



IT IS ORDERED as set forth below:

Date: November 2, 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: 12-76496-PWB
	:	
LORINE DENISE HIGGS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
SPT REAL ESTATE SUB III, LLC,	:	
	:	
Movant	:	
	:	
v.	:	CONTESTED MATTER
	:	
LORINE DENISE HIGGS and	:	
MARY IDA TOWNSON, Trustee,	:	
	:	
Respondents.	:	

ORDER

SPT Real Estate Sub III, LLC (“SPT”) seeks entry of an order confirming that the filing of the bankruptcy petition does not operate as a stay of the enforcement of a prepetition

dispossessory writ of possession pursuant to 11 U.S.C. § 362(b)(22). For the reasons set forth herein, the motion is denied.

SPT alleges that on September 6, 2011, Bank of America conducted a foreclosure sale on real property located at 602 Talmadge Lane, Canton, Georgia (the “Property”). SPT purchased the Property from Bank of America on May 8, 2012. Thereafter, SPT instituted a dispossessory action, that being *SPT Real Estate SUB III, LLC v. Clayton Peterson and All Other Occupants*, 12MC5513, in the Magistrate Court of Cherokee County, Georgia, and obtained a writ of possession on October 5, 2012. SPT contends that the Debtor was not a borrower under the original loan, but claims to be a tenant residing in the Property.

Section 362(a)(3) provides that the filing of a bankruptcy petition operates as a stay of “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” Section 362(b) enumerates exceptions to the automatic stay. Section 362(b)(22) provides that the filing of a bankruptcy petition does not operate as a stay,

subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.

Thus, in order for § 362(b)(22) to be applicable, the eviction proceeding giving rise to the prepetition writ of possession must be based on a landlord-tenant relationship between the movant and the debtor.

The Court concludes that the facts as asserted by the Movant do not give rise to a right to relief under § 362(b)(22). Although SPT obtained a prepetition writ of possession, it is not founded on a landlord-tenant relationship with the Debtor as the plain language of § 362(b)(22) requires. There is no allegation or evidence that SPT is a lessor of the Property to the Debtor or any other party.

The Debtor's petition identifies her landlord as Phyllis Peterson. The borrower under the note with Bank of America was Clayton Peterson. It is entirely possible that this Debtor's bankruptcy filing is a calculated attempt to further delay the lawful eviction of persons from the Property. The possibility of an abusive filing is further indicated based upon the lack of an original signature on the petition.¹ Notwithstanding these circumstances, the Court cannot ignore the plain and explicit terms of § 362(b)(22)'s requirement of a landlord-tenant relationship. As a result, § 362(b)(22) is inapplicable to the facts of this case. SPT may seek relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and any other remedies to prevent an abusive filing it deems appropriate, subject to notice and a hearing. Accordingly, it is

ORDERED that the motion for order confirming petition does not operate as stay of the enforcement of dispossessory writ of possession is denied without prejudice to SPT's right to request relief from the automatic stay pursuant to § 362(d).

End of Order

¹The Debtor presented the petition for filing in person in the Clerk's office. After filing, it was discovered that the signature on the petition appeared to be a copy, not an original. Pursuant to Bankruptcy Rule 9011(a), on October 29, 2012, the Court issued an Order and Notice to the Debtor to provide an original signature on the petition no later than November 9, 2012, or the petition shall be stricken and the case shall be dismissed void ab initio.

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