett County, Georgia (the "Property"), challenging the Defendant's authority to foreclose on the Property, and requesting an injunction against the Defendant with respect to any dispossession action. Because the Defendant failed to answer, the Debtor seeks entry of default judgment on the relief requested.

The Debtor filed this complaint on December 12, 2011, eleven days after the dismissal of the chapter 13 bankruptcy case, 11-78588-pwb. The Court denied the Debtor's motion to reopen the bankruptcy case on February 24, 2012. Having dismissed the main bankruptcy case and denied the Debtor's request to reopen it, the Court would, in most circumstances, conclude that there is no basis for the discretionary retention of jurisdiction of this proceeding. *See Fidelity & Deposit Company of Maryland v. Morris (In re Morris)*, 950 F.2d 1531, 1535 (11<sup>th</sup> Cir. 1992).

But during the pendency of this adversary proceeding the Debtor filed a chapter 7 case, that being 12-54963-PWB. As a result, the Court will consider whether it is appropriate to retain jurisdiction before ruling on the Debtor's motion for default judgment.

The Debtor filed a chapter 7 case, 12-54963-PWB, on February 27, 2012. The Debtor has not listed any of the claims against the Defendant as assets of the bankruptcy estate. Federal Home Loan Mortgage Corporation ("Freddie Mac") sought relief from the automatic stay with respect to the Property and alleged that it was the current owner of the Property and the transferee of BAC Home Loans Servicing LP (the Defendant in this action) who conducted a foreclosure sale

on March 1, 2011. [12-54963-PWB, Doc. 16]. On September 26, 2011, the Superior Court of Gwinnett County, Georgia issued a final order for immediate writ of possession with respect to the Property. [12-54963-PWB, Doc. 16, Exh. E]. The Debtor did not appear at the hearing on Freddie Mac's motion for relief from stay and an Order was entered granting the motion on May 14, 2012.<sup>1</sup> The Order provides in pertinent part, "the Motion is GRANTED; as the Property is not property of the estate, and the only issue is that of possession, which arises under Georgia law" and "ORDERED that the automatic stay is modified so that Freddie Mac may proceed in the appropriate state court, as otherwise authorized under Georgia law, to recover possession of the Property, including the initiation and completion of a state court dispossessory action." [12-54963-pwb, Doc. 20 at 2]. For the reasons stated at a hearing on June 5, 2012, the Court denied the Debtor's motion for reconsideration of the Order. [12-54963-PWB, Doc. 26].

Section 1334(c)(1) of Title 28 provides, "Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

The extensive prepetition litigation and the filing of two bankruptcy cases after the foreclosure of the Property occurred tend to show that the Complaint was filed to further delay an eviction. All of the Debtor's remaining claims are nonbankruptcy claims related to the contention that the foreclosure of the Property was wrongful and in violation of state and/or federal

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<sup>1</sup>The Debtor filed a motion to continue the hearing 18 minutes before the hearing was scheduled, asserting that she became ill and required medical attention the night before the hearing. The Court was unaware of the motion and proceeded with Freddie Mac's motion for relief from the automatic stay. As a result, the Court denied the Debtor's motion to reschedule the hearing as moot. [12-54963-PWB, Doc. 19].

nonbankruptcy law. The Debtor has not listed these claims on Schedule B as assets. To the extent that any of these claims are valid, they have no bearing on the administration of the bankruptcy estate since the Debtor has not disclosed them as assets, and the Trustee, who arguably is the proper party in interest, has not sought to intervene in this action on behalf of the estate.

Taking into account all of the circumstances, including the history of litigation between the parties, the prepetition foreclosure of the Property, and the termination of the automatic stay of 11 U.S.C. § 362(a) to permit the lender to exercise its nonbankruptcy law rights to the Property, the Court concludes that abstention is warranted in the interests of justice. For the foregoing reasons, it is

ORDERED that the Debtor's motion for default judgment [Doc. 6] is denied. It is

FURTHER ORDERED that, pursuant to 28 U.S.C. § 1334(c)(1), the Court hereby abstains from hearing the claims asserted by the Debtor in this adversary proceeding and that this adversary proceeding be, and the same hereby is, dismissed without prejudice.

End of Order

Distribution List

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